CITY AND COUNTY OF DENVER

BOARD MEMBERS
EDGAR L. NEEL – CHAIR
ANN TERRY – VICE CHAIR
LESLIE M. LAWSON
LORI MACK
SYL MORGAN-SMITH

STAFF DIRECTOR
L. MICHAEL HENRY

DENVER BOARD OF ETHICS
WEBB MUNICIPAL BUILDING
201 West Colfax, 2nd Floor - (2.H-13)
Department 703 - (for U.S. Mail)
Denver, CO 80202-5330
E-mail: michael.henry@denvergov.org
Website: www.denvergov.org/ethics
Phone: (720) 865-8412
Fax: (720) 865-8419

DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1– June 30, 2008

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2008 in response to fact-specific requests for advisory opinions or inquiries/complaints. **They should not be used as conclusive guidance for situations where the facts may differ**.

Cases 08-1, 08-41 and 08-42 (conflict of interest)

In Case 08-1 a member of City Council requested an advisory opinion as to whether there would be a prohibited conflict of interest if he voted on a controversial re-zoning case in his district because of the fact that one of his Council aides is married to one of the citizens most active in the zoning controversy. The Councilperson had already directed that aide not to work on the re-zoning matter and assigned another of his aides to assist him on all matters related to that re-zoning case.

The Board of Ethics advised the Councilmember that he is not prohibited by Section 2-61 of the Denver Code of Ethics (conflict of interest) or the City Charter from discussing or voting on the re-zoning matter because neither he nor his immediate family members nor any business associates have any financial or property interests in the rezoning areas and because he and his aide had taken appropriate measures to avoid any potential conflict of interest due to the involvement of the aide's spouse in the re-zoning matter. The Board encouraged the Councilmember to take great care to maintain his own impartiality in word and in deed and to continue to maintain his aide's separation from the matter by ensuring that the aide is not assigned to any role or placed in any position where the aide could take any direct official action regarding the re-zoning matter.

In Cases 08-41 and 08-42, a citizen filed complaints against both the Councilmember and the aide, soon after the City Council voted on the re-zoning case, accusing them of conflicts of interest and mentioning that the aide had signed a petition, also signed by many other neighborhood residents, requesting the Zoning Administrator to waive the fees normally charged for re-zoning applications. The Board of Ethics dismissed both of these complaints because the aide was specifically directed by the Councilmember not to have any involvement as a city employee in the rezoning matter and because the Councilmember had earlier obtained an advisory opinion from the Board of Ethics which he complied with.

Case 08-2 (subsequent employment)

An employee of the Public Works Department requested an advisory opinion and/or a waiver concerning whether and how Section 2-64(a) of the Code of Ethics would apply to him:

> **Sec. 2-64. Subsequent employment.**
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

The employee had served in a number of roles with increasing responsibility for several years in the major project of redeveloping Denver Union Station. For approximately two years, he was one of two city leads on the project management team for the Union Station project. The employee was considering leaving city government and working for the primary private consultant on the Union Station project.

The Board of Ethics concluded that his role as a city lead on the project management team amounted to "direct official action" of the type that would cause a violation of 2-64(a) without a 6-month waiting period.

However, the Board determined, pursuant to Section 2-54(f) of the Code of Ethics, to grant the employee a waiver because it would be in the city's best interests if he would not be required to wait six months to begin work for the private consultant on the Union Station project, due to the importance of the project to the City and County of Denver and the Denver metropolitan area and the great complexity of the project and his understanding of many aspects of the project. The Board indicated that the consultant's work would be environmental review and would be entirely in support of the city's goals relating to the project and that the employee would be using his expertise consistently with the city's objectives and needs and not to the city's disadvantage.

Case 08-3 (gifts)

The director of the Division of Small Business Opportunity (DSBO) requested an advisory opinion. A private company which manages the DSBO data-base, was offering a scholarship to an educational conference to an employee of one of its "customers." The scholarship would cover travel, room and registration. The director wished to know if any DSBO employees may apply for or accept such a scholarship from the company.

Section 2-60(a) of the Code of Ethics provides:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:
>
> (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation; …

The purpose of this section is to avoid the actuality or appearance of special influence by those who give gifts to city personnel. Since the company has a current contract with DSBO (and probably would like to extend its contract in the future), the Board of Ethics decided that anyone "in a position to take direct official action" with regard to the company, including approving or negotiating or recommending for or against the contract or renewal of the company's contract, would be prohibited from accepting a gift (which would include a scholarship) from the company. Any DSBO employee who is not "in a position to take direct official action" regarding the contract with the company would be permitted to apply for and accept a scholarship.

Case 08-4 (gifts)

A Deputy Chief of the Police Department asked whether it is permissible under the gift section of the Denver Code of Ethics for police officers to obtain discounts from a firearms manufacturing company. Denver police officers are required to purchase their own handguns for use on duty.

The company in question has an "Appreciation for Service" discount program in which it offers a discount for all members of law enforcement agencies or military agencies. The discount is offered for just one model handgun. That model has been approved for use on duty by DPD.

No Denver police officers are involved in negotiating or approving contracts or purchase orders for the purchase of firearms. In fact, the city does not purchase any handguns for

police officers, since officers are required to purchase their own handguns for use on duty. The Police Department's purchasing is handled by a civilian employee in the Police Department. The Denver Police Department does not currently have any type of contract or purchase order with the company in question and does not know of any effort by the company to obtain a contract or purchase order with the Police Department in the future.

Section 2-60(a) of the Denver Code of Ethics includes in the definition of "gift" "any "reduction in price or any discount that is not similarly available to all city officers, officials and employees on the same terms." Since the discount in question is only available to police officers and military personnel and is not available to all city employees, this discount would be defined as a "gift." However, only city personnel who are "in a position to take direct official action with regard to the donor" (the company offering the discount) are prohibited from accepting a gift pursuant to section 2-60(a) and only if the city "has an existing, ongoing or pending contract, business or regulatory relationship with the donor." Neither of those conditions applies in this case. Therefore, the Board of Ethics concluded that all Denver police officers are able to accept the discount and would not violate the Code of Ethics.

Case 08-5 (subsequent employment)

A former city employee requested an advisory opinion and/or a waiver. He had been employed by Denver International Airport in a number of capacities since 1996. His last job title was Airport Operations Manager (one of fourteen). He left city government in November 2007 and was hired by a private company which provides security services for aviation facilities. After leaving city government, he worked for several months for the company on a project related to an airport in Florida. Now the company would like to assign him to manage the security contract at DIA and also a Registered Traveler Program contract which the company is in the process of finalizing with DIA.

In 2005, while he was working on security for DIA, he wrote a request for proposals and evaluation criteria when DIA was trying to contract with a private security organization. DIA ultimately selected the company in question, whose predecessor company was the incumbent firm that already had a security contract with DIA. He also served on a review panel of 6 to 8 city employees that reviewed the applicants, including the company in question.

In 2005-2006, he also prepared an earlier request for proposals for the Registered Traveler Program for DIA, but he was not involved in contract selection or negotiations relating to the contract eventually awarded to the company in question. He was transferred away from the DIA security office in July 2007, when he accepted a position as an Airport Operations Manager.

He and the company wished to know if he is prohibited by Section 2-64(a) of the Denver Code of Ethics from working for the company to manage the two contracts between DIA and the company now, without waiting until six months after November 2007.

Section 2-64(a) of the Code of Ethics provides:

> **Sec. 2-64. Subsequent employment.**
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

"Direct official action" is defined in Section 2-52(b) as:

> **Sec. 2-52. Definitions:**
>
> (b) *Direct official action* means any action which involves:
>
> (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
>
> (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits;
>
> (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
>
> (4) Appointing and terminating employees, temporary workers, and independent contractors.
>
> (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above…

Even though the former employee prepared two different requests for proposals more than two years ago under which the company was selected and served on one of the review teams, the Board concluded that this does not amount to direct official action of the type that would require a six-month waiting period. He did not personally negotiate or approve a contract with the company and his involvement with the review team for the security contract was more than two years ago.

The Board found that, due to the significant time gap, he would not violate Section 2-64(a) if he were to be employed now to manage the two contracts with DIA. Technically, he was still within six months of the time that he terminated his employment with the city, but, in fact, he had not worked in the security office or on matters relating to security in more than six months.

Case 08-6 (no jurisdiction)

A part-time city hearing officer filed a complaint concerning an agency head who he alleged had improperly terminated his employment. He had also appealed to the Career Service Authority Board. The Board of Ethics dismissed the complaint for the reason that it does not have jurisdiction over personnel matters of this nature.

Case 08-7 (conflict of interest)

A member of City Council filed a request for an advisory opinion. The Councilmember's spouse had recently been hired by a Denver law firm that has considerable dealings with the City and County of Denver.

The attorney and the law firm indicated, however, to the Board of Ethics that the firm has established a policy that the Councilmember's spouse will not be involved in any matters that involve the City and County of Denver directly or the City Council.

Conflicts of interest are regulated by Section 2-61 of the Code of Ethics. In summary, the Code would prohibit the City Councilmember from taking direct official action (including, for example, approving a contract or lease) if the spouse:

- Is the other party in the matter
- Owns more than 1% of another party in the matter
- Is an officer of another party in the matter
- Is directly involved in obtaining the city's business for another party in the matter
- Is an officer in another party in the matter
- Is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications or similar document for another party in the matter other than in a purely clerical capacity
- Performs more than a nominal portion of the work in the matter or supervises or manages more than a nominal portion of the work

The Board concluded that, so long as the spouse does not work on any cases involving the City and County of Denver for the law firm, there is no conflict of interest prohibited by the Denver Code of Ethics which would require the member of City Council to abstain from voting as a City Councilmember. However, in order to avoid the appearance of impropriety, the Board recommended that if a contract or other matter in which the law firm is a party or represents a party comes before City Council or a City Council committee, the Councilmember should disclose for the record that the spouse works for the law firm, even though the spouse did not work on that particular matter. In addition,

the Board recommended that, if any type of contract between the City and County of Denver and the law firm comes before City Council, the Councilmember should abstain from discussing or voting on that contract.

In addition, even though the Board of Ethics acknowledged that it has no jurisdiction to regulate the law firm, the Board encouraged the law firm to:

- Continue its policy that the Councilmember's spouse will not be involved on matters that involve the City and County of Denver directly or the City Council and
- build a confidentiality wall so that the spouse will not be aware of the law firm's actions and information on certain matters if and only if the firm is involved in any cases in which the interests of the firm or its clients are adverse to the City and County of Denver.

The Board of Ethics indicated that all lawyers in the law firm are obligated to follow the ethical rules established in the Colorado Supreme Court's Rules of Professional Responsibility, including those related to conflicts of interest.

Cases 08-8, 08-9 and 08-17 (no jurisdiction)

These complaints were filed by an inmate of the County Jail concerning a public defender, a prosecuting assistant city attorney and a county judge, alleging mishandling of a criminal case against the inmate. The Board of Ethics dismissed these cases because 1) issues such as those raised in the complaints can only be handled though the appeals process; 2) the Board of Ethics does not have jurisdiction over issues such as those and 3) the Denver Code of Ethics does not apply to public defenders or judges.

Cases 08-10 through 08-15 (no jurisdiction)

A citizen filed complaints against the Mayor and several department heads, concerning the death of a young woman (her niece) while in custody in the Denver City Jail. She alleged failure to provide proper training and supervision to employees at the jail, falsification of records and failure to investigate properly.

The Board dismissed the complaints pursuant to Section 2-56(6)(a) of the Denver Code of Ethics because the Board of Ethics has no jurisdiction over these types of issues and pursuant to Section 2-56(6)(b) because the alleged violations, if true, would not constitute violations of the Code of Ethics. The Board indicated that it believes that the appropriate remedies in these cases are through the litigation process and expressed sympathy for the tragic death.

Case 08-15 (outside business activity)

A police officer requested an advisory opinion about a book that he has written based on some of his experiences and which he is seeking to publish. He indicated that he has taken precautions not to compromise anyone's identity or any unsolved police cases and that he does not mention Denver or the Denver Police Department in the book. The officer's appointing authority has approved the outside business activity in writing as required by Section 2-63 of the Code of Ethics concerning outside employment or outside business activity.

The Board of Ethics concluded that, so long as he has obtained written approval from his appointing authority, his writing or publishing the book will not violate Section 2-63 of the Code of Ethics. The Board reminded the officer that the approval must be given annually so long as that business activity continues.

The Board also reviewed Section 2-61 of the Code of Ethics, regulating conflicts of interest, and did not find any violation of that section, since the officer will not be taking any "direct official action" regarding the book. The Board also concluded that there is not any "incompatibility" with his city job or adverse effect on the city's interests, which would be prohibited by Section 2-61 (g) of the Code of Ethics, which provides that "no officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city."

The Board, however, recommended that, in order to avoid the appearance of impropriety, he should not conduct any of his writing or publishing activities on city time or with city resources.

Case 08-16 (no jurisdiction)

An inmate at the County jail filed a complaint against a deputy sheriff. He said that he had filed a written grievance at the County Jail and that the deputy that he complained about in the grievance "came back to the unit and read the grievance and made threats to me. He informed me that he's going to send me to the hole and make my time hard. He also tried to get me in a confrontation. I refused and walked away…"

The written grievance form was never received or logged in as an official grievance at the County Jail.

The Board of Ethics stated that <u>if</u> it could be proven by clear and convincing evidence that the deputy sheriff destroyed or diverted a written grievance against him and/or threatened or retaliated against the inmate, that would be improper conduct.

The Board, however, dismissed this complaint pursuant to Section 2-56(6)(a) and (b) of the Code of Ethics because (a) the Board has no jurisdiction over allegations of this nature and (b) the alleged violations, if true, would not constitute violations of the Code of Ethics.

The Board of Ethics recommended to the Sheriff Department that it might wish to strengthen or clarify information to inmates and improve training for deputies about the proper procedure for filing and handling grievances so that:

1) a deputy complained about in a grievance should not read a grievance before it is properly logged in;
2) inmates are clearly advised how to file an official grievance;
3) all of the procedures recommended by the American Corrections Association regarding inmate grievances are followed.

Case 08 – 18 (gifts)

An Assistant Fire Chief requested an advisory opinion. A private for-profit chain of exercise facilities and employees of the Fire Department have asked whether firefighters may be given free use of such private exercise facilities. The Assistant Chief asked for an advisory opinion as to whether it would violate the Code of Ethics for firefighters to receive and use free rights to use private exercise facilities.

Gifts are regulated by Section 2-60 of the Code of Ethics:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:
>
> (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation…

The prohibition on accepting gifts only applies to city personnel "in a position to take direct official action" concerning the donor of the gift and if "the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor."

Firefighters are charged with the inspection of all businesses within the response areas of their firehouses. All businesses in Denver are required to undergo a fire inspection on a regular basis. Therefore, firefighters are in a position to take direct official action, by making regulatory fire inspections – which fits within the definition of direct official action in Section 2-52(b), specifically "enforcing laws or regulations or issuing, enforcing or regulating permits" regarding fitness facilities in the territorial jurisdiction of their firehouses. Likewise, fitness facilities, like most other businesses in Denver, are in a regulatory relationship with the city. Therefore, acceptance of gifts in those circumstances would be prohibited unless one of the exceptions in Section 2-60(b) applies or unless the Board of Ethics grants a waiver. None of the exceptions in 2-60(b)

apply to this situation.

The Board of Ethics learned that the Department of Parks and Recreation and the Denver Fire Department entered into a written memorandum of understanding on February 21, 2008 by which each firehouse was issued one adult recreation center card (Special User Membership) to allow one or more firefighters on duty during their 24-hour shifts to use the fitness and weight rooms of the city's 29 recreation centers at no charge. The Assistant Chief indicated that the Fire Department would publicize this program to all firefighters. The Assistant Chief and the Board of Ethics agreed that this recreation center program not only provides fitness/wellness benefits to firefighters but has the added benefit of providing an opportunity for firefighters to interact with young people using the recreation centers, which is a valuable recruitment tool for the Fire Department.

The Board of Ethics determined that there is a possibility of confusion and loss of public trust if firefighters are allowed to accept free passes or memberships from private fitness facilities, which some might suspect might lead to special treatment for those offering free memberships. The Board determined that it would be a violation of section 2-60(a) of the Code of Ethics for any firefighter to accept a free membership or pass from a private fitness facility within his or her service area.

The Board encouraged the Fire Department to publicize to all firefighters the opportunities at Denver's recreation centers and also encouraged the Department of Parks and Recreation to consider a similar Special Use Membership for police officers and deputy sheriffs, who have similar needs to maintain their fitness and wellness.

Case 08-19 (outside business activity and conflict of interest)

An appointee of the Mayor, who was hired in early 2008, who advises on public safety issues, requested an advisory opinion. Until then, he was a fulltime employee and one of two active members of a Denver limited liability corporation which has approximately 50 employees. The appointee was and still is the president of the company and owns 2 or 3% of the company.

He now spends approximately 20 hours per month "managing the business." He has obtained written approval from the Mayor's Chief of Staff for this outside employment or outside business activity pursuant to Section 2-63 of the Denver Code of Ethics.

The company recently applied for and received approval for a $225,000 loan from Denver's Office of Economic Development (OED). The appointee will be a guarantor of the loan if and when it is granted. The appointee was not involved in any negotiations with OED which were conducted only with his business partner. OED indicated that the company's loan application was subject to OED's regular standards and underwriting criteria and that the company received no special preference due to the fact that the president is a Mayoral appointee. The OED employee who recommended approval of the loan said that he did not even know that the president was a Mayoral appointee until after he formulated his recommendation to approve the loan.

The conflict of interest section of the Code of Ethics (2-61) prohibits any city person from taking "direct official action" on a matter before the city if he or she has a substantial conflict of interest. In this case, the appointee works with the Department of Safety and had no connection with OED and had no role in negotiating or approving the loan by the city or any other aspect of the definition of direct official action.

.

The Board of Ethics determined that there would not be a violation of the Code of Ethics for the company to apply for or to receive a loan from OED, due to the facts that:

1. the appointee had no connection whatsoever with the loan approval decision by OED
2. OED did not give the appointee or the company any preferential treatment whatsoever by virtue of his current employment as a Mayoral appointee
3. the loan application was subject to the same underwriting and program standards to which OED subjects all loan applications.

The Board recommended that, if the loan is granted, the appointee should avoid any discussions or negotiations with OED concerning the loan and should continue to refrain from asking for any special treatment in the handling of the loan.

Case 08-20 (no jurisdiction)

A citizen who used to work for the city filed a complaint against an assistant city attorney who was assigned to defend the city in a lawsuit filed by the former city employee against the city. The Board dismissed this case pursuant to Section 2-56(6)(a) and (b) of the Code of Ethics because (a) the Board has no jurisdiction over allegations of this nature and (b) the alleged violations, if true, would not constitute violations of the Code of Ethics.

Cases 08-21, 08-22, 08-23, 08-34, 08-40, 08-44, 08-45, 08-47, 08-48 and 08-49 (no jurisdiction)

These complaints were filed against deputy sheriffs by inmates of the County Jail who alleged various types of improper behavior not related to the Denver Code of Ethics. The Board dismissed these cases pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics because (a) the Board has no jurisdiction over allegations of this nature and (b) the alleged violations, if true, would not constitute violations of the Code of Ethics. The Board suggested that the inmates pursue their issues through the grievance process at the County Jail and/or complaints to the Internal Affairs Bureau of the Sheriff Department and/or the Independent Monitor.

Cases 08-24, 08-25, 08-29, 08-37, 08-38, 08-50, and 08-51 (no jurisdiction)

These complaints were filed by inmates at the County Jail concerning police officers alleging various issues of misconduct which were not related to the Code of Ethics. The Board dismissed these cases pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics because (a) the Board has no jurisdiction over allegations of this nature and (b) the alleged violations, if true, would not constitute violations of the Code of Ethics. The Board suggested that the inmates pursue their issues through complaints to the Internal Affairs Bureau of the Police Department and/or the Independent Monitor.

Case 08-26 (hiring and supervision of family members)

A deputy division manager in a city department requested an advisory opinion. She was considering applying for the vacant position of division manager. She wished to know if the Code of Ethics would prohibit her from applying for or being hired for the job due to the fact that her son works for the same division. The Board of Ethics determined that there would not be a violation of Section 2-59 of the Code of Ethics, regarding hiring and supervision of family members, due to the facts that 1) she had no involvement in the hiring of her son; 2) she does not supervise her son and 3) if hired as division manager, there would be two levels between that position and her son's position. The Board also recommended that, if hired as division manager, she should abstain from any involvement in any personnel actions directly related to her son.

Case 08-27 (no jurisdiction)

A citizen filed a complaint against a city cashier, alleging that the cashier was rude, confrontational, demeaning and un-customer-friendly. The cashier responded with a very different version of the events and also asked her supervisor to review the situation. The Board of Ethics dismissed the complaint because (a) the Board has no jurisdiction over allegations of this nature and (b) the alleged violations, if true, would not constitute violations of the Code of Ethics.

Case 08-28 (conflict of interest)

A city employee co-owns a small catering company. She requested an advisory opinion about whether there is any prohibition against a company owned or co-owned by a city employee doing business with the city or doing business with her specific city department. The employee had already obtained written approval from her supervisor to engage in the outside business activity, pursuant to Section 2-63 of the Code of Ethics.

The Board determined that there is no prohibition in the Code of Ethics, the Revised Municipal Code or the City Charter against a company owned or co-owned by a city employee doing business with the city, so long as the employee does not have a "direct

official action" role in negotiating or approving the contract or purchase order. The Board of Ethics, however, is not aware whether or not the employee's specific agency has a stricter policy on this issue, which is permitted by Section 2-51 of the Code of Ethics.

The Board encouraged her, however, in order to avoid the appearance of impropriety, not to attempt in any way to influence the decision of any department personnel about who to hire to cater any functions.

Case 08-30 (use of public office for private gain)

A citizen filed a complaint against his City Council representative for putting information in her monthly electronic newsletter sent to her constituents concerning a film festival and an essay contest related to the Democratic National Convention. The newsletter also contained many other items relating to city government, neighborhood associations and various non-profit organization activities. The complainant claimed that including those items violated Section 2-67 of the Code of Ethics, which prohibits use of public office for private gain, and that those newsletter items "promoted the activities of the Democratic Party and other organizations not controlled by or part of the City and County of Denver."

The Board of Ethics determined that nowhere in the Councilwoman's newsletter were there any items which would benefit her own private interests or that of any of her family members, or business associates. Nor was she urging her constituents to vote Democratic or contribute to the Democratic Party, which would certainly be inappropriate, even if not in violation of Section 2-67.

The Board dismissed the complaint pursuant to Section 2-56(6(b) of the Code of Ethics because the alleged violation does not constitute a violation of the Code of Ethics.

Case 08-33 (subsequent employment)

A traffic engineer was employed by the Public Works Department for six years and left city government in 2004 to work for himself and later for a private consultant. He then was hired again by the city in 2008, but left city government again after 2 1/2 months to work again for the same consultant company. During his most recent period with the city, he was assigned to two specific traffic engineering projects He requests an advisory opinion as to whether Section 2-64(a) of the Code of Ethics will permit 1) the consultant company to bid to work on the projects in question and, if awarded the bid or bids, may the former employee work on those projects without waiting six months.

Section 2-64(a) provides:

Sec. 2-64. Subsequent employment.

(a) During six (6) months following termination of office or

employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

The applicability of this section depends on whether or not the former employee performed any "direct official action" during the recent 2 ½ months that he worked for the city. The definition of "direct official action" is as follows:

2-52(b) *Direct official action* means any action which involves:

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.

(2) Enforcing laws or regulations or issuing, enforcing, or regulating permits;

(3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;

(4) Appointing and terminating employees, temporary workers, and independent contractors.

(5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

The former employee and his former city supervisor advised the Board of Ethics that the former employee had not performed any "direct official action" regarding the projects in question during 2008. The Board determined that it would not be a violation of Section 2-64(a) of the Code of Ethics for the former employee to begin to work immediately for the consultant on the projects in question because he did not take any direct official action during the 2 ½ months that he worked for the city most recently. The Board also decided that there is nothing in the Code of Ethics that would prohibit the consultant company from bidding on any work on the projects in question.

Case 08-35 (conflict of interest and outside business activity)

A sergeant in the Police Department and his supervisor requested an advisory opinion. The sergeant proposed to open a non-police secondary job of business security consulting with schools which wanted to be prepared for various types of emergencies.

The Board of Ethics advised the sergeant that he must obtain written permission on an annual basis from his appointing authority before he can begin any type of outside business activity or employment in order to comply with Section 2-63 of the Code of Ethics. In addition, in order to avoid a conflict of interest, as described in Section 2-61 of the Code of Ethics, the Board recommended that the sergeant:

- Not consult with any clients with locations in the City and County of Denver, which would avoid the possibility that a prospective client might feel that it might receive preferential law enforcement help if it hires the sergeant or might receive less law enforcement help if it fails to hire him.
- Not use any of his city time or city resources in his outside business
- Not solicit clients or engage in the outside business in his police uniform
- Not identify himself in any advertising letters or material as a Denver police officer, including using any photographs in his police uniform

Case 08-39 (subsequent employment)

A city employee who intends to retire from city government asked for an advisory opinion. He was considering the possibility of working on a contract basis for the same department after his retirement and wanted to know if the Code of Ethics would prohibit this or would require a 6-month waiting period, pursuant to Section 2-64(a) of the Code of Ethics:

> **Sec. 2-64. Subsequent employment.**
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

The Board stated that the phrase "outside of the city government" was specifically added by City Council in 2007, at the request of the Board of Ethics, to clarify situations such as this.

In an earlier advisory opinion (Case 06-26), the Board of Ethics stated:

> …the Board believes that the principal problem which 2-64(a) appears intended to prevent is a conflict between a City employee's loyalty to the City and his or her loyalty to the person's next employer. If the next employer is also the City, that problem is alleviated…

The Board advised the employee that the Denver Code of Ethics does not prohibit him from working on contract for a city agency following his retirement from his work as a city employee.

Case 08-43 (outside employment and conflict of interest)

An employee in the Community Planning and Development Department (CPD) requested an advisory opinion. He was considering being a candidate for the Regional Transportation District (RTD) Board of Directors in the November 2008 election. RTD board members are paid $12,000 per year. The work includes monthly board meetings and numerous committee meetings.

The employee does not have any "direct official action" decision-making or policy-setting power within CPD, as defined in Section 2-52(b) of the Code of Ethics.. Various CPD planners and managers do make decisions regarding how RTD bus and light-rail routes and facilities interact with city streets, parks, neighborhoods, etc.; however, the employee is not part of the decision-making.

Since RTD board positions are paid positions, the Board of Ethics determined that he would need to comply with Section 2-63 of the Code of Ethics if he were to be elected to the board, by obtaining written approval from his appointing authority of the outside employment as an RTD board member. The Board also determined that, as long as his city job does not involve "taking direct official action" on any matters relating to RTD, he is not prohibited by the Denver Code of Ethics or the Denver Charter from running for or serving on the RTD board.

The Board also found that there would not be anything "incompatible" between his city job and the RTD board position, which would violate Section 2-61(g) of the Code of Ethics and also Section 1.2.8(A) of the City Charter.

The Board also recommended that, in order to avoid the appearance of impropriety, the employee should:

- Not use city resources or any of his city time to gather signatures or campaign for the RTD board
- Not use any city resources or any of his city time to perform RTD functions, if elected (in other words, he should take city leave time for any RTD activities during city time)
- Abstain from voting as an RTD board member on any contract or other matters to which the City and County of Denver is a direct party.

Case 08-46 (subsequent employment)

A former city employee requested an advisory opinion. She was the Director of Security at Denver International Airport for several years before she retired in early 2008. She

then established her own aviation security company, which has been requested by a major engineering firm to be part of a team that is responding to a Request for Qualifications (RFQ) for engineering and architectural services for a large new project at DIA. If the engineering firm is awarded the contract and if her company is part of the team, the company would be responsible for "providing guidance" on safety and security matters on the project.

She advised the Board of Ethics that, as a city employee, she did not manage engineering projects and specifically had no dealings with this project and she had no business relationships with the engineering firm. She was not involved in preparing the RFQ and the RFQ was not prepared until after she left city government.

Section 2-64(a) of the Code of Ethics regulates subsequent employment for city employees:

> **Sec. 2-64. Subsequent employment.**
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

The Board of Ethics concluded that the former employee would not violate Section 2-64(b), even if her company were to begin work on the engineering team for the project at DIA before the six-month anniversary of her retirement from city government because she took no direct official action during her employment with the city regarding the engineering firm or the project.