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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1– June 30, 2009

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2009 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 08–70, 08-71 and 08-72 (no jurisdiction)

A recently-retired city employee filed complaints alleging that a co-worker sexually harassed her in the workplace, that the co-worker's supervisor did nothing regarding the allegation and that the human resources director for the agency also did nothing. The Board of Ethics dismissed these cases because: 1) the Board was not permitted to obtain access to the underlying investigations by the agency and by the Career Service Authority; 2) the alleged sexual harassment occurred more than two years earlier: and 3) the Board of Ethics has no authority to deal with allegations of sexual harassment.

Case 09 – 1 (conflict of interest)

An employee of the Department of Human Services requested an advisory opinion regarding her relationship with a non-profit organization that provides clothing to needy children, of which she was one of the founders. Many of the children were clients of DHS, such as foster children. The employee had agreed to write grant applications for the non-profit in her off-duty time. The non-profit had not received any money from DHS in the past and did not expect to do so in the future. The employee was also considering whether she could join the board of directors of the non-profit. The employee was not a

decision-maker (did not have "direct official action" power) regarding any DHS grants or funds. The Board of Ethics concluded that the employee would not be prohibited by Section 2-61 of the Code of Ethics from grant-writing or board membership for the non-profit and also commended her for her volunteer service for children.

Case 09 – 2 (no jurisdiction)

A citizen filed a complaint against a city inspector who had issued him a warning notice about failure to remove snow and ice from sidewalks within 24 hours of a snowfall. The citizen said that the notice was erroneous and harassing. The Board of Ethics dismissed the case for lack of jurisdiction and suggested that the citizen speak to the inspector's supervisor.

Cases 09-3 through 09-11 (no jurisdiction)

Two former employees of Denver Water, who had recently been terminated from their employment, filed complaints against the Mayor, some members of City Council, a member of the Auditor's staff and the members of the Board of Water Commissioners, alleging that they failed and refused to investigate and prevent corruption, waste and fraud in the nature of over-payment by Denver Water to two contractors on three major construction projects. The former employees also complained that they were wrongfully terminated by Denver Water in retaliation for "blowing the whistle." The Board of Ethics dismissed all of the complaints because the Denver Code of Ethics does not deal with issues such as these and also because an external audit was underway by an audit firm which has the expertise, resources and jurisdiction to conduct such an audit. The Board encouraged Denver Water and the complaining parties to provide information regarding the allegations to the external auditor.

Case 09-12 (subsequent employment)

An employee of the Department of Environmental Health and his supervisor requested an advisory opinion and/or a waiver. The employee intended to leave city government and set up a private consulting business to provide information technology training and consulting for the federal government and local governments, including Denver, regarding a federally-designed specialized software system that the employee had used and overseen at DEH. He had not had any role in selecting or approving the software for DEH. Both the employee and the supervisor requested a waiver, if necessary, from the Board of Ethics from Section 2-64(a) of the Code of Ethics, which 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 Board of Ethics determined that, since the employee had no "direct official action" role regarding the software during his service with the city, he would not violate the Code of Ethics by establishing a consulting business regarding the software or contracting with DEH to administer the software, without waiting six months; and, therefore, no waiver was necessary.

Case 09-13 (no jurisdiction)

A citizen filed a complaint alleging that a police officer had used unnecessary force in arresting her. The Board of Ethics dismissed the complaint because the Denver Code of Ethics does not give jurisdiction to the Board over such matters. The Board recommended that the citizen contact the Police Department's Internal Affairs Bureau and/or the Office of Independent Monitor.

Case 09-14 (outside employment)

An employee at Denver International Airport requested an advisory opinion as to whether he could sell decorated apparel and promotional items as an outside job to employees and departments at DIA on his off-duty time. The employee had already obtained his supervisor's approval, as required by Section 2-63 of the Code of Ethics. The employee did not have any employees under his supervision, and, therefore, would not be attempting to sell to any subordinate employees. The Board of Ethics decided that the employee would not violate the Code of Ethics by such outside employment; however, the Board recommended that the employee:

- Should not pressure any city employees to purchase from him;
- Should not use any city time or city resources for his outside business;
- Should renew his supervisor's approval on an annual basis in the future, as required by Section 2-63 of the Code of Ethics:
- In attempting to sell to agencies at DIA or any other city agencies, he should comply with all city purchasing regulations, if any.

Case 09-15 (conflict of interest)

A division director at Denver International Airport requested an advisory opinion. Part of his job responsibility was to oversee preparation of a policy and procedure manual for the division. Before the division director began to work at DIA, the Deputy Manager of Aviation had retained an outside consulting company to draft the manuals for several DIA divisions. The division director had no role in selecting or approving the company. The company was an independently operating, wholly-owned subsidiary of a large multi-national corporation. The division director's spouse was a vice president and general manager of the western division of the multi-national corporation, but had no connection with the subsidiary consulting company. The division director said that it was his

responsibility to define and sign a statement of work for the contract and to ensure that the work is completed satisfactorily and that the company is paid. He advised the Board of Ethics that he could not delegate this responsibility to anyone else at DIA. He wished to know if this responsibility will pose a conflict of interest prohibited by the Code of Ethics, in light of his wife's position with the parent company. The Board reviewed section 2-61 of the Code of Ethics and determined that, since the division director's wife's company was entirely independent of the consulting company, the Code of Ethics will not prohibit him from administering the contract.

Case 09-16 (conflict of interest)

An employee of the Office of Economic Development was on temporary assignment to work on loan to the Metro Denver Economic Development Corporation (MDEDC), part of the Denver Metro Chamber of Commerce, where she administered the Workforce Innovation in Regional Economic Development (WIRED) Initiative. WIRED is funded through a grant that the City and County of Denver received from the U.S. Department of Labor, on behalf of a nine-county region in metro Denver. The City is the fiscal agent (recipient and administrator) for the grant. The employee requested an advisory opinion on five separate questions relating to possible conflicts of interest.

The first issue was that one sub-grantee (out of 26 WIRED sub-grantees) was a client of the Denver law firm in which the employee's husband was a partner. Her husband did some *pro bono* legal work for a non-profit arm of Client 1 and the firm did paid work for the for-profit arm of Client 1. The employee said that:

> …Client 1 is a non-profit, but has a for-profit subsidiary. My husband does *pro bono* work for the non-profit arm but is supposed to be paid for the work that he does for the for-profit. Client 1, the parent, paid my husband's law firm no monies in 2007 and 2008. My husband has assured me that he did not learn that Client 1 had sought or received WIRED funds before the fact and that he has never done any work for Client 1 associated with the WIRED grant.

The second issue was that the employee's husband also performed *pro bono* legal work for another of the 26 grantees, Client 2, a non-profit associated with the University of Colorado.

In both cases, the employee advised the Board of Ethics that she recently learned from representatives of the two sub-grantee clients that her husband had represented the clients but she had not known so before. Her husband does not discuss his clients with his wife, because, as an attorney, he is bound by the confidentiality rules of the legal profession.

The third issue was that the Governor appointed the employee to the board of the community college system about a year ago. Community colleges are both WIRED sub-grantees and partners of sub-grantees in at least 11 instances.

The fourth issue was that the School of Public Affairs at the University of Colorado in Denver (SPA), which has been one of the WIRED partners from the beginning of the grant, had requested the employee to serve on the advisory board of SPA.

The fifth issue was that the employee had learned that her husband's law firm "has recently done paid work for Metro Denver EDC and for the Chamber of Commerce, but my husband has not been the attorney in these relationships."

The employee advised the Board of Ethics that she did "not get involved in the funding decisions" for any of the sub-grantees, with the initial funding decisions being made by others. However, she indicated that "I approve contract modifications that do not involve granting of additional funds." A number of her responsibilities involve administering the various grant contracts.

Conflicts of interest are regulated by Section 2-61 of the Denver Code of Ethics:

> **Sec. 2-61. Conflict of interest while employed.**
>
> (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:
>
> (1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;
>
> (2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;
>
> (3) He or she, a member of the immediate family, a business associate or an employer is an officer in another party in the matter;
>
> (4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;
>
> (5) He or she, a member of the immediate family, a business associate or an employer 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; or

(6) A member of his or her immediate family performs more than a nominal portion of the work in the matter, or supervises or manages more than a nominal portion of the work….

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(g) 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 of Ethics concluded that the employee did take "direct official action" regarding contracts with WIRED sub-grantees because she "administers" the contracts, which is part of the definition of "direct official action" in Section 2-52(b) of the Denver Code of Ethics. However, neither her husband's legal representation of Client 1 or Client 2 nor her husband's law firm's representation of the Chamber of Commerce, nor her membership on the Community Colleges Board (assuming she is not an officer of the board), nor her possible membership on the advisory board of the School of Public Administration amounted to a "substantial employment, contractual or financial interest" as defined in 2-61(a). Neither the employee's husband nor his law firm did any of the work for any of the clients regarding applying for or negotiating the WIRED grants, therefore, the Board concluded there was no violation of 2-61 (a) (5) or (6). The Board also recognized that neither the employee nor her husband financially profited from the free legal work that he did for his clients.

The Board of Ethics found that the employee had not violated Section 2-61 and that she should be commended for disclosing these issues and requesting this advisory opinion and that her husband and his law firm should be commended for performing pro bono work for non-profit organizations.

The Board, however, recommended that the employee should consider declining membership on the advisory board of the School of Public Affairs (or any other board relating to partners or grantees of WIRED), in order to minimize any additional overlapping and inter-connected responsibilities that might give the appearance of a conflict of interest. The Board also advised that she should not allow herself to be elected an officer of the Community Colleges Board, because that would cause a violation of 2-61(a)(3) as long as she administers the WIRED grants. The Board also recommended that, if Client 1 or Client 2 substantially increases its role with WIRED in the future, she should request further advice from the Board of Ethics and/or consider abstaining from

administering any transactions with that entity and/or ask her husband to decline further representation of that entity.

Case 09-17 (outside employment)

A police officer requested an advisory opinion as to whether he ccould establish an outside business in which he would provide security services outside the City and County of Denver. The Board determined that, so long as the officer's appointing authority approves the outside business activity and renews the approval on an annual basis, as required by section 2-63 of the Code of Ethics, such outside business activity would be permitted by the Code of Ethics. The Board also recommended that:

- He should not engage in outside security activity within the City and County of Denver (which might have the appearance of a conflict of interest)
- He should not use his city workplace or city equipment or his police uniform for his outside business, including performing security work or meeting with prospective clients

Case 09-18 (gifts)

A police captain, on behalf of the Chief of Police, requested an advisory opinion. The Chief wished to request donations from the public (particularly businesses) to pay for the production of medallions by a private vendor to commemorate the service of law enforcement officers from Denver and 57 other governmental jurisdictions in Colorado who worked in various capacities during the Democratic National Convention in Denver in August 2008. The Chief proposed sending a letter to potential donors to request donations to the Denver Police Department, which would be placed in a city fund designated to receive gifts to the Police Department.

The Board of Ethics analyzed whether the Chief (or any other city employee or officer) may solicit donations to the Denver Police Department to cover the production of the medallions. Solicitation of gifts is 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;…
>
> (c) **It shall not be a violation of this article for an officer, official, or employee to solicit donations to the city** or to solicit or

> redirect donations for charitable purposes to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided that solicitation and financial records are maintained and provided that the soliciting person , or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom…. (emphasis added).

Since Section 2-60(c) specifically allows city personnel to "solicit donations to the city," the Board of Ethics determined that the Chief of Police (or any other city employee or officer) is not prohibited by the Code of Ethics from soliciting donations to the Denver Police Department to pay for the commemorative medallions.

Nevertheless, the Board of Ethics suggested that the Police Department should consider whether it might be preferable for the private Police Foundation to solicit and receive the donations for the production of the medallions, which would avoid the appearance that public city funds are being used to benefit a partisan political event (the Democratic National Convention).

The Board also recommended that any solicitation (including any follow-up solicitation by police personnel) should not be done by officers who have direct-official action power over the potential donor. The definition of "direct official action" in Section 2-52(b) of the Code of Ethics includes "enforcing laws." The Board of Ethics encourages any representatives of the Police Department to avoid the appearance of impropriety by not soliciting from any persons or entities over which they may have direct official action authority, such as individuals or businesses in police districts over whom they would have power to enforce the law, or vendors over whom they might have authority to approve or recommend or negotiate a contract or purchase order. The Board also encouraged them not to solicit contributions from anyone in person while they are in uniform.

The reasoning for these suggestions is so that the individuals or entities and the public should not have any belief that the individuals or entities may receive favorable treatment from the police if they make a donation or may receive unfavorable treatment if they do not.. The Board also urged the Police Department to note that Section 2-60(c) requires that "solicitation and financial records are maintained and provided that the soliciting person, or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom…." The Board also reminded the Department that, if the donations are made to the Police Department, the Department must comply with Executive Order 134, which requires disclosure to the Clerk and Recorder of gifts to the city over $2500.

Case 09 – 19 (conflict of interest)

A sergeant in the Police Department, who is considering being a candidate for sheriff of a Colorado county approximately 100 miles from Denver in the November 2010 election, requested an advisory opinion as to whether being a candidate for sheriff would violate the Code of Ethics. He said that, if elected, he will retire from the Denver Police Department.

Section 2-62(g) of the Denver Code of Ethics says 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 of Ethics determined that there is nothing incompatible between being a candidate for sheriff of another county some distance from Denver and being a Denver police officer. Further, the Board decided that such a campaign would not adversely affect the interests of the City and County of Denver, as long as he would be able to take leave or vacation or off-duty time to campaign and as long as he retires if he is elected. The Board also recommended that he should not campaign in his Denver police uniform or use city time or resources to campaign.

Case 09-20 (no jurisdiction)

A recently-terminated project employee in the internal audit department of Denver Water filed a complaint against her supervisor, claiming that he wrongfully terminated her for insubordination after she requested him to remove her name from reports related to a major construction project that she disagreed with. The Staff Director of the Board of Ethics dismissed the complaint because the Denver Code of Ethics does not give jurisdiction to the Board of Ethics to review or act upon complaints against persons who are not elected officials or city employees or board or commission members of the City and County of Denver. Denver Water, which is not a part of the City and County of Denver government, is an entirely separate and independent entity which is not subject to the Denver Code of Ethics. The Staff Director, however, forwarded a copy of the complaint to Denver Water and to Denver Water's external auditor.

Case 09-21 (outside employment, conflicts of interest)

An aide to a City Councilmember requested the Board of Ethics to consider if outside employment by the aide would violate the Code of Ethics. The aide wished to work on a one-month consulting contract for a public relations firm that represents a national company intending to open a new charter school in Denver. Under her contract, the aide would formulate a plan to recruit students and recruit campaign staff and plan for their contact with students and families and media communications.

Neither the public relations company nor the national firm has any contracts with the City and County of Denver or are pursuing any such contracts. Any contracts that the national

firm has or would be pursuing in Denver would be with Denver Public Schools, which is an entirely separate entity from the City and County of Denver.

Section 2-63 of the Denver Code of Ethics requires that any city employee wishing to engage in outside employment or outside business activity must obtain written approval from her or his appointing authority.

In addition, Section 2-61 of the Code of Ethics prohibits a city employee from "taking direct official action" (the definition of which in Section 2-52(b) includes recommending or doing research for the approval or disapproval of contracts) if an outside employer is the other party in the matter. City Council must approve major contracts (over $500,000). As noted, however, neither the public relations company nor the national firm is pursuing a contract with the City.

Based upon the understanding that neither the public relations company nor the national firm has any contracts with the City and County of Denver or are pursuing any such contracts and if the Councilmember approves the aide's outside employment on this project, the Board of Ethics determined that the aide will not violate the Code of Ethics by taking this outside consulting job.

The Board also recommended that:

1. if the aide wishes to engage in any other consulting work, she should present a new and specific request for approval by the Councilmember and should feel free to bring another request to the Board of Ethics, since each consulting contract may have different implications;
2. she should not do any consulting work on her city time or with any city resources.

Case 09 -22 (gifts)

A Division Chief in the Police Department was assigned to coordinate the security needs for Sportaccord, an event held in Denver in March 2009 called Sportaccord, a 5-day gathering of 1,500 leading representatives from international sport. The convention is held in a different country each year and encompasses over 100 international sports federations and their related associations.

The Division Chief says that he "identified the off-duty coordinators for the identified venues and coordinated their efforts. My involvement consisted of staying in contact with the off-duty supervisors daily and to ensure the security needs were being met." He indicated that, about a week after the event, he received a gift-wrapped box which contained a pair of cuff-links bearing the insignia of the International Olympic Committee from a staff member of a high official of the IOC, who had returned to France.

The Division Chief requested an advisory opinion from the Board of Ethics about whether he could keep or use the cuff-links.

The acceptance of gifts by Denver city personnel is regulated by Section 2-60 of the Code of Ethics, the pertinent parts of which are:

> **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;...
>
> (b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:
>
> (3) Nonpecuniary awards that are publicly presented by an organization in recognition of public service if the award is not extraordinary when viewed in light of the position held by the recipient;…
>
> (5) Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of twenty-five dollars ($25.00) or less, such as inexpensive tee shirts, pens, calendars, books, flowers, or other similar items;…
>
> (6) Gifts while visiting other cities, counties, states, or countries or hosting visitors from other cities, counties, states, or countries when it would be a breach of protocol to refuse the gift…

The Board of Ethics determined that the Division Chief's role in "coordinating security" did not amount to "direct official action," as defined in Section 2-52(b) of the Code of Ethics, because the city was not "a party" to the contracts for security between the event organizers and the individual off-duty Denver police officers, who received their pay directly from the event organizer. However, even if he was involved in "direct official action," this situation would qualify as an exception under Sections 2-60(b)(3) (unsolicited non-pecuniary gift in recognition of public service) or (2-60(b)(6) (gift while hosting visitors from other countries, where it would be a breach of protocol to refuse the gift).

The cufflinks were unsolicited, were apparently of modest value (although probably worth more than $25.00) and were given in appreciation after the event had already occurred, with no motivation to curry special treatment or favor by the Division Chief. The Board of Ethics determined that, under the specific circumstances of this case, it would not violate the Denver Code of Ethics for the Division Chief to accept this gift of cufflinks and to use them as he sees fit.

Case 09-23 (outside employment, conflict of interest, prior employment)

The Project Coordinator of Denver's Road to Work in the Denver Department of Human Services (DHS) requested an advisory opinion. She has been employed by DHS since January 2009. Before she joined DHS, she had been employed for three years by a Massachusetts and New York-based consulting company. Before coming to work for DHS, she had planned and been scheduled to work on 2 separate consulting projects for the consulting company: The employee wished to finish out these 2 projects for the consulting company during her personal time.

The same consulting company has a 6-month $35,000 contract with the City and County of Denver through DHS, executed on March 10, 2009, to evaluate a federal grant program called Projects With Industry (which is associated with the program that the employee work with – Denver's Road to Work). She indicated that she will not sign off on the evaluation of that contract between the consulting company and DHS; however, as Project Coordinator of Denver's Road to Work, she will review all of the data generated by the project, will make recommendations to her supervisor about the evaluation and will prepare reports from DHS to the .federal government about Projects With Industry.

The first issue involved outside employment. The Board of Ethics advised the employee that she would need to obtain written approval of any outside employment projects from her appointing authority, pursuant to Section 2-63 of the Denver Code of Ethics.

The second issue involved conflicts of interest. Conflicts of interest are regulated by section 2-61 of the Code of Ethics:

> **Sec. 2-61. Conflict of interest while employed.**
>
> (a) …an officer, official, or employee **shall not take direct official action** on a matter before the city if he or she or a member of the immediate family, a business associate or **an employer other than the city** of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:
>
> (1) He or she or a member of the immediate family, a business associate or **an employer other than the city is the other party in the matter…** (emphasis added)

The Board of Ethics determined that, if the employee had no role in taking "direct official

action" in her DHS job regarding the DHS contract with the consulting company, she would not be involved in a conflict of interest prohibited by section 2-61. However, the Board, concluded that she currently does "take direct official action" concerning the DHS contract with the consulting company. The definition of "direct official action" in section 2-52(b) of the Code of Ethics includes the following:

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

(1) Negotiating, approving, disapproving, **administering**, **enforcing**, or **recommending for or against a contract… 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…

(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. (emphasis added)

Therefore, the Board concluded that the employee's administration and/or recommendation for approval or disapproval of the continuation of the DHS contract with the consulting company would cause her to be engaged in a conflict of interest prohibited by Section 2-61(a)(1).

The third issue concerns prior employment. Section 2-62 of the Code of Ethics which relates to former employers (the consulting company, in this case):

Sec. 2-62. Prior employment.

… Officers, officials, and employees shall not take any direct official action with respect to their former employers for a period of six (6) months from the date of termination of the prior employment.

The Board concluded that the employee would violate Section 2-62 if she were to take direct official action through administering the DHS contract with the consulting company until at least six months have expired from the date of the termination of her contract with the consulting company.

Case 09-24 (subsequent employment)

A program administrator was hired by the Department of Environmental Health in April 2006 after a federal grant was funded for a health-related program. The 3-year grant expired in February 2009; however, one additional year of funding was approved. The employee tendered her resignation from DEH, which will be effective May 15, 2009. Her supervisor, was considering hiring her on a part-time contract basis through January 2010 "to provide continuity and advance DEH's ability to meet the grant obligations…" The

employee requested an advisory opinion to determine whether such contract employment by DEH would violate Section 2-64(a) of the Code of Ethics, which 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 (emphasis added).

In a number of earlier cases, the Board of Ethics has advised that a contract with a city department by a former city employee does not violate 2-64(a), for example, Case 06-26. The Board of Ethics determined that since her post-city-employment contract would be with a city department, it would not violate either the letter or the spirit of Section 2-64(a) of the Denver Code of Ethics.

Case 09-25 (conflict of interest)

An employee of the Office of Internal Monitor (OIM) was considering applying to be a member of the 19-member Colorado Peace Officers Standards and Training (POST) board, appointed by the governor. She would apply for the one "citizen" position on the POST board. All of the board positions are unpaid and the board meets on a quarterly basis. The purpose of the board is to establish and maintain standards for peace officers' training and certification.

The mission of OIM is to:

> provide fair and objective oversight of the Denver Police and Sheriff's Departments. The Monitor's mission is directed at transparency and accountability in order to ensure public confidence in Denver's sworn Safety personnel and the policies which govern them.
> The OIM is responsible for:
>
> 1. Actively monitoring and participating in investigations of sworn personnel in the City and County of Denver's Police and Sheriff Departments;
> 2. Making recommendations to the Manager of Safety, Chief of Police and Director of Corrections (who are responsible for discipline within the departments) regarding administrative action, including possible discipline for such uniformed personnel; and
> 3. Making recommendations regarding broader policy issues.

Since positions on the POST board are unpaid, the employee would not be required to obtain written permission for "outside employment or business activity" by Section 2-63

of the Code of Ethics, although she indicated that she has consulted with her appointing authority about this.

The Board of Ethics determined that, in her position at OIM, she does not have any "direct official action" power as defined in Section 2-52(b) of the Code of Ethics; therefore, she would not be prohibited from serving on the POST board by the conflict of interest section of the Code of Ethics, 2-61, the key provision of which is:

> **Sec. 2-61. Conflict of interest while employed.**
>
> (a) …an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter…

In addition, subsection 2-61(g) provides:

> (g) 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 of Ethics determined that it would not violate the Code of Ethics for the employee to serve on the POST board. Further, the Board concluded that there would not be any incompatibility with her city duties or that it would adversely affect the interests of the city. Finally, the Board urged the employee, if appointed to the POST board, to recuse herself from any votes to certify a Denver police academy class or to de-certify any Denver police officer (which she had agreed to do), which could pose a conflict of interest.

Case 09-26 (no jurisdiction)

A citizen filed a complaint concerning an investigator for the Denver District Attorney's Office for communicating to the citizen the decision by a Chief Deputy District Attorney that the office would not investigate or prosecute a case of what the citizen believed was criminal mortgage fraud. The complaint was dismissed by the Staff Director of the Board of Ethics because employees of the District Attorney's Office (who are state employees) are not subject to the jurisdiction of the Denver Board of Ethics and because the Board of Ethics has no authority to second-guess decisions whether or not to investigate or prosecute. The Staff Director also encouraged the citizen to communicate with the Colorado Division of Real Estate and the Colorado Department of Public Safety.

Case 09-27 and 09-28 (no jurisdiction)

A city employee filed complaints against her immediate supervisor and a division manager in the Denver County Court for issuing her a written disciplinary reprimand.

The Board of Ethics dismissed the complaint because it was a personnel issue, over which the Board has no jurisdiction. The Board advised the employee that personnel issues of this sort can more appropriately be dealt with through the Career Service Authority grievance/appeal process or mediation process.

Case 09-29 (no jurisdiction)

A citizen who had his automobile impounded in the Denver Vehicle Impound Lot filed a complaint concerning the investigating detective, saying that that the affidavit filed by the detective was "inaccurate" because it misspelled the citizen's last name and because it wrongly indicated the name of a co-owner of the vehicle. The Board of Ethics dismissed the complaint because the Denver Code of Ethics does not prohibit "inaccuracy" and advised the citizen that he can raise these issues with an attorney and/or a court and/or the Manager of Safety.

Case 09-30 (no jurisdiction)

A citizen filed a complaint concerning the Denver Photo Speed Enforcement Program, after having received two tickets in the vicinity of schools during school hours. She stated that the program is "a badly-run revenue device having nothing to do with children's safety…an abomination and a very serious ethical problem." The Staff Director of the Board of Ethics dismissed the complaint because the Denver Board of Ethics only has authority to review complaints which 1) concern specifically-identified City and County of Denver employees, elected officials or board or commission members and 2) relate to the specific subjects contained in the Denver Code of Ethics. He also advised the complaining citizen that she has the right to appear in court and present her facts and arguments about the cases to an Assistant City Attorney and/or a County Court judge or magistrate and to present her ideas to the police captain who supervises the program.

Case 09-31 (conflict of interest)

The Staff Director of the Denver City Council requested an advisory opinion, on behalf of City Council, to determine if there is a conflict of interest or other Code of Ethics provision that prohibits City Council members from individually purchasing city bonds from the Better Denver bond issue, which was approved by the voters in November 2007. She indicated that "the purchase would be made at the same time and under the same conditions that all other retail bond purchasers would be purchasing them" and also indicated that the bond dealers selling the Better Denver bonds were selected through a request for proposals issued by the Treasury Department and were not selected by City Council.

Section 2-61(d), part of the conflict of interest section of the Code of Ethics, provides:

> (d) An officer, official, or employee may acquire an interest in bonds or other evidences of indebtedness issued by the city or the board of water commissioners

so long as they are acquired on the same terms available to the general public.

Therefore, the Board of Ethics concluded that the Code of Ethics specifically allows City Council members to purchase the Better Denver bonds or any other General Obligation bonds as long as they are acquired on the same terms available to the general public.

Cases 09-32 and 09-33

A Denver citizen filed complaints concerning a case-worker and the case-worker's supervisor at the Department of Human Services (DHS). The complaining citizen said that she had been receiving food stamps from DHS for herself and her children. In her written complaint, filed on May 26, 2009, she said:

> I realized that I had no food stamp benefits on my…card. I called on May 8 to request my caseworker…to return my call. I was informed by the customer service rep that my caseworker had 4 business days to call me back. On May 15th, my caseworker still had not returned my call…I then requested to have her supervisor, to return my call. I was told by the rep that she had 2 days to call me back. On May 19, no one had still returned my call. I called the call center on this date and I explained what was going on and that I was homeless and my kids had no food to eat. The call center transferred me to the supervisor. I left a message personally on her voice-mail. Still no return call from either…

The Staff Director of the Board of Ethics tried several times to telephone the supervisor on May 26, 2009, following receipt of the complaints, but the recorded announcement said "all circuits are busy. Please try again later." The complaining citizen advised the Board's Staff Director that she then made 2 trips to DHS to leave requested documents; however, the documents were lost at least once by the DHS.

The Board of Ethics determined that, although the situation is very regrettable, the very poor communication by DHS did not violate the Denver Code of Ethics. The Board dismissed both of the complaints because a) the Board lacked jurisdiction and 2) the allegations, if true, would not violate the Code of Ethics.

The Staff Director of the Board of Ethics, however, had discussions with the Deputy Manager of DHS, who apologized for the poor communications that the citizen had with the Department concerning her food-stamp benefits and assisted in putting her in direct contact with the supervisor in order to expedite the decisions regarding her food-stamp benefits. The Board of Ethics advised the citizen that it believes and hopes that DHS will be able to use her situation as an educational example of how the Department can improve its communications.

Case 09 – 36 (outside employment, conflict of interest)

A service maintenance electrician at Denver International Airport requested an advisory opinion. A company which has a contract with the city to install runway guard lights and

fiber-optic improvements at DIA or one of its sub-contractors had offered to hire the employee to work approximately 20 hours per week as one of its three inspectors for this work, which will last approximately 200 days. The employee would also train workers on the job and enforce safety procedures.

The employee advised the Board of Ethics that:

- He had no role whatsoever in selecting or approving the contractor or the sub-contractor for the contract or sub-contract;
- He understands that he would have to do any outside work on his own time and not use any city resources;
- It is not part of his regular city job duties to inspect any construction or electrical work at DIA; and
- His DIA supervisor had approved this outside employment.

Any outside employment must be approved by an employee's appointing authority, pursuant to Section 2-63 of the Code of Ethics. Assuming that the appointing authority has approved, the only other issue is whether there is any conflict of interest or incompatibility between the employee's DIA job and his proposed outside employment. The Board of Ethics determined that the employee will not violate Section 2-61 of the Code of Ethics regarding conflict of interests under the conditions described above.

The Board, however, encouraged the employee to have a discussion with the outside employer to clarify that he will be able to report any problems that he may find with the electrical work to DIA and/or the Federal Aviation Administration, if any such problems are not adequately remedied by the contractor or sub-contractor.