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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1– June 30, 2010

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2010 in response to fact-specific requests for advisory opinions or complaints. **They should not be used as conclusive guidance for situations where the facts may differ**.

Case 09 – 63 (no jurisdiction)

A citizen filed a complaint against a city employee who briefly used his city e-mail to communicate to the Manager of Parks and Recreation and to the president of the city employee's neighborhood association concerning the employee's opposition to a proposal by the citizen to establish a service in certain city parks and to have associated advertising in parks. The employee also communicated, accurately, that the citizen had been charged with petty theft in an unrelated matter. That case was dismissed by the Denver County Court. The Board of Ethics concluded that the employee's conduct did not violate any part of the Denver Code of Ethics and dismissed the complaint; however, the Board cautioned the city employee not to use his city e-mail for issues such as this, in order to avoid the appearance of impropriety.

Case 10 – 1 (conflict of interest)

A staff member of the Internal Affairs Bureau of the Sheriff Department requested an advisory opinion regarding a situation being considered by the IAB. The IAB had learned that a civilian employee of the Sheriff Department is married to a convicted felon. The husband had been convicted of a felony in the 1980s and had been incarcerated for

approximately one year. The employee married her husband in the 1990s. The husband had also been incarcerated for two non-felony charges, one of which (in a different county) followed the marriage and which the employee reported to the Sheriff Department. There was no evidence that the employee used her public position in any way to benefit her husband. The Board of Ethics was not able to conclude that the employee had violated any section of the Denver Code of Ethics or Section 1.2.9 of the Denver Charter (regarding conflict of interest) or a Sheriff Department policy regarding fraternization.

Cases 10 – 2 and 10 – 11 (no jurisdiction)

The Board of Ethics dismissed both of these cases because they concerned alleged misconduct by persons who were not City and County of Denver officers, employees or officials.

Case 10 – 3 (outside employment, conflict of interest)

A city employee, who is an attorney and is a former state employee, requested an advisory opinion as to whether she would violate the Denver Code of Ethics if she would counsel with state employees and, perhaps, state legislators on a volunteer, unpaid basis concerning legislative efforts to reduce retirement benefits to state retirees through the Public Employees Retirement Administration. She had already informed her supervisor, who did not object.

Section 2-63 0f the Code of Ethics requires that any city employee contemplating "outside employment or outside business activity" must report it to his or her appointing authority and obtain written approval; however, the Code specifically excludes "unpaid volunteer activity" from that requirement. In addition, the Board of Ethics concluded that city employees have the same First Amendment constitutional right of all U. S. citizens to "petition the government for redress of grievances" and that the conflict of interest section of the Code of Ethics (2-61) does not address or prohibit this situation.

The Board also advised the employee that there is no reason that she may not truthfully identify herself by title as an employee of the City and County of Denver, but, if she does so, she should indicate that her opinions are strictly her own and not the city's or her department's.

Case 10 – 4 (no jurisdiction)

A citizen filed a complaint regarding her former spouse, a city employee, for failing to pay a court-ordered settlement in the dissolution of marriage case and for failing to inform her of his current address so that court papers could be served on him. The Board of Ethics dismissed the complaint, because the Denver Code of Ethics does not deal with such issues; however the Board encouraged the employee to pay his debt in order to avoid the appearance of impropriety. The Board also suggested that the citizen or her

attorney might contact the city employee's supervisor to discuss where and when papers might be served on him.

Cases 10 – 5 and 10 – 6 (no jurisdiction)

A city employee filed complaints against her immediate supervisor and the human resources director in her department. The Board of Ethics dismissed the complaints because they involved personnel issues which were not subjects covered by the Denver Code of Ethics.

Case 10 – 7 (conflict of interest)

A police detective requested an advisory opinion as to whether he could be a candidate for a vacant Denver City Council seat. He is assigned to a police district that does not overlap with the City Council District. The detective said that he would retire from the police force if he would be successful in the election and that he understood that he could not campaign on city time or use any city resources in his campaign and that he should not campaign in police uniform. The Board of Ethics concluded that there is no section of the Code of Ethics or the Denver Charter that would prohibit a city employee from being a candidate for City Council. The Board also recommended that the detective should comply with his representations, mentioned above.

Case 10 – 8 (no jurisdiction – time limit)

A citizen who had filed a lawsuit in federal court on behalf of her company against the City and County of Denver, the Denver Department of Aviation and four individual employees of the Department of Aviation also filed a complaint with the Board of Ethics concerning one of the city employees.

The company alleged in the lawsuit that it had two contracts to provide services at Denver International Airport which were improperly terminated in 2007. One paragraph of the lawsuit alleged:

> Plaintiff understood it was not appropriate to give gifts to any City employee…. one of the contract compliance technicians…assigned to monitor Plaintiff's work, told Plaintiff other contractors purchased gifts for City employees and that Plaintiff might be more successful if it did so. In response, Plaintiff wrote a letter…stating; "We have been told by several sources that we would need to play the politics (including wining, dining and gift giving) to work successfully at DIA. We find this reprehensible and refuse to buckle under to such demands."

The lawsuit did not specify the approximate date of that alleged conversation, but it was presumably sometime before May 2007. The lawsuit also did not provide any specificity about which DIA employees actually might have received gifts from whom or when. None of the other allegations in the lawsuit involved the Denver Code of Ethics.

Section 2-56(3) of the Denver Code of Ethics provides that the procedural rules that the Board of Ethics must adopt shall "prohibit the board from accepting complaints or inquiries about actions that took place more than two years prior to the date of filing." Since the alleged conversation in question presumably took place before May 2007 (more than two years before the citizen filed her complaint with the Board of Ethics), the Board determined that it could not proceed any further with this complaint. If any prohibited gift-soliciting or gift-taking by unnamed DIA personnel did take place, that also would have been more than two years before the filing of the complaint.

The Board stated that the allegation, if proven to be true, could indicate serious misconduct by unspecified DIA employees, in violation of section 2-60 of the Code of Ethics; however, the Board dismissed the complaint because the Board has no jurisdiction over this issue, due to the 2-year limitation.

Case 10 – 9 (outside employment)

On behalf of the Police Department, a lieutenant requested an advisory opinion to clarify how the Board of Ethics would interpret a recent addition to the Code of Ethics. On November 30, 2009, City Council adopted the following new subsection of the Code of Ethics outside employment section (which had been recommended by the Board of Ethics):

> 2-63 (c) City resources may not be used for any outside employment or outside business activity.

The lieutenant suggested that "the broad wording" of that change "may be interpreted to mean that Denver police officers may not make use of issued equipment (police radios, marked police vehicles, explosive detection canines, etc.) while working secondary employment assignments approved by their appointing authority and in their capacity as police officers."

The Police Department, in its Rule 114.01 in its Operations Manual, has 7 pages of detailed provisions regarding Secondary Employment, including:

- 114.01(3)(l) – use of police vehicles in the performance of Secondary Employment Police Work duties if approved by the Division Chief when such use can be justified for the safety of the public and/or officers or when such use is determined to be in the best interest of the department;
- 114.01(4)(g) – officers performing Secondary Employment Police Work in an establishment selling liquor will be in full uniform…;
- 114.01(4)(h) – officers working in any secondary employment in a construction area "are required to wear the department-authorized" helmet;
- 114.01(4)(i) – officers working in traffic direction or control "are required to wear the basic cap and reflective vest apparel."

The lieutenant gave two examples of current practice that could be interpreted to violate Section 2-63 (c):

1. Special events, such as the Denver Marathon, where off-duty officers (who are paid by the event organizers) use police pool vehicles to provide traffic control and safety;
2. Sporting events such as Broncos or Rockies games in private facilities, where a city-owned explosive-detecting dog is used to conduct a sweep of the facility. The police officer-handler is paid by the sports organization for the off-duty work.

The Board of Ethics concluded that when it recommended passage of Section 2-63(c) to City Council, the Board did not consider these situations and welcomed the opportunity to clarify how it will interpret Section 2-63(c) in the future.

The Board decided that in the future it will not find a violation of section 2-63(c), even though police officers use city equipment and are paid by a private entity for secondary employment in situations where 1) the secondary employment is approved, regulated and administered by the Police Department and 2) the police officers are working in their capacity as police officers. The Board emphasized that this clarification applies only to the Police Department and to police-related secondary employment.

Case 10 – 10 (outside business activity)

A city employee requested an advisory opinion about his proposal to write a book.

Section 2-63 of the Denver Code of Ethics requires the written approval on an annual basis from an appointing authority for any city employee to engage in outside employment or outside business activity and also provides that "city resources may not be used for any outside employment or outside business activity."

Section 2-61(g) of the Code of Ethics also 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 of Ethics determined that the employee will not violate the Denver Code of Ethics if he:

- Obtains his hiring authority's written approval for writing the book and any follow-up marketing activities on an annual basis;
- Does not use any city time or equipment or other resources to write or market the book;
- Does not write about any trade secrets or other information that might damage the City and County of Denver.

Case 10 – 12 (gifts - charitable solicitation)

A Division Chief in the Police Department requested an advisory opinion as to whether he and other police personnel can sell raffle tickets to benefit a charitable organization of which he is a board member – Families of Homicide Victims and Missing Persons. He

also wished to know if posters for the raffle can be set up and can tickets be sold within city police facilities.

Section 2-60(c) of the Code of Ethics specifically permits city personnel to "solicit or redirect donations for charitable purposes to a 501(c) or other charitable organization…"

> **Section 2-60(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.

This section does not prohibit such solicitation in city buildings.

The city policies for posting, advertising and solicitation from the Facilities Management Division provide that material for posting in any city buildings must be 1) pre-approved by the Facilities Management Division and 2) posted only on "designated bulletin boards."

The Board of Ethics concluded that city employees are specifically allowed to solicit donations for charitable purposes by Section 2-60(c) of the Code of Ethics. The Board, however, recommended that the Division Chief urge anyone involved in the solicitation to avoid any appearance of pressure on subordinate officers, employees or citizens to buy raffle tickets, even though it is a worthy purpose. The Board also urged him to be sure that the posting policies of the Police Department and/or the Facilities Management Division are followed.

Case 10 – 13 (supervision of relative)

The Director of Corrections and a Division Chief in the Sheriff Department requested an advisory opinion and/or a waiver regarding supervision of an immediate family member In April 2010, the Sheriff Department opened the new Downtown Detention Center (DDC) as part of the new Justice Center. The Division Chief has been in charge of the Sheriff Department's Downtown Division since February 2009 and was also the project manager for the construction of the DDC. She will have overall responsibility for operation of the DDC.

The Division Chief's brother has been with the Sheriff Department for over 32 years, primarily at the County Jail on Smith Road. The Director of Corrections has transferred him to the DDC, along with 200 other Sheriff Department employees and approximately 1500 inmates. There will be 2 levels of supervision (Major and Captain) between the Division Chief and her brother at the DDC.

Section 2-59(b) of the Code of Ethics prohibits supervision of an immediate family member (the definition of which includes brother) unless a waiver is given by the Board of Ethics:

> **Sec. 2-59. Employment and supervision of family members.**
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> The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members.
>
> (a) Unless he or she obtains a waiver pursuant to section 2-54, no officer, official, or employee shall appoint or hire a member of his or her immediate family for any type of employment, including, but not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.
>
> (b) No officer, official, or employee shall **supervise or be in a direct line of supervision** over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.
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> (c) When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers. Examples of circumstances which might result in a waiver include, but are not limited to:
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> (1) The family member who is proposed to be hired was certified through a competitive process conducted pursuant to law and the officer, official, or employee who would make the appointment did not influence or affect the certification.
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> (2) The officer, official, or employee who would officially make the appointment is acting ministerially and did not select the family member or attempt to influence the person who did.
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> (3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.
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> (d) **The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor.** (emphasis added)

In this case, a large number of Sheriff Department personnel are moving to the new facility and, according to the Director of Corrections, "the experience and expertise of" both the Division Chief and her brother "with operating a new facility will be important to the successful transition and ongoing operational success" of the new facility, which will be in the "best interests of the city."

The Board of Ethics determined that the placement of both at the DDC will not violate Section 2-59 of the Code of Ethics, because there will be two levels of supervision between the Division Chief and her brother and, therefore, she will not be in the direct line of supervision over her brother. Therefore, no waiver is required in this situation. However, the Board recommended that, in order to avoid the appearance of impropriety:

- The Division Chief should abstain from any involvement in any personnel action (positive, negative or neutral) regarding her brother and she should notify others at DDC that she will do so and
- There should always be at least 2 levels of supervision between the Division Chief and her brother. If this situation were to change, such as by a promotion of her brother, she should return to the Board of Ethics for advice and/or a waiver regarding the changed circumstances.

Case 10 – 14 (outside employment)

A police sergeant requested an advisory opinion. He graduated from law school in 2000 and is licensed to practice law in Colorado. He currently works from 10pm to 6am at Police Headquarters. He is considering associating with a law firm part-time in order to gain experience for a possible second career in the practice of law. He has not negotiated an arrangement with any specific law firm. He asked whether part-time law practice in his off-duty time would be permitted by the Code of Ethics.

Section 2-63 of the Code of Ethics requires that any city employee must obtain written approval from the employee's appointing authority before engaging in outside employment or outside business activity. This approval must be renewed annually.

The Board of Ethics concluded that part-time outside law practice is not prohibited by the Code of Ethics, so long as written approval from the appointing authority is obtained (and renewed on an annual basis) and also decided that such law practice is not incompatible with his city duties.

In order to avoid potential conflicts of interest or other issues, the Board advised that he also should comply with the following conditions:

1. not practice any criminal law in the City and County of Denver;
2. not represent any persons or entities besides himself in matters where those interests are in conflict with the City and County of Denver, either in civil or criminal law;
3. not represent any persons or entities besides himself in any matter before any agency of the City and County of Denver government;

4. not practice criminal law where any Denver police officer is connected to a case in his or her official capacity;
5. not use any Denver Police Department or City and County of Denver records, databases or equipment in his practice of law, except through channels approved for other citizens and after paying any appropriate fees;
6. not conduct any law practice business during his on-duty city hours or while in his police uniform or in City and County of Denver workplaces;
7. not advertise or promote himself or his law practice by stating that he is a Denver police officer or employee;
8. not co-counsel or associate in a law firm with any other attorney or attorneys representing clients with interests in conflict with the City and County of Denver;
9. not share any Police Department confidential information with clients or others.
10. should abide by Sections of the Police Disciplinary Matrix RR141.1, RR141.2, RR203 and RR312.1.

The Board also reminded him that he is subject to the Colorado Rules of Professional Conduct for attorneys adopted by the Colorado Supreme Court.

Case 10 – 15 (conflict of interest)

The Director of the Division of Small Business Opportunity (DSBO) of the Denver Office of Economic Development (OED) requested an advisory opinion.. Her sister wishes to apply for certification as a Disadvantaged Business Enterprise (DBE), which would assist her to apply for a position on a Regional Transportation District project, which is partially funded by the federal government. DBE standards and certification are established in federal law and apply to federally-funded projects.

A DSBO certification committee, of which the Director is a member, is responsible for certifying or not certifying applicant business enterprises as DBEs after reviewing documents submitted by an applicant

Section 2-52(b)(2) of the Code of Ethics provides that one of the elements of "direct official action" is "enforcing laws or regulations or issuing or enforcing or regulating permits, licenses, benefits or payments." Although the word "certify" does not appear in the definition, the Board of Ethics believes that the quoted section should be interpreted to include certification of DBEs by DSBO.

The Board of Ethics concluded that the certification of the sister's company as a DBE would be a prohibited conflict of interest for the Director under Section 2-61(a)(1) of the Code of Ethics, since an "immediate family member" is the other party in the matter. According to Section 2-61(f) of the Code:

> 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.

The Director advised the Board of Ethics that there is a backlog in DSBO in certifying DBEs and, as a result, the office has hired a third-party consultant to review applications in order to reduce the backlog and that the Director would assign her sister's DBE application to the consultant and that she would recuse herself from participating in the decision by the certification committee on her sister's application in order to minimize a conflict of interest.

The Board advised the Director that, if her sister applies for DBE certification from DSBO, the Director must recuse herself from any involvement in the certification of her sister's company as a DBE and comply with all of the provisions of Section 2-61(f) in order to avoid a conflict of interest. The Board encouraged the Director to consult with the City Attorney's Office to be sure that the consultant and the certification committee can perform their functions without any influence or participation by the Director.

Case 10 – 16 (subsequent employment)

The former Director of Workforce Development in the Denver Office of Economic Development was employed by the city from March 2007 until April 2010, when she left city government to become executive director of a nonprofit organization known as SkillBuild Colorado.

She had become the volunteer co-chair of the steering committee of SkillBuild Colorado in January 2009 and helped guide the process to start SkillBuild Colorado, which is a "workforce funding collaborative." The City and County of Denver provided $10,000 cash in 2009 to SkillBuild Colorado and has committed $305,000 in "aligned funding" and $20,000 in cash for 2010. The Director "committed" the funds in December 2009 to SkillBuild Colorado.

SkillBuild Colorado hired an executive director in the spring of 2009, but he left that position in September 2009. The Director began to discuss with the chair of the SkillBuild Colorado steering committee in February 2010 the possibility of her becoming the executive director of SkillBuild Colorado.

The Board of Ethics considered whether the former Director is permitted by the Denver Code of Ethics to accept the job as executive director of SkillBuild Colorado without waiting six months or, if not, whether a waiver is appropriate.

Subsequent employment for city officers and employees is regulated by Section 2-64(a) of the Denver Code of Ethics:

Sec. 2-64. Subsequent employment.

The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.

(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 the former Director's actions in working with other agencies to apply for funding from the national organization and in "committing" funds as Director of Workforce Development to SkillBuild Colorado amount to "direct official action" on her part as defined in Section 2-52(b), because those actions amount to "negotiating, approving… a contract,…grant or similar instrument in which the city is a party." The Board concluded that acceptance of the executive director's job for SkillBuild Colorado (without waiting for 6 months) would violate Section 2-64(a), because 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 then considered whether a waiver is appropriate. Section 2-54(f) allows the Board of Ethics to grant a waiver "if it finds that a waiver will serve the best interests of the city." The Executive Director of the Office of Economic Development advised the Board of Ethics that he believes that "having someone at the helm of SkillBuild who understands Denver, regionalism and workforce development will benefit Denver and the region in the long term."

The Board of Ethics concluded that it is in the city's best interests for the former Director to commence work at SkillBuild Colorado without waiting for 6 months and therefore granted a waiver because:

- The goals of the City and County of Denver and SkillBuild Colorado are very similar, which are to provide opportunities for self-sufficiency for low skilled and underemployed individuals in the Denver community.
- The former Director will be taking a pay cut from her city job. In other words, there should not be any perception that she arranged to take the SkillBuild job out of self-interest so that she could earn a higher salary.
- She has a set of skills that will greatly assist in accomplishing the common goals of the city and SkillBuild Colorado
- Even if 6 months passed, it would not make a difference or change the situation as to the city or SkillBuild Colorado because the funding for 2010 had already been established.

Case 10 – 17 (hiring and supervision of relative)

An electrical superintendent at Denver International Airport requested an advisory opinion. DIA was in the process of hiring two electrical shop maintenance technicians. One of several applicants for those positions was the superintendent's 22-year-old step-son.

The superintendent says that he had nothing to do with the early stages of the hiring process and that, after a written examination and interviewing, his step-son was second on the list of 13 finalists. The superintendent was not involved in interviewing the finalists. The superintendent would normally make the hiring decision, which he described as "checking the scores on the written examination with another supervisor and verifying that all the paperwork is in order and then sending the paperwork to human resources." However, he advised the Board of Ethics that the hiring decision or signing of paperwork can be delegated to his supervisor, who must sign off on all hiring paperwork anyway.

If the superintendent's step-son is hired, there would be one supervisory level (supervisor) between the superintendent and his step-son who would be a technician.

The hiring and supervising of relatives is regulated by Section 2-59 of the Code of Ethics:

> **Sec. 2-59. Employment and supervision of family members.**
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> The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members.
>
> (a) Unless he or she obtains a waiver pursuant to section 2-54, no officer, official, or employee shall appoint or hire a member of his or her immediate family for any type of employment, including, but not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.
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> (b) No officer, official, or employee shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.
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> (c) When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers. Examples of circumstances which might result in a waiver include, but are not limited to:
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> (1) The family member who is proposed to be hired was certified

through a competitive process conducted pursuant to law and the officer, official, or employee who would make the appointment did not influence or affect the certification.

(2) The officer, official, or employee who would officially make the appointment is acting ministerially and did not select the family member or attempt to influence the person who did.

(3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.

(d) The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor.

The definition of “immediate family member” in Section 2- 52(c) of the Denver Code of Ethics includes “step-son,” which is defined in Webster’s Dictionary as “the son of one’s husband or wife by a former marriage.” The definition of step-son has nothing to do with the age of the person, just as all of the definitions of relatives in the Code of Ethics have nothing to do with their age. Therefore, the Board of Ethics determined that Section 2-59(a) would prohibit the superintendent from “hiring or appointing” his step-son. However, as noted above, the superintendent said that he was not involved in the hiring process yet and that he could ask his supervisor to review and sign the paperwork.

Section 2-59(b) would prohibit the superintendent from supervising either his step-son or his step-son’s supervisor. Therefore, the possible hiring of the step-son would violate that section unless the superintendent would obtain a waiver from the Board of Ethics.

The Board of Ethics, however, decided not to grant a waiver in this situation. The Board said that it does not believe that it is in the best interests of the city to have immediate family members in the same work group separated by only one level of supervision. The Board wishes to discourage similar situations in the future due to the appearance of favoritism to immediate family members that such a hiring and supervising situation involves. Although the Board has given a number of waivers in the past to allow supervision by an immediate family member, in those cases, the family member had already been hired as a member of that city department.

Case 10-18 (conflicts of interests, gifts)

The Director of Strategic Marketing in the Office of Economic Development requested that the Board of Ethics review the issue of “sponsorship programs” and particularly the question of whether such programs might cause any conflicts of interest.

In June 2008 the city issued a document entitled City Sponsorship Policy and Procedures, At that time, the city was facing and is still facing hard economic times and saw sponsorships as a way to earn revenue and/or decrease expenses for the city.

There are 2 citywide sponsorship arrangements that are officially approved. The first is a contract by which a cell-phone company paid the city $20,000 in return for the right to market through city communications (such as the Insight city employee newsletter, the city employee website and a table at the annual picnic for all city employees) the fact that the company has agreed to offer any city employee a 15% discount on company products. Presumably, the company hoped that it would increase its product sales through marketing of this discount to city employees. The second is a contract by which a vending machine company pays the city for the exclusive right to place vending machines in city locations, such as break rooms in city offices, which includes exclusivity for one line of soft drinks. Prior to the exclusive sponsorship, various agencies had their own vending machine arrangements.

There are also a large number of department-specific sponsorships. An example is that a health-care company pays the city to subsidize swimming-pool admissions during the summer for low-income young people in return for placing its name on the program and obtaining publicity and good-will. Another example is that another healthcare company pays for and places its name on guidebooks for the city park system. These two companies also provide health insurance to city employees.. The Denver Office of Cultural Affairs solicits and obtains sponsorships for concerts in parks. Theaters and Arenas, through a private contractor, solicits many sponsorships for events in its venues.

Denver's Purchasing Director, who is involved with some, but not all, of the sponsorship programs, says that the programs he is involved in invite different companies so that different companies have a fair opportunity to participate. For example, three cell-phone companies were all invited to participate in the sponsorship relating to cell-phone discounts for city employees. He also says that there should not be any expectation that a company that has a sponsorship arrangement with the city will get any special advantage in a bidding process for any city purchasing contract or purchase order because of the sponsorship. He informs buyers in the Purchasing Division that they must base their selections on specific criteria and should not be influenced by whether a company has a sponsorship arrangement with the city or not.

The gift section of the Denver Code of Ethics (2-60) prohibits (with many exceptions) the solicitation or acceptance of gifts to city personnel 1) if the city person is in a position to take direct official action regarding the donor and 2) if the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor. The purpose of Section 2-60 is "to avoid special influence by those who give gifts to city officers, employees or officials." Section 2-60(c), on the other hand, specifically permits a city person to "solicit donations to the city"…if the city person "does not use the gift and it cannot reasonably be inferred that the gift was intended to influence the officer, official or employee in the performance of his or her duties."

Sponsorships are different from gifts or donations because the sponsor will receive some consideration for its sponsorship, such as advertising or exposure to city employees or the exclusive right to sell soft drinks to city employees.

The Board of Ethics concluded that the Denver Code of Ethics does not prohibit such sponsorships. However, the Board believes that city sponsorships and perhaps other public-private partnerships involve ethical issues and challenges. In particular, there might be a public perception by a sponsor and/or the public that a sponsor might have a special influence with or get a special advantage from the city regarding, for example, a city regulatory or contracting function as a quid pro quo for its sponsorship. Any perception that any entity should "pay to play" with the city government should be discouraged

The Board recommended that the Director of Strategic Marketing, the Purchasing Division, the City Attorney's Office and the Mayor's Office should give careful thought to avoiding the appearance of impropriety, through the following measures (several of which are already being followed by some agencies):

1. developing and publicizing consistent written policies regarding sponsorships for use by all city agencies and departments. Perhaps a new executive order should be considered for this purpose;
2. requiring that all sponsorship agreements should be in writing and available to the public;
3. having all sponsorships be for a limited term;
4. clarifying that the only consideration to a private party from a sponsorship agreement is what is stated in the written sponsorship agreement and that no other favor or advantage will be given by the city or any city agency, employee, officer or official;
5. clarifying that all city contracts and purchase orders are issued based only upon the specific criteria which must be considered for that contract or purchase order and are not influenced by a party's involvement or non-involvement in any city sponsorship arrangement;
6. making sure that whoever solicits a sponsorship has nothing to do with any contracting or regulatory function that the potential sponsor might be involved in;
7. approaching several possible sponsors, rather than one, for each sponsorship opportunity and having objective criteria for the selection, if more than one express interest;
8. making sure that the decision regarding a sponsorship may not be made by any city person who has any city or personal relationship with a possible sponsor;
9. considering amending Executive Order 134 to require city departments or agencies to disclose any sponsorships with a value of $2500 or more. (Currently, Executive Order 134 excludes sponsorships from the definition of "gifts to the city" which must be reported;)
10. being aware that the Board of Ethics will be glad to provide advice on individual sponsorship issues.