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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1– June 30, 2012

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2012 in response to fact-specific requests for advisory opinions or complaints.
These opinions should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss any specific issues you may have.

Cases 11-50 and 11-51 (no jurisdiction)_____

The Board of Ethics dismissed both of these complaints, because they did not concern Denver officers, employees or officials.

Case 12-1 (supervision of family member)

Until recently, a major in the Sheriff Department was in charge of the Training Academy for the Department. He was reassigned to be a deputy sheriff major at the Downtown Detention Center (DDC). His responsibilities will be administrative matters at the DDC, the sheriff operation at the courthouse and the sheriff's operation at Denver Health Medical Center.

The major's son has been a deputy sheriff at the DDC for approximately one year. Both father and son work the day shift. The major and his supervisor both agree that any personnel or administrative actions regarding the major's son will be assigned to the other deputy sheriff major at the DDC. There are two other levels of supervision between the major and his son, namely the levels of sergeant and captain.

Supervision of family members is regulated by Section 2-59 of the Denver Code of Ethics:

> **Sec. 2-59. Employment and supervision of family members.**
>
> The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members…
>
> (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.
>
> (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**…**
>
> (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.

In a number of similar cases, the Board of Ethics has determined that there is not a violation of Section 2-59 (and thus no need for a waiver), if there are two or more levels of supervision between the family members.

The Board determined that the employment of the major at the DDC, even though his son is also employed there, will not violate the Code of Ethics because the major is not in the "direct line of supervision" of his son. The Board also decided that the major must abstain from taking any personnel or administrative action regarding his son, which he has already agreed to do.

The Board recognized that temporary situations might arise, such as an emergency at the DDC where the major might be put in a temporary situation of supervising his son or a vacation or sick-schedule of others at the DDC, which might also create a temporary situation of the major supervising his son. However, the Board determined that such short-term temporary situations would not cause a violation of Section 2-59.

Case 12-2 (outside employment), conflict of interest

An employee in the Golf Division of the Parks and Recreation Department who is also a licensed Colorado attorney requested an advisory opinion regarding two different issues.

First, she wished to know whether she can write journal articles, lecture, or otherwise practice law in the golf industry. Second, she would like to pursue a Masters of Law degree after work hours and wishes to know if the Code of Ethics or any other city regulations govern that.

Issue I. According to Section 2-63 of the Code of Ethics, a city employee must obtain written approval of her or his appointing authority for paid outside employment or outside business activity – "excluding unpaid volunteer activity." Several years ago, a former Manager of Parks and Recreation adopted a stricter rule than 2-63, which required disclosure and approval of unpaid volunteer work. However, the current Manager says that Parks and Recreation now follows the citywide version of Section 2-63.

According to Section 2-63, the final decision regarding outside employment is up to an employee's appointing authority and not the Board of Ethics. However, the Board usually tries to point out what situations in outside business activity should be avoided, rather than prohibiting types of outside employment altogether. The Board concluded that it would be a conflict for the employee to advise clients or give talks or write articles about how to compete with Denver Golf or to divulge trade secrets to competitors of Denver Golf. On the other hand, it would not be a conflict to write articles or to advise clients about how to avoid liability or safety hazards by using safer equipment or design, which would be advice that would benefit the golf industry as a whole and not cause any harm to Denver Golf. If she engages in such paid or unpaid outside work, she should clearly indicate that she is not speaking or acting as a representative of Denver Golf or the City and County of Denver. In addition, she must not use any city time or resources in such outside work.

Issue 2. The Board of Ethics concluded that nothing in the Code of Ethics, Career Service Rules or other city rules or ordinances requires city employees to obtain permission to attend classes or pursue degrees, so long as that would not interfere with the employee's city work duties. The Board obtained the following information from an expert at Career Service Authority, regarding CSA Rules:

- Some agencies (such as Technology Services) may require employees to be available at all hours because of the demands of the job, but this is not a general requirement for all exempt employees;

- Generally speaking, exempt employees are expected to work at least 40 hours a week, and possibly more if necessary to complete their duties. This could create a conflict with taking law school at night as the combination of classes and studying may make it very difficult for an employee to put in the time required to do his or her job;

- I am not aware of any rule, etc. that requires supervisor consent before an employee can sign up for college classes. However, if there is a conflict between an employee's work schedule and school schedule, the employee might need to request a schedule change from the supervisor. In that situation, supervisor consent to the schedule change may be required before the employee is able to leave work to take classes at night**.**

The Board of Ethics advised the employee that:

- She will need to obtain her appointing authority's written approval before she can engage in paid outside activity, such as writing articles or consulting with clients. Any such unpaid volunteer outside business activity does not require such approval.
- Any outside work (paid or unpaid) that could assist a competitor of Denver Golf to gain an advantage over Denver Golf would be an impermissible conflict of interest that "adversely affects the interests of the city" and must be avoided.
- There is no section of the Code of Ethics or Career Service Rules that would prevent her from pursuing any educational courses or degree or require her to obtain permission to do so, so long as the classes and studying do not interfere with her work duties or work hours. If an emergency occurred at Denver Golf that required her attendance, that would take priority.

Cases 12 – 3 through 12 – 8 (no jurisdiction

A citizen filed complaints concerning 6 employees of the County Court and the City Attorney's Office concerning alleged mishandling of litigation and appeals that she had filed. The Board of Ethics dismissed the complaints because it has no jurisdiction over such issues.

Cases 12-9 through 12-12 (no jurisdiction)

The mother of a deceased city employee filed complaints concerning four current or former city employees concerning alleged theft of insurance and retirement benefits and false notarization of documents. The Board of Ethics dismissed these complaints because the Board has no jurisdiction over such issues.

Case 12- 13 (conflict of interest)

The chief executive officer of a Colorado nonprofit organization requested an advisory opinion. Approximately six years ago, the non-profit began to teach classes to young men. In March 2012, the non-profit will begin to teach classes to young people referred through Denver's Office of Economic Development's youth employment office (where the wife of the CEO works). There is, however, no contract between the nonprofit and OED or any other city agency regarding providing those classes. Funding to provide the classes comes through Colorado Healthy Relationship Organization and the United States Department of the Interior and no funds come from OED or any other city agency.

The CEO's wife will not have anything to do with approving, negotiating or administering any contract or program with the nonprofit. Conflicts of interest are regulated by Section 2-61 of the Denver Code of Ethics:

> **Sec. 2-61. Conflict of interest while employed.**
>
> The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,
>
> (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… (emphasis added)

The Board of Ethics advised the CEO that there is no impermissible conflict of interest regarding OED and the CEO, because his wife had no direct official action role on behalf of OED regarding the nonprofit.

Case 12- 14(supervision of family members)

The newly-appointed Deputy Director for Recreation of the Department of Parks and Recreation requested an advisory opinion. A few years before she was appointed, her two step-sons had become employed by the Recreation Division, where they are still employed. She wished to know if this will violate Section 2-59 of the Code of Ethics which prohibits supervision of immediate family members. Step-sons are included in the definition of immediate family members in Section 2-52(c) in the Code of Ethics. Section 2-59 provides:

> **Sec. 2-59. Employment and supervision of family members.**
>
> The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members…
>
> (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….**

(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.** (emphasis added)

The two step-sons are supervised by Operational Coordinators which report to Recreation Supervisors which report to Directors of Recreation. In other words, there are three levels of supervision between the step-sons and the Deputy Manager. Therefore, the Board concluded that there is not a violation of Section 2-59, because there are three levels of supervision between the Deputy Manager and her step-sons. The Board also advised her that she should not participate in taking any personnel actions regarding her step-sons.

Case 12 – 15 (no jurisdiction)

Two citizens filed a complaint concerning a caseworker assigned to a child-welfare investigation, alleging that the caseworker mishandled the investigation. The Board of Ethics dismissed the complaint because it was not within the Board's jurisdiction and encouraged the citizens to present their issues to the court handling the case.

Case 12-16 (conflict of interest, prior employment)

The Mayor appointed the president and CEO of a private company as the new Manager of a city department. The company has two contracts for engineering services with the city. Before he was sworn in, the prospective Manager requested an advisory opinion regarding possible conflicts of interest.

He recently resigned from any position with the company and sold his shares of the company's stock. No member of his family now has any stock in the company. He advised the Board of Ethics that the company will probably apply for future contracts with the City and County of Denver, including with his new department.

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

Sec. 2-61. Conflict of interest while employed.

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(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;…

(b) For purposes of this section, business associate means a person or entity with whom an officer, official or employee or a member of his or her immediate family is a partner or a co-owner of a business in which the business associate and the officer, official or employee or a member of his or her immediate family each own at least one percent of the business…

(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. (emphasis added)

The Code of Ethics also regulates conflicts of interest regarding prior employment:

Sec. 2-62. Prior employment.

No person shall be disqualified from service with the city as an officer, official, or employee solely because of his or her 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.** (emphasis added)

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

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**, licenses, benefits or payments;

(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…** (emphasis added)

The Board of Ethics found that, in light of the recent sale of all of his stock in the company and the fact that none of his family members own any stock or are involved with the company, Section 2-61 will not prohibit the new Manager from taking direct official action regarding the company. However, Section 2-62 requires that he must not take any direct official action regarding the company during the first six months after leaving employment with the company.

In addition, the Board strongly recommended that he should follow the steps in Section 2-61(f) if faced with any situation involving the company and that he should promptly advise others in the department that he must have no involvement whatsoever in contracts or potential contracts or projects regarding the company and that such matters must be dealt with entirely by someone else in the department or another department or the Mayor's Office during the first 6 months after he left the company. The Board also recommended, but cannot require, that, because of his long-term involvement with the company and the fact that, as Manager, he will be in effective control of all department employees, he should consider complying with these recommendations throughout his term as Manager. The purpose of these findings and recommendations is to minimize the impression by the public, the media or competing contractors that his prior connection with the company will give the company an unfair advantage.

Case 12-17 (conflict of interest)

The Director of the Division of Small Business Opportunity (DSBO) of the Office of Economic Development (OED) requested an advisory opinion. The main function of DSBO is to approve and monitor certification of businesses as Minority/Women Disadvantaged Businesses (MBWE), which gives advantages in contracting with the City and County of Denver and also with other government entities.

A private consultant contracted with the city to provide supervision and management of various projects as part of the Better Denver (2007) Bond Program. Until recently he had an office in the Webb Municipal Office Building, although he is not and was not a city employee. He continues to perform his consulting contract with the city. His consulting company obtained MWBE certification from DSBO some time ago and is now seeking additional "codes" from DSBO, which would certify expertise in those codes. These additional codes, if certified, will not help him with his current city contract, but will help him with future public or private contracts that he may seek.

The consultant said that he does have other work, but he did not use his city office space, computers or other city resources for his private work. He said that he expects that his current city contract will be finished within 12 months and that he anticipates applying for other city contracts.

Another consultant has a contact for financial management on some bond and other projects. She works in the Webb Building and is seeking MWBE certification.

The Director asked whether "since they are located in the Webb Building and working in the same department where these contracts are issued and interested in, is this a conflict of interest?"

Since the two consultants are not city employees, they are not subject to the Denver Code of Ethics. Nonetheless, the Board of Ethics determined that their city overseer and these or any similar consultants should take measures to avoid any appearance of impropriety or unfair advantage so that the integrity of the city's contracting system is not compromised. In particular, independent consultants if they office in city facilities 1) must not use city offices or city equipment or other resources for any private business and 2) they should not be given access to any information about potential city contracts or requests for proposals on projects which they might want to apply for or bid on any earlier than the information is made available to the public.

Case 12-18 (conflicts of interest)

The Director of Corrections and another city employee requested an advisory opinion regarding participation in a proposed "jail industries" program. Unlike many federal and state prisons and other county jails, Denver's jail system does not have "jail industries." In general, jail industries are inmate-employment programs within or connected with jails through private companies which ease inmate re-entry into society and reduce recidivism.

The Director and the other employee began to discuss jail industries at meetings of the Crime Prevention and Control Commission, on which they both serve. They both believe that it would be good for inmates and citizens of Denver to establish a jail industry program. The other city employee proposed that a company of which he is the president and 3% owner could be the first company to engage in or "pilot" the Denver jail industry program. He does not currently take any pay or benefits from the company. He works approximately 20 hours per month for the company on his non-city time. If the jail industry pilot is successful, expansion to other companies would be possible.

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

> **Sec. 2-61. Conflict of interest while employed.**
>
> The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,
>
> (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…

(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.

Another pertinent section of the Denver Code of Ethics is Section 2-67:

Sec. 2-67. Use of public office for private gain.

No officer, official or employee shall use his or her public office or position or disclose or use confidential information **in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated** or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment. (emphasis added)

The Board of Ethics stated that it believes that a jail-industries program would be good for inmates and for the citizens of Denver. However, the Board concluded that for the company to compete to participate in or to actually participate in the Denver jail industries program would be a violation of Section 2-67 of the Code of Ethics. Such participation could also carry with it a strong appearance of impropriety. This is because the other employee's position gives him a position of influence over many city programs, including Department of Safety programs and 2) his learning about jail industries came through involvement in the Denver Crime Prevention and Control Commission. The Board considered granting a waiver, but decided not to do so, because the possible appearance of use of public office for private gain would be too great.

The Board recommended to the Sheriff Department that a competitive selection process be established to obtain proposals from potential jail industries, not including the company in question.

Case 12 – 19 (hiring or supervision of relatives

The Director of Corrections requested an advisory opinion and/or waiver regarding possible promotion and supervision of 1) his sister and 2) his former wife.

The Denver Sheriff Department makes promotions based on a list which lasts for approximately 2 years, certified by the Career Service Authority after the administration of examinations, from which the Director makes promotions when a vacancy occurs if the department's budget allows for a promotion.

His sister has the rank of captain in the Sheriff Department, but is currently temporarily serving as an acting major (due to a high-ranking officer being placed on leave). His former wife has the rank of sergeant, but is currently serving as acting captain due to the same situation. The rank structure within DSD is as follows:

- Undersheriff (Director of Corrections)
- Division Chief
- Major
- Captain
- Sergeant
- Deputy

Hiring and supervision of immediate family members are regulated by Section 2-59 of the Code of Ethics:

> **Sec. 2-59. Employment and supervision of family members.**
>
> 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.

(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:

(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.** (emphasis added)

A sister is an "immediate family member" as defined in Section 2-52(c) of the Code of Ethics. Since the sister would be in the direct line of the Director's supervision so long as she is an acting major or if she were to be promoted to major, since there is only one other rank (division chief) between Director and major. Therefore, the Director would violate Section 2-59(b) unless he receives a waiver from the Board of Ethics, pursuant to Section 2-54(f).

A former spouse is not an immediate family member as defined in the Code of Ethics.

The Board of Ethics advised the Director that:

1. Having his sister serve now as acting major or, in the future, if she is promoted to major would violate Section 2-59(b) of the Code of Ethics.
2. However, the Board granted the Director and his sister a waiver so long as a) the next person on the CSA-established list is given the next available promotional opportunity to major; b) the Director will not know what are the questions or tasks in the promotional

examination; c) the Director will ask the Manager of Safety to make the actual promotional decision(s) for major if his sister is highest on the promotion list and d) the Director will abstain from any personnel actions regarding his sister and assign them to the Manager of Safety. The Board also encouraged him to consider using sheriff officers from other counties to interview for future promotions to major if his sister is one of the candidates to be interviewed. The reason for this waiver is that all of the conditions in Section 2-59(c) apply to this situation.

3. Since a former spouse is not defined as an immediate family member and since there would be 2 other ranks between Undersheriff and captain, there is no violation of Section 2-59 regarding the Director and his former wife's promotion to acting captain or possible promotion to captain. However, in order to avoid the appearance of either unfavorable or favorable treatment of his former spouse based on their relationship, the Board encouraged the Director to follow the steps included in paragraph 2 above.

Case 12-20 (no jurisdiction

A citizen filed a complaint concerning an assistant city attorney, who handled proceedings regarding a public nuisance confiscation of her automobile after her husband had been caught driving the vehicle as a habitual traffic offender. She claimed that she was deprived of due process of law and that the amount of the judgment was excessive, but she made no allegations of a violation of the Denver Code of Ethics. For that reason, the Board of Ethics dismissed the complaint.

Case 12-21 (gifts –travel expenses)

Two employees of Denver International Airport filed a request for an advisory opinion.

For several years, successive mayors and DIA staff have encouraged international air flights to and from DIA. After considerable negotiation, in September 2011, Icelandair announced new air service between DIA and Reykjavik. The City estimates that this service will generate $28 million in annual economic impact to the Denver region and create nearly 300 new jobs.

As incentives to Icelandair for this service, City Council by ordinance had approved several items, including waiver of landing and aircraft parking fees and funds for marketing the service. In addition, City Council, the Mayor and the Manager of Aviation will approve a use and lease agreement with Icelandair.

Icelandair invited a Denver delegation to fly on the inaugural flight from Reykjavik to Denver in May 2012. The Mayor identified 8 City persons to be part of the delegation. Icelandair offered to pay the total cost of airfare from Boston to Reykjavik and Reykjavik to Denver plus hotel rooms for the 8 City and County of Denver representatives, as well as 10 other community leaders. The cost would be between $2000 and $3500 per person, depending on the class of the air service (described as Option 1 in the request for an advisory opinion). However, the delegation would prefer Option 2, which is a "reduced rate of $1000 for airfare and 2 nights'

hotel." The Board of Ethics was informed that "this rate matches the promotional package offered when the service was announced in September."

The acceptance of gifts, the definition of which includes "travel expenses and lodging" and "any reduction in price or any discount that is not similarly available to all city officers, officials and employees on the same terms," is regulated by Section 2-60 of the Code of Ethics:

> **2-60** The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.
>
> (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…

All of the eight(8) City and County of Denver delegation members are "in a position to take direct official action" regarding Icelandair and have taken such action already by negotiating, voting for, signing or recommending the ordinance and agreements and some will administer the agreements in the future. In addition, the city has and will have a contract, business and regulatory relationship with Icelandair. Therefore, the City and County of Denver delegation members would violate Section 2-60(a) by accepting either Option 1 or Option 2, unless they are discounts or reductions in price that are "similarly available to all city officers, officials and employees on the same terms" or unless the exception indicated in Section 2-60(b)(12) applies: "items which are similarly available to all employees of the City or the general public on the same terms and conditions."

The Board of Ethics concluded that, while this discounted rate may have been advertised to the public in September 2011, such advertisement in September was not meaningfully available to all city officers, officials and employees or to the general public on the same terms. Only a few city people or members of the public likely knew that the agreements with Icelandair would be finalized in March 2012 and that the inaugural flight would be in May. In addition, the $1000 promotional offer was only available for a limited time and is not available now.

The Board is empowered to grant a waiver, pursuant to section 2-54(f) of the Denver Code of Ethics if the acceptance of the travel expenses would be "in the best interests of the city." In 2002 in a series of cases (Cases 2-24, 2-28 and 2-29), the Board of Ethics developed a policy that it did not wish to grant waivers regarding travel expenses unless "emergency, unusual or exigent circumstances" exist.

The Board of Ethics approved waivers for up to 3 city representatives to accept Option 1 (full-price discount) from Icelandair. The Board decided that waivers for more than 3 employees would not be justified. Payment for other city delegation members, if any, should be paid by the city or the Department of Aviation. The Board concluded that this waiver will be in the long-term best interests of the city to celebrate the inaugural Icelandair flight and to assist, as the

request for an advisory opinion indicates, in "building a strong foundation for future economic exchange between Colorado and Iceland and to develop long-term partnerships."

Case 12-22 (no jurisdiction)

A citizen filed a complaint, concerning his next-door neighbor, who is a city employee, regarding a number of alleged zoning violations and other bad-neighbor issues. The Board of Ethics dismissed the complaint because it had nothing to do with city employment or the Denver Code of Ethics.

Case 12- 23 (conflict of interest)

The Manager of Parks and Recreation filed a request for an advisory opinion concerning a possible conflict of interest regarding the Deputy Manager for Parks and Planning. The Deputy Manager and his wife founded a non-profit organization several years ago to encourage environmental learning for young people. The Deputy Manager has never been a paid employee of the nonprofit. His wife is now the executive director of the nonprofit.

The Parks and Recreation Department is partnering with other communities in the metropolitan area to obtain funds from the federal government from a settlement of litigation. One of the projects in Denver's proposal is to purchase land that would be leased to the nonprofit. The Manager of Parks and Recreation advised the Board that, in order to avoid a conflict of interest, before submitting the application for funding to the federal government, the department removed the Deputy Manager from the decision-making process and he took no direct official action in the decision to go forward with the application. The Deputy Manager's wife met only with the department's Manager and Director of Planning to provide background on the necessity of the project. All recommendations for projects from this fund came from the Planning Director directly to the Manager. Ultimately, funding will be accepted by the Mayor and City Council for final approval.

On another subject, the Deputy Manager and his wife informed several young people in the nonprofit program that paid summer internships will be available in the Parks and Recreation Department, with the selection process being managed by Career Service Authority. The Deputy Manager said that he recognizes that the young people from the nonprofit must be given no special preference in selection of the interns and that all applicants must be treated fairly and measured by the same criteria.

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

> **Sec. 2-61. Conflict of interest while employed.**
>
> **The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,**

(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. (emphasis added)

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

(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, licenses, benefits or payments;

(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…**

The Board of Ethics determined that the Code of Ethics will not be violated if the Deputy Manager did not and will not take any direct official action regarding the nonprofit program, if the land is obtained and leased to the nonprofit and that he must not attempt to influence the decisions of others in the department regarding the nonprofit, including the Planning Director.

The Board urged him to be particularly mindful of the need to separate himself from any decisions at the department regarding the nonprofit in order to avoid the appearance of impropriety, particularly since the Planning Director directly reports to him. In addition, in order to avoid the appearance of impropriety, he should remove himself from any role in interviewing or selecting young people from the nonprofit for any department internship programs**.**

Case 12-24 (gifts)

Two assistants to the Mayor requested an advisory opinion. The Mayor wants to establish a garden at the city-owned facility known as Cableland to stress the importance of urban agriculture and food gardens with a specific emphasis on children.

Cableland was the residence of Denver's Bill Daniels, known as the Father of Cable Television. When he died in 2000, he left much of his estate to form the Daniels Foundation and also left his large home, known as Cableland to the City and County of Denver, which has been used for special city or private events.

A for-profit company which does business with the city has expressed an interest in donating funds to the city for the establishment of such a garden at Cableland.

Section 2-60(c) of the Denver Code of Ethics specifically allows for the solicitation of donations to the city:

> 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.

Such donations are permitted from anyone, including organizations doing business with the city.

The Board advised that Section 2-60(c) of the Code of Ethics specifically permits a donation by anyone to the city and/or to a 501(c) or other charitable organization, so long as "financial records are maintained." The Board also stated that Executive Order 134 requires that any gift to the city over $2500 must be disclosed to the Clerk and Recorder's office.

Case 12-25 (outside employment)

An applicant for a city job requested an advisory opinion. He wished to know whether, if hired by the city, he would be able to continue his work with a 2-person company that he owns that provides professional service in the information security area.

Outside employment is regulated by Section 2-63 of the Denver Code of Ethics:

> **Sec. 2-63. Contemporaneous or outside employment.**
>
> The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.
>
> (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
>
> (b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.
>
> (c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity…
> (d) City resources may not be used for any outside employment or outside business activity.

The Board of Ethics did not find any inherent conflict of interest between his potential job with the city and his work with his company; however, as required by 2-63, if hired by the city, he cannot engage in any outside employment or outside business activity unless he obtains written approval from his appointing authority. If that is approved, he must not use any city resources or time for his outside work. In addition, his company should not work on any project or for a client that would conflict with his loyalty to the city and County of Denver and his city department. In addition, he should note that Section 1.2.9B of the Denver Charter provides that "no…employee

shall have a direct interest in a contract or similar instrument with the city if he or she participated in approving or establishing the contract or instrument…"

Case 12-26 (subsequent employment)

A city employee requested an advisory opinion about applying for a job with a national company, after he was approached by a representative of the company about being the manager of the company's Colorado operations. The employee was considering whether to apply for the position or not.

The employee has never dealt with the company in his city job, although the company currently has one contract with the city through a different department. The company does not have any contracts with the department the employee works for. In particular, the employee was concerned about:

1. The possibility that the company might respond to a Request for Proposals which was issued by the department. The responses to the RFP were due on or before May 1, 2012. The company was one of several companies that obtained the bid documents from the city. The employee was a member of the 4-person selection committee that will review the submitted bid documents, score and short-list the bidding companies and interview the short list of companies. However, the employee advised the Board of Ethics that if the company bids (which will probably not be known until May 1) and if he has decided to apply for the job with the company, he will ask to be removed from the selection committee. The selection committee will not have access to any of the submitted bid documents until May 1. The employee also told the Board that he has not talked to anyone at the company or any other potential bidder about the RFP in question.

2. Whether Section 2-64 of the Code of Ethics regarding subsequent employment or any other provision of the Denver Code of Ethics would prohibit the employee from going to work for the company.

Subsequent employment is regulated by Section 2-64 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 employee has not yet taken any direct official action regarding the company, since the company has not had any contract with his department during

his employment with the city.

The Board decided that, in order to avoid conflicts of interest:

1. If the employee decides to apply for a position with the company, he must immediately advise a superior in the department that he must withdraw from the selection committee or else wait until May 2, 2012 to apply for the position;

2. If the company does not submit a proposal or if the employee has withdrawn from the selection committee, the potential conflict between his city job responsibility and his private desire to be employed by the company is eliminated. Therefore, Section 2-64 would not prohibit him from working for the company without waiting for 6 months.

3. The employee must not have any private communications with the company concerning the RFP.

Case 12-27 (gifts)

The Director of a department requested an advisory opinion. The primary purpose of the department is to issue and regulate city licenses.

A private taxi company has offered to donate some of its used computer monitors to the department. The Director would allocate these monitors for customer use in the lobby of the agency. The donor estimates the value of each used monitor to be $25.

The department does not license taxi companies. That function is performed by the state Public Utilities Commission, which issues "certificates of public convenience and necessity" to taxi companies. The PUC also licenses individual taxi vehicles. However, the city department does license individual taxi drivers (herdic licenses) and also has a number of regulatory requirements in an ordinance to enforce, such as that a taxi company must "keep a permanent record of each telephone call received requesting taxicab service" and that possession of alcoholic beverages by a taxi driver is prohibited.

If the gift of the computer monitors was from the company to the Director individually, the gift would be prohibited by Section 2-60(a) of the Denver Code of Ethics, which prohibits gifts to city personnel in a position to take direct official action regarding the donor if the donor is regulated by the city because "direct official action," as defined in Section 2-52(b) includes "enforcing laws or regulations or issuing, enforcing or regulating permits, licenses, benefits or payments."

Section 2-60(c) provides, however:

> 2-60(c) It shall **not** be a violation of this article for an officer, official, or employee to solicit donations **to the city** …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).

Therefore, the Board of Ethics advised the Director that acceptance of the gift from the taxi company to the department of used computer monitors for use in the department for city purposes is allowed by the Code of Ethics.

In addition, although it does not appear that the value of the monitors would exceed $2500, the Board reminded the Director that Executive Order 134 requires disclosure to the Clerk and Recorder of any gift to a city agency or department over $2500.

Case 12-28 (gifts)

The City Attorney asked for an advisory opinion about whether it is ethical for the Mayor to donate seats in what have customarily been called "the Mayor's boxes" at city-owned venues, including Buell Theatre, Boettcher Concert Hall, Ellie Caulkins Opera House, Denver Coliseum, and Red Rocks Amphitheatre to nonprofit entities so that they can use them to raise funds for charitable purposes.

Section 2-60(c) of the Code of Ethics permits city personnel to "redirect donations for charitable purposes;"

> 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. (emphasis added)**

The Board of Ethics determined that Section 2-60(c) specifically permits the Mayor to redirect tickets from Arts and Venues Denver to 501(c)(3) or other charitable organizations "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."

In addition, Section 2-60(b)(4) of the Code of Ethics would allow the Mayor or any other city person in a position to take direct official action concerning AVD to accept tickets for his or her own personal use up to four free or reduced-price event tickets from the same donor in any calendar year regardless of the value, so long as attendance is reasonably related to his or her official or ceremonial duties.

In addition, the Board recommended that the Mayor's Office should develop fair and neutral criteria or standards for distributing event tickets. For example, in order to avoid the appearance of favoritism, tickets should be distributed to a variety of nonprofits. They should also be used only for "charitable purposes" and not, for example, to benefit friends.

Case 12- 29 (gifts)

A Police Department detective assigned to Denver International Airport requested an advisory opinion. He investigated a case in which a traveler from Wyoming was found to have a loaded gun in her carryon bag at DIA. Ultimately the case was resolved and no state or federal charges were filed. A few days later he received a package from the traveler which contained a card, plastic water bottle with Wyoming emblem, a Wyoming sticker, a note pad and a T-shirt with sayings about Wyoming.

Section 2-60(a) of the Code of Ethics prohibits the acceptance of gifts by a city person in a position to take direct official action concerning a donor. "Enforcing laws" is one of the elements of "direct official action." However, Section 2-60(b)(5) gives an exception for "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, calendars, books, flowers, or other similar items." In addition, the Board of Ethics, on several occasions, has indicated that gifts of reasonable value given in appreciation for good work already performed do not violate the Code of Ethics.

The Board of Ethics advised the detective that acceptance of these unsolicited items of nominal value would not violate the Code of Ethics; however, the Board stated "if you feel uncomfortable, you might wish to donate them to any charity or church."

Case 12-30 (gifts)

A Division Chief of the Police Department requested an advisory opinion, asking whether it is appropriate for the Police Department to forward to police personnel messages from various "retailers, sports team and special events offering discounts for law enforcement personnel." The request for an advisory opinion was sparked by an e-mail offer from a Denver Outlaws lacrosse team ticket operations and promotions representative of discounted seats for police officers for a game designated as Heroes Night.

In addition, the Division Chief brought to the Board of Ethics meeting a poster and coupons offering discounts to police officers from an automotive service center in Denver, which had been posted by an unknown person in an elevator in the Police Department headquarters and he requested guidance regarding that discount offer.

Gifts to city personnel are regulated by Section 2-60 of the Denver Code of Ethics:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.
>
> (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…**

(5) **Any ticket to a sporting, recreational, or cultural event except as provided for in subsection (b)(4) of this section…**

(7) **Any reduction in price or any discount that is not similarly available to all city officers, officials, and employees on the same terms…**

(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…**

(4) **The donation of meals, tickets to events for which admission is charged, or free or reduced price admission to events for which a fee is charged, but only under the following conditions:**

a. **No more than a total of four meals, tickets, or free or reduced price admissions may be accepted from the same donor in any calendar year, regardless of the value…**

d. Attendance must be reasonably related to the official or ceremonial duties of the officer, official, or employee;…

(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…**

(**12) Items which are similarly available to all employees of the city or the general public on the same terms and conditions**… (emphasis added)

The definition of "direct official action" in Section 2-52(b) includes "enforcing laws," which is what all police officers do. Any business or person inside the City and County of Denver has a "regulatory relationship" with the city. The office and the Denver games of the Denver Outlaws are at Sports Authority Field in Denver.

Therefore, the Board of Ethics concluded that gifts to Denver police officers, including, but not limited to "any ticket to a sporting, recreational, or cultural event" or "any reduction in price or any discount that is not similarly available to all city officers, officials, and employees on the same terms" are prohibited, unless they are specifically allowed by any of the exceptions in Section 2-60(b).

The first issue is whether it would violate the Code of Ethics for police officers to accept the Denver Outlaws discount offer. This discount is not "similarly available to all city officers,

officials and employees on the same terms." Attendance at a lacrosse game is not allowed by the exception in 2-60(b)(4), because it is not "reasonably related to the official or ceremonial duties of the officer, official, or employee." The Board acknowledges that it did allow city first responders to accept tickets for a special game to commemorate the 10th anniversary of September 11, 2001; however, this Denver Outlaws game has no such unusual commemorative significance or relationship to the officers' city jobs, even though the team calls it a Heroes' Night.

The second issue is whether these discounts (including the Denver Outlaws discounts or the automotive center discount coupons) would be acceptable under the 2-60(b)(5) exception – "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." The Board determined that discounts or discount coupons are not tangible "items" as are meant to be included in the 2-60(b)(5) exception and, therefore, are not allowed to be accepted by police officers unless the discounts are "similarly available to all city officers, officials and employees on the same terms." All of the examples in that sub-section are tangible "items."

The third issue relates to the general question of other similar offers to police officers of items, discounts or tickets. Each specific offer would need to be analyzed under the steps outlined above.

The fourth issue, which is for the Police Department, and not the Board of Ethics, to decide is whether it is administratively too cumbersome for the department to analyze all offers under the steps mentioned above before deciding whether to transmit them to police officers. In other words, the Police Department could decide to adopt a policy that it will not transmit gift or discount offers to its officers. It is not appropriate, however, for the department to forward the offers to the police union, because that would abdicate to the Police Protective Association the department's responsibility to encourage all officers not to accept gifts that violate the Code of Ethics. Section 2-65 of the Code of Ethics provides that "Every appointing authority shall…provide training to employees regarding the code of ethics."

In summary, the Board of Ethics advised the Division Chief:

- Acceptance by police officers of these specific discount offers from the Denver Outlaws and from the automotive service center would violate the Code of Ethics for the reasons described above;
- Any additional offers should be analyzed on their own specific facts;
- The Police Department has the ability to decide as a matter of policy, as it has apparently done in the past, not to transmit such discount or ticket or other gift offers;
- The Police Department should not abdicate to the Police Protective Association the department's responsibility to encourage all officers only to accept gifts that comply with the Code of Ethics.
- The Police Department should discourage posting of posters or other communications in department facilities that offer discounts, tickets or other gifts that would violate the Code of Ethics.

The Board also encouraged the Division Chief and the Police Department to recognize that the acceptance by police officers of discounts or any other types of gifts, unless similarly available to all city personnel, may have the appearance of impropriety by suggesting that those who give such gifts may receive more favorable treatment from officers or the department than those who do not.

Case 12 – 31 (no jurisdiction)

A citizen filed a complaint alleging that her son-in-law, a city employee, had failed to repay what she claimed was a loan made 3 years ago. The Board of Ethics dismissed the complaint, concluding that this is a civil dispute between her and her son-in-law concerning nothing related to his city employment. Even if the transaction was a loan, failure to repay a loan does not violate the Denver Code of Ethics.