Denver Board Of Ethics

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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1– June 30, 2013

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2013 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.

Case 13 - 1 (gifts)

A Fleet Management employee asked if he can accept a gift card for an iPad with an estimated value of $350 that he won as a prize in a drawing following a workshop on Truck Technology and Compressed Natural Gas (CNG). One of the co-sponsors was a provider of CNG fuel station equipment, a representative of which contacted the employee "a few weeks after the event" and advised him that he had won the drawing. About 150 persons attended the workshop.

The employee advised the Board of Ethics that he will not be involved in any way in designing or selecting any CNG equipment or fuel stations.

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

Staff Director

L. Michael Henry

Board Members

Edgar L. Neel – Chair

Brian J. Spano – Vice Chair

Roy V. Wood

Andrew S. Armatas

Sylvia S. Smith

(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…

The Board of Ethics concluded that, since the employee will not have any "direct official action" power regarding the company, he is not prohibited from accepting the iPad gift. If he had direct official action power, according to the Board's decisions in Cases 04-12 and 11-52, the question would then be whether the drawing of his name for the gift was "truly random." In this situation, it is not clear if the drawing was truly random, since he did not learn that he had won until a few weeks after the workshop; however, since he does not have direct official action power regarding the company, that question does not need to be reached. The Board cautioned the employee that, if he accepts the gift, he should not be involved in any decision-making that could impact the company.

Case 13-2 (gifts; travel expenses)

The Director of the Denver Office of Emergency Management and Homeland Security (OEM) requested an advisory opinion and/or waiver regarding travel expenses.

OEM has a contract with a vendor for a software system. The current contract runs through September 2013. The vendor has offered to pay travel and lodging expenses for the Director to attend a worldwide conference of emergency professionals in Augusta, Georgia.

The Board of Ethics concluded that, since the Director is the head of the small OEM office, he will have direct official action power regarding the administration of the contract with the vendor and the decision about whether to renew the contract or not. Therefore, he is prohibited by Section 2-60(a) of the Code of Ethics from accepting travel expenses and lodging from a for-profit vendor. That section provides:

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…

(6) Travel expenses and lodging…

The next question is whether the Board wished to grant a waiver to allow him to accept travel and lodging expenses from the vendor. Pursuant to Section 2-54(f) of the Code of Ethics, the Board may grant a waiver if the Board finds that "the waiver will serve the best interests of the city." In this case, however, the Board determined that, although the learning experience for the Director and the City will be valuable at the conference, there was not sufficient reason to grant a waiver and that the appearance of special influence is too great, in most situations, when city personnel accept travel expenses from vendors which they can decide whether to contract with or not.

Case 13-4 (gifts; travel expenses)

The Director of the Department of Excise and Licenses, which, among many other things, licenses and regulates fire and security alarm systems, requested an advisory opinion and/or waiver as to whether the sole in-house employee administering the alarm program may accept travel and lodging expenses from an outside contractor so that he can fully understand how the contractor is operating the alarm program. The travel would be for a 1 or 2-day visit to the contractor's headquarters in Irving, Texas.

The contract obligates the contractor "to manage and implement the City's alarm systems ordinance…as a single point of customer contact, issuing and renewing permits, generating reports, working to reduce false alarms in the City, working with the City in assessing fees and assisting in appeals and working with City interfaces from its location in Irving, Texas."

The Board of Ethics concluded that, since the employee will oversee of the Alarm Systems Program, he will be in a position to take direct official action by administering and recommending renewal or non-renewal of the contract with the contractor, which will expire in December 2014. Therefore, he would violate Section 2-60(a) of the Code of Ethics by accepting travel expenses from a for-profit vendor doing business with the city if the travel expenses were to be considered a gift.

That section provides:

> **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…
>
> (6) Travel expenses and lodging…

However, the contract between the City and the contractor states in the Scope of Work: "Contractor shall provide training for City employees…as requested by the City." The Board concluded that this clause obligates the contractor to pay for the training and, if appropriate, transportation to and from the location where the training can be done best and, therefore, the payment of travel expenses by the contractor will not be a gift. The travel expenses are not a "thing of value that is given to a person without adequate and lawful compensation." As a result, acceptance of the travel expenses by the employee will not violate the Code of Ethics.

The Board also discussed whether, if the travel expenses were to be considered a gift, it would grant a waiver to allow the employee to accept travel and lodging expenses from the contractor. Pursuant to Section 2-54(f), the Board may grant a waiver if the Board finds that "the waiver will serve the best interests of the city." The Board decided that, if the travel expenses were to be considered a gift, it would grant a waiver, because it is in the best interests of the city to have a knowledgeable and functional relationship between the Department of Excise and Licenses and its contractor in administering the City's alarm program.

The Board strongly recommended that, in order to avoid the appearance of impropriety, the employee should only accept travel or lodging expenses that are reasonable and not extravagant.

Case 13-5 (conflict of interest)

The Manager and the Deputy Manager of a department requested an advisory opinion. The Deputy Manager's spouse is the president of a Denver engineering firm and owns approximately 8% of the firm. The firm made a proposal to the department in response to a Request for Proposals (RFP) for work that will cost approximately $400,000. The Deputy Manager did not prepare the RFP. The 7-person Selection Committee contains one person who reports directly to the Deputy Manager and two others who report directly to that person.

The requesters wanted to know whether any possible conflict of interest violations of the Code of Ethics will be removed if the Deputy Manager were to be recused from dealing with the selection process and subsequent project administration should the firm be selected. The Deputy Manager's duties for the selection process and project administration would be reassigned within the department either to another Deputy Manager or to the Manager, if the firm were selected.

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**… (emphasis added)

The Deputy Manager's spouse has a "substantial interest" in the firm (being the president and owning approximately 8% of the company) and, therefore, the Deputy Manager cannot take any direct official action regarding any potential or actual contract with the firm. The definition of "direct official action" in Section 2-52(b) of the Code of Ethics is:

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

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

(2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, 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 decided that, technically, it would not be a violation of the Code of Ethics if the Deputy Manager has completely complied and would continue to comply with Section 2-61(f) regarding every aspect of the RFP and, if the spouse's company is selected, would have no involvement whatsoever with the administration of the contract.

However, the Board was unanimously of the opinion that, in order to avoid the appearance of favoritism to the spouse's company, the firm should not be allowed to compete for this project or future contracts, so long as the Deputy Manager is in a position of influence over so many of the department personnel involved in the drafting of the RFPs, the selection committee and the administration of this and similar projects. The Board finds that, even if the Deputy Manager is "recused" from any direct official action regarding the firm, the Deputy Manager's strong position of influence over many department staff who report directly or indirectly to the Deputy Manager will give the strong appearance to the public and to competing firms of "influence on the official actions of city officers, employees or officials by their private or family interests."

Cases 13-6 and 13-7 (use of public office for private gain and improper use of confidential information)

A citizen filed complaints concerning a city employee and her supervisor, alleging 1) that the city employee came to the citizen's office in her city vehicle in her city uniform on city time to do personal business and was rude, harassing and intimidating and 2) that the supervisor improperly revealed to the citizen's work supervisor a complaint that the citizen had filed about the city employee with Denver 311, which the citizen believed should have been confidential.

The Board of Ethics considered whether the city supervisor's sharing of the citizen's 311 complaint could be a violation of Section 2-68 of the Code of Ethics:

> **Sec. 2-68. Use of confidential records**
>
> No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties , except in the performance of official duties or as required by law or court order.

The Board of Ethics concluded that anyone who files a complaint with Denver 311 presumably wants something to be done to resolve the complaint and therefore a complaining person should not expect her identity or other information to be kept confidential unless specifically requested.

The citizen's main complaints about the city employee were that she was "rude, intimidating…bullying and demanding…condescending…stalking" and that she was doing "personal business" during her city work time in her city uniform and using her city vehicle. The Code of Ethics does not prohibit rudeness or "stalking." However, the Code does provide as follows:

> **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.

The Board of Ethics concluded that the events at the citizen's workplace had no connection with the city employee's city work responsibilities. In other words, she was not using her public office or position to obtain private gain for herself. In addition, the city supervisor reviewed the conduct and determined that no discipline was warranted.

The Board dismissed both of these complaints pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violations, if true, would not constitute violations of the Code of Ethics.

The Board, however, concluded that the city employee's use of city time and resources for her personal business gave an appearance of impropriety and strongly recommended that she should not conduct personal business using her city vehicle on city time in her city uniform.

Case 13- 9 (outside employment, conflict of interest

A police officer requested an advisory opinion. He had worked off-duty for several years as security for a restaurant with a liquor license and a dance cabaret license owned by his father. He did not have any ownership interest in the establishment. He was not aware of any licensing problems that the restaurant has had.

A Deputy Chief of Police recently disapproved this off-duty work in the belief that there is a conflict of interest because the officer's father owns the restaurant. His immediate supervisor suggested that he request an opinion from the Board of Ethics.

Section 2-63 of the Code of Ethics requires annual written approval of outside employment for all city employees by the employee's appointing authority:

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) Copies of documents arising from this section shall be placed in each officer's or

employee's departmental personnel file.

(e) City resources may not be used for any outside employment or outside business activity.

Conflicts of interest are regulated by Section 2-61of 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) …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….

The definition of "direct official action" in Section 2-52(b)(2) of the Code of Ethics includes "enforcing laws."

The Board of Ethics advised the officer that:

- Pursuant to Section 2-63 of the Code of Ethics, a city employee's appointing authority has the authority to approve or disapprove outside employment on an annual basis. In other words, the decision is up to the Police Department and not the Board of Ethics.
- The Board of Ethics, however, believes that there is a potential conflict of interest in the work for the officer's father's liquor-licensed establishment. On the one hand, since he would be performing Secondary Employment Police Work, he is required by Section 114.01 of the Denver Police Department Operations Manual to "enforce the ordinances and laws of the City, State and United States…officers may act to prevent a breach of the peace or to enforce the law." On the other hand, if he were to observe violations of the law at his father's establishment, he might feel a divided loyalty or, even if he did not feel such a divided loyalty, the public might perceive that he would have a conflict of interest.

Case13- 10 (conflict of interest

The Manager of the Department of Parks and Recreation requested an advisory opinion. There are 19 members of a volunteer Denver Parks and Recreation Advisory Board (DPRAB) that advises the Department. The Department of Parks and Recreation (DPR) and the Office of Children's Affairs anticipate jointly contracting for professional services with one DPRAB member "to develop and execute a project plan that increases upon the initial phases of the My Denver card program…a single card that allows children ages K-12 access to city programs, services, cultural venues and public transportation for all Denver school aged students."

On occasion, the topic of the My Denver card may be discussed at the DPRAB; however, DPRAB has no authority to direct activities around the My Denver card nor approve contracts related to the program. The board member is not a city employee.

The Manager wished to know if there is anything in the Denver Code of Ethics that would prohibit "concurrent service to the DPRAB and the contracted work."

Section 2-61(a)(1) of the Code of Ethics prohibits any city officer, employee or official (board or commission member) from taking direct official action if he or she "is the other party in the matter." However, this contract will not be negotiated, approved or administered by the DPRAB. Therefore, there is no prohibited conflict of interest if the board member were to have a contract with DPR and the Office of Children's Affairs.

Nor would such a contract violate Section 1.2.9(B) of the Charter:

> No officer or 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 contact or instrument or its terms or conditions…

In summary, the Board of Ethics determined that it would not violate any section of the Code of Ethics for the DPRAB member to enter into a contract relating to the My Denver card program, so long as the member had no direct official action regarding that contract.

Case 13- 11 (gifts)

The Director of the Department of Excise and Licenses requested an advisory opinion about whether it would violate the Code of Ethics if the department would accept donations of a frozen yogurt machine and/or supplies to produce frozen yogurt for citizens/customers who come to the department office in order to provide greater customer service to those who deal with the department, particularly those who must wait in long lines at the department's counter due to heavy caseloads and staff cuts. Employees could also partake.

Denver law firms and consultants who represent clients doing business with the department, including liquor license applicants, have offered to make donations toward the frozen yogurt equipment and/or supplies.

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

> **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…

Section 2-60(a) clearly prohibits the Director or other decision-makers in the department from accepting <u>personal</u> gifts from anyone wanting to obtain one or more licenses from the department, unless permitted by one of the exceptions in Section 2-60(b). However, 2-60(c) specifically allows donations <u>to the city</u>:

2-60(c) It shall not be a violation of this article for an officer, official, or employee to solicit or accept donations to the city or to solicit, accept 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 advised the Director that Section 2-60(c) allows him and the department to solicit and/or accept donations to the city and/or the department of a yogurt machine and supplies for the benefit of citizens and customers of the department. The Board also advised that:

- "Solicitation and financial records" must be maintained;
- The Director and other department employees should not consume the yogurt.
- The donated machine and supplies, if accepted, would belong to the city and/or the department;
- He should consult with the Controller and/or the City Attorney's Office about how to inventory and account for the donations.

However, the Board strongly discouraged the Director from entering into such a venture, due to the strong appearance of impropriety that would result from allowing law firms or others who represent applicants for licenses from the department to give donations to the department. Even assuming that it would not be the actual case, citizens, other license applicants and other law firms or consultants might assume that the donating firms might have special preference at the department due to the donations. The Board suggested that there would be no problem if donations could be obtained from entities that do not obtain licenses or otherwise do business with the department.

Case 13-12 (no jurisdiction)

A police officer filed an inquiry asking:

1. Can the Denver Police Department use its facilities, equipment, employees, and uniformed officers to publicly support and promote the executive and legislative agenda of one political party over the other?
2. Can the Denver Police Department encourage uniformed police officers to lend support to one side of a political position while simultaneously denying uniformed police officers from participating in a lawful event that lends support to the opposing side of the same political position?

The inquiry described a visit to Denver by President Barack Obama to promote gun control legislation and the involvement of the Chief of Police and others in the Police Department in that visit. However, the officer did not cite any specific provisions of the Denver Code of Ethics which would be implicated by the inquiry or which the officer believed were violated by the Chief or any other city official.

The Board dismissed the inquiry pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because:

- The Board has no jurisdiction over the issues described in the inquiry. "Political activity," while it is mentioned in other laws and policies of the city, is not mentioned in the Denver Code of Ethics;
- The alleged violation, if true, would not constitute a violation of the Code of Ethics;
- Participation at the event for all police personnel was voluntary and not required, except for those whose presence was required for the purpose of protecting the safety of the President of the United States.

Case 13-13 (hiring or supervision of immediate family)

An administrator in the Division of Recreation requested an advisory opinion. Her son was hired as a recreation coordinator for the My Denver Initiative. The My Denver card is a single card that allows children ages K-12 access to city programs, services, cultural venues, recreational opportunities and public transportation for all Denver school-aged students.

Her son went through the regular city application process and was selected by another administrator to be one of approximately 18 candidates to be interviewed for the position. The mother had nothing to do with the screening. She was selected to be on the interview panel; however, she left the building and did not participate in any way in her son's interview.

Her son will be primarily supervised by a different administrator in the Recreation Division. However, she indicated that she and the other administrator "share responsibilities for the My Denver program – his focus is on budget and mine is on outcomes of the program."

Section 2-59 of the Code of Ethics regulates hiring and supervision of family members (the definition of which includes sons).

> **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…

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

Because the administrator was not involved in the screening, interviewing or hiring decision for her son and because her son was hired through a competitive process, the Board of Ethics concluded that she did not violate Section 2-59(a) of the Code of Ethics regarding hiring of immediate family members.

However, although the other administrator will have primary supervisory authority regarding her son, the Board concluded that the mother will have some supervisory responsibility for her son, because she and the other administrator share responsibilities for the My Denver program. Therefore, the Board concluded that the mother will violate Section 2-59(b) of the Code of Ethics since she will "supervise or be in a direct line of supervision over a member of her immediate family," even if it is only partial supervision. The Board, however, granted her a waiver to allow this partial supervision. The Board recommended, however, that she should abstain from participating in any personnel action involving her son, in order to avoid the appearance of impropriety.

Case 13-14 (gifts, travel expenses

The Executive Director of the Denver Agency for Human Rights and Community Partnerships (HRCP) requested an advisory opinion.

The Director had been asked to mentor or chaperone 10 Montbello High School seniors who are members of the school's Drumline on the inaugural United Airlines nonstop flight to and from Denver International Airport and Tokyo. (The flight was also discussed in Board of Ethics case 12-53.) The students travelled to a number of Japanese cities and performed at the U. S. ambassador's residence in Tokyo.

Sponsorship donations were being raised by other city personnel to pay the travel and lodging expenses for the students and the Director. The Director was not doing any of the fundraising, although he said that the "invoices to the sponsors of the Tokyo trip will come out of my office."

Solicitation and acceptance of gifts is 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;…

(6) **Travel expenses and lodging**;

(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:

(7) Reasonable expenses paid **by non-profit organizations or other governments** for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city;…(emphasis added)

The definition of "direct official action" in Section 2-52(b) of the Code of Ethics is:

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

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

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

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

Neither the Director nor HRCP have any "direct official action" authority regarding the persons or entities that agreed to contribute to the sponsorships for the trip, although all of those entities or persons do business with the City and County of Denver.

The Board of Ethics concluded that, because the Director and the HRCP office have nothing to do with direct official action regarding the persons or entities that agreed to sponsor the students' trip, he will not violate Section 2-60 by accepting travel expenses from those entities. The Board also advised him that he should insist on being informed by those who are raising funds for the sponsorships of this trip of any

new sponsors and, if any new sponsors are entities over which he or HRCP have direct official action power, he should not accept or use such funds.

Case13-15 (gifts, travel expenses

The Interim Director of Fleet Management in the Department of Public Works requested an advisory opinion. The city had recently signed a contract with a manufacturing company, to purchase 2 new street sweepers. The Director said that the company wishes to pay for the travel expenses of 2 city employees to go to the factory in Huntsville, Alabama to inspect the units before they are shipped to Denver. He advised the Board of Ethics that:

> These are a… sweeper never before operated by the City of Denver. These units are designed to be used in the Street Maintenance Paving Program. Because these units are new to the City of Denver the vendor wants us to be thoroughly knowledgeable on how these units were assembled and how they are to be used. If any changes or modifications are to be made they would like to make the changes there at the factory instead of at the Denver dealership…
>
> The two employees have not been selected yet. One will probably be a salary employee and the other an hourly employee. One will be an employee from Street Maintenance and one from Fleet Management. None of these employees negotiated or approved the purchase. This was a bidding process which the lowest bidder won the contract. Public Works Purchasing Department awarded and administered the bid. No one from this department (Purchasing) will be selected for the visit.
>
> Normally we have language in the spec sheets addressing travel to the build site but unfortunately it was not included in this bid.

Travel expenses paid by outside parties are regulated by Section 2-60 of the 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;…

(6) **Travel expenses and lodging**;

(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:

(7) Reasonable expenses paid **by non-profit organizations or other governments** for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city;…(emphasis added)

The definition of "direct official action" in Section 2-52(b) of the Code of Ethics is:

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

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

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

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

In a previous case, the Board of Ethics considered a somewhat similar fact situation. In Case 05-9, given to one of the Director's predecessors at Fleet Management, the Board approved the idea of including in the bid and purchase documents a provision that travel expenses to a factory be paid by the vendor so that city representatives may inspect "specialized, custom-assembled, high-cost vehicles" before delivery to Denver. For some reason, however, such a provision was apparently not included in the city's contract with this company.

The Board determined that acceptance of travel expenses to inspect the street sweepers at the Alabama factory will not violate the Code of Ethics, so long as the employees were not and will not be in a position to take direct official action regarding the contract in question with the manufacturing company, including involvement in administering the contract. The Board indicated that the Director should take care to select such Public Works employees to take the trip. The Board also advised that the travel and lodging expenses accepted should be reasonable and not extravagant. The Board also recommended that the Director work with the City Attorney's office to include in future similar requests for proposals and

contracts a provision for vendor-paid travel expenses to factories to inspect any specialized, custom-assembled, high-cost vehicles.

Case 13 - 16 (outside employment)

A city employee recently wrote a book as a private citizen regarding "graffiti vandalism." He had obtained written approval from his department in 2012 and again in January 2013 for outside business activity as an "author," pursuant to Section 2-63 of the Code of Ethics. He requested an opinion from the Board of Ethics about what activities related to the book are permissible, including making presentations (some of which would involve payment of fees), selling the book through distributors or retailers and marketing it through search-engine optimization.

The employee said that all of these activities will be on his personal time, he will not use any city resources and he will not portray himself during any activities regarding the book as representing his department or the City and County of Denver. Apparently there was some tension between the employee and other city personnel due to lack of clarity about whether he was perceived as a representative of the city, as well as the fact that the book apparently focuses on different tactics in combating graffiti than those used by the city.

Outside business activity 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) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
>
> (e) City resources may not be used for any outside employment or outside business activity.

Approval of outside employment or outside business activity must be given by an employee's appointing authority (not the Board of Ethics), although employees and appointing authorities are "encouraged" to consult the Board.

The Board of Ethics advised the employee that, so long as written approval is obtained on an annual basis from his appointing authority, he may engage in paid outside business activity, so long as he does not use any city resources or city time for that activity, including writing books, making presentations (some of which would involve payment of fees), selling books through distributors or retailers and marketing books through search-engine optimization. The Board stated that "Even though you may emphasize different anti-graffiti tactics than the city government, that does not amount to a conflict of interest that should prohibit you from writing or speaking about or earning money from your ideas."

The Board also encouraged him to take extra measures to be very clear that in writing or promoting the book or speaking as an anti-graffiti expert he is not representing the City and County of Denver or any city agency, so that the media, citizens and city agencies will not be confused.

Case 13-17 (outside employment)

A Landside Service Agent II at Denver International Airport submitted a request for approval for outside employment to his supervisor, pursuant to Section 2-63 of the Code of Ethics. He wished to work as a shuttle driver for a hotel on some of his days off. Regarding the proposed outside employment, he said:

> The job duties include driving hotel guests to different locations throughout Denver, including DIA on occasions…There are no scheduled pick-ups at DIA. It is strictly on a "will call" basis.

Apparently the supervisor or someone else at DIA denied the request as a potential conflict of interest.

The employee advised the Board of Ethics that "I do issue parking citations in the parking lots" at DIA, but "I do not patrol Terminal areas. Ground Transportation does. I can only issue citations for parking, not for moving violations."

Some of the essential duties of a Landside Service Agent II at DIA are described in the job description for the employee's position:

- Monitors contract compliance of commercial operators and parking contractors who provide services to airport passengers and employees ensuring contractual terms of service are fulfilled, as applicable;
- Patrols airport parking areas and passenger arrival and departure areas to monitor performance of contractors, assist passengers in securing services, inspect condition of facilities and construction areas and ensure safe and efficient movement of passengers and other users of the airport.
- Authorizes access of commercial carriers to appropriate designated terminal levels and lanes for individual and group passenger drop off and pick up. Updates or modifies information on commercial carriers in order to monitor and/or validate their authorized status to use commercial carrier areas of the airport;
- Responds to traffic problems, accidents, security incidents, and medical emergencies at airport parking and ground transportation areas;

- Issues citations and/or denies access privileges to the terminal for violations of contract provisions, parking restrictions, or conflicts among individual commercial carriers.
- Coordinates towing of improperly parked or abandoned vehicles, escorts towing contractor to the vehicle impound area, and inspects and records condition and contents of vehicles.
- Gains compliance for airport rules and regulations with regard to facilities use, parking access, traffic control, security, and passenger service…

Outside employment is governed 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.
>
> (f) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.
> (g) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
> (h) City resources may not be used for any outside employment or outside business activity.

The Board of Ethics advised the employee, pursuant to Section 2-63 of the Code of Ethics, that he can only engage in outside employment if it is approved in writing by his appointing authority. In addition, since he does issue parking citations in the DIA parking lots and could possibly be assigned, according to the essential duties of a Landside Service Agent II, to monitor contract compliance of commercial operators and issue citations and/or deny access privileges to the terminal for violations of contract provisions, parking restrictions, or conflicts among individual commercial carriers, it would be a conflict of interest for him to have outside employment driving a hotel shuttle bus that transports hotel guests to or from DIA. As an example, during his on-duty time, he could possibly be put in the position of observing a shuttle bus of his outside employer improperly parked at DIA, which would pose a conflict between his job responsibility to issue a citation and the desire of his outside employer not to have its vehicle ticketed or its guests inconvenienced. The Board said that it understands the employee's desire to engage in outside employment, but encouraged him to look for other opportunities which would not have any connection with parking or ground transportation companies at DIA.

Case 12- 57 (travel expenses)

A Forensic DNA Analyst in the Denver Police Department Crime Lab requested an advisory opinion. He had been invited to speak at one or two conferences sponsored by an international for-profit vendor of "instruments and reagents used in a variety of biotechnology purposes, including forensic casework applications." One of the conferences will be in Chicago and the other will be in Atlanta. The company offered to pay for his travel, hotel and per diem expenses, in return for his speaking at the conferences about "The Use of Familial DNA Searching as an Investigative Tool." The employee said that "Denver has been at the forefront in researching and implementing this new method" and that "personnel from the District Attorney's Office and the Crime Laboratory have been invited to present on this topic across the country."

The employee said that, as a scientist, he uses many of the company's products and instruments on a daily basis, but that he does "not make final decisions on what products the laboratory will use, nor do I place orders for supplies." He said that "the DNA Technical Leader (his supervisor) makes those decisions based upon scientific data and the needs of the DNA Section." He also advised the Board of Ethics that purchasing decisions are based on a team approach and on internal validation studies of the equipment and products to be purchased. He also indicated that the Crime Lab, which has approximately 50 employees, purchases such items from several different companies.

Gifts, including travel expenses 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…
>
> (6) Travel expenses and lodging…

The definition of "direct official action" in Section 2-52(b) of the Code of Ethics includes "negotiating, approving, disapproving, administering, enforcing, recommending for or against a contract, purchase order…"

The Board of Ethics advised the employee that he will not violate Section 2-60 of the Code of Ethics by accepting travel expenses from the company because, given all of the circumstances described above, he is not in a position to take direct official action regarding the company.

The Board urged him, however, to encourage his supervisors and colleagues to develop purchasing protocols so that direct official action decisions are not made by persons who have received

impermissible gifts from vendors or potential vendors, unless a waiver has been obtained from the Board of Ethics. The Board also cautioned him that any travel and lodging expenses that he accepts should be reasonable and not extravagant.