Denver Board Of Ethics

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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1– June 30, 2014

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2014, in response to fact-specific requests for advisory opinions or complaints.
These summaries should **not** be used as conclusive guidance for situations where the facts differ. Please contact the Board of Ethics to discuss any specific issues you may have.

Cases 13 – 26 through13 - 28 (conflict of interest)

A terminated city employee filed complaints concerning his former supervisor and 2 other co-workers. He raised a number of issues over which the Board of Ethics had no jurisdiction, including failure to make reasonable ADA accommodations, workplace bullying, unjustified termination and improper or dishonest interference with a company's contract.

He also alleged that one of the co-workers was a domestic partner of a top executive with a company, which has a contract with the city department and that co-worker has direct official action authority over that company by approving and administering its contract with the department. The Board of Ethics concluded that none of the documents or allegations submitted by the complaining party provided evidence that the co-worker exercised any direct official action that would benefit the domestic partner or the company. In addition, it was common knowledge at the department that the co-worker and the domestic partner lived and continued to live together and, for that reason, the co-worker and the department took care to make sure that the co-worker did not make any decisions that would affect the company.

In addition, Section 2-56(3) of the Code of Ethics prohibits the Board "from accepting complaints or inquiries about actions that took place more than two years prior to the date of filing." The primary focus of the allegations concerning the co-worker and the company concerned the award of a contract in 2009 and is therefore earlier than two years prior to the date of filing of these complaints.

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The Board of Ethics dismissed all three complaints pursuant to Sections 2-56(6)(a) and (d) of the Code of Ethics, because the Board had no jurisdiction over these issues and the complaints were, on their face, groundless.

Case 14-1 (gifts)

A Police Department lieutenant requested an advisory opinion regarding a gift of 165 hoodies that the owner of a hotel/motel left at the district headquarters for each of the police officers in the district. The lieutenant tried to refuse any gifts, but the business owner would not leave with them. The business owner told the lieutenant that he supported and appreciated the Denver Police Department—especially the officers assigned to that district, where his business is located. The value of each hoodie was probably between $10 and $12.

Gifts 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…
>
> (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…:
>
> (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;** (emphasis added)

The definition of "direct official action" in Section 2-52(b) of the Code of Ethics includes "enforcing laws." Therefore, all police officers are in a position to take direct official action regarding all citizens and businesses and should not accept gifts from citizens or businesses, at least from those located in the districts where they are assigned, unless permitted by an exception in Section 2-60(b).

Acceptance of the hoodies by all of the police officers in District 6 could arguably have be permitted by the exception in Section 2-60(b)(5), because the value of each item was less than $25. Since the aggregate value of the items was approximately $1800, however, the Board of Ethics determined that acceptance would violate Section 2-60(a) of the Code of Ethics.

The Board advised the lieutenant that the district should either return all of the hoodies to the business owner, while expressing gratitude to him for the gift, or, with the business owner's permission, donate them to a crime victims' assistance center, homeless shelter or other appropriate non-profit organization. The Board noted that if acceptance were allowed by the Code of Ethics, acceptance could cause an appearance of impropriety. If the gift was accepted, some citizens or other businesses may have the impression, even if not intended or warranted, that police officers in the district might be inclined to give better service and protection to businesses who give gifts to police officers or the Police Department. No one should believe that gifts have any influence whatsoever on the quality of service given to citizens or businesses by city employees.

Case 14-2 (outside employment, conflict of interest)

A Senior City Planner in the Community Planning and Development Department (CPD) requested an advisory opinion. He worked on neighborhood planning in certain neighborhoods and also as a case manager for specific rezoning requests.

He saw a real estate listing for a single-family home in Denver and placed an offer on the property, which was accepted. He planned to form and manage a limited liability company, hire a demolition company to demolish the house, acquire some adjacent city-owned land through a land-exchange process, vacate some city right-of-way and dedicate a portion of the parcel as right-of-way to the city, apply for rezoning of a small portion of the assembled property to the same zone district as the surrounding neighborhood and sell the assembled and ready-to-develop parcel to someone else to develop, presumably at a profit. He was not responsible for recent neighborhood planning efforts in that neighborhood. He indicated that everything about his proposal was public information and that he had not and would not use any insider or confidential information.

He conferred with the Director and the Deputy Director of CPD, who were supportive of his plan, but who encouraged him to obtain an advisory opinion from the Board of Ethics about the proposed outside business activity.

He advised the Board of Ethics that:

- He would recuse himself from any review or recommendations within CPD of the demolition, right-of-way vacation and dedication, land exchange, rezoning or any other issues with this property and make sure that any request for a rezoning would be assigned to a different team in CPD to review the request;
- He anticipated working on the project from 2 to 5 hours per week. Any work on the project would be done on his personal time or, in the event of dealings with a city office during work time, he would take vacation time.
- He would not use any city resources on the project.

Outside business activity is regulated by section 2-63 of the 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...

(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.

In addition, Section 2-61 (conflict of interest) prohibits a city employee from taking direct official action (the definition of which includes "issuing, enforcing or regulating permits") if he or she has a substantial interest in a matter or if the outside business activity "is incompatible with his or her duties or that adversely affect the interests of the city."

The Board of Ethics was concerned that the circumstances of this case could present an appearance of impropriety. However, the Board determined that, so long as the employee obtained advance written approval from his appointing authority (to be renewed annually) and strictly complied with all of his representations in the bullet-points above, he would not violate Section 2-63 or section 2-61 of the Code of Ethics through this outside business activity and the appearance of impropriety would be mitigated. The Board requested, however, that before becoming involved in the development of any other real estate in the City and County of Denver, he should return to the Board for additional advice regarding the specific details of the business venture.

Case 14 - 3 (gifts, travel expenses)

A Denver citizen filed an inquiry concerning donated tickets, travel and other expenses associated with the Mayor's attendance at the Super Bowl on February 2, 2014.

On January 30, 2014, an article appeared in the *Denver Post*, a few days in advance of the Super Bowl on February 2, in which the Denver Broncos played the Seattle Seahawks. The news article indicated that the Mayor would be attending the Super Bowl in East Rutherford, New Jersey, together with his mother and two employees of the Mayor's Office. The article further reported that the "trip expenses" were to be paid by "private funds."

In response to the *Denver Post* article, the citizen emailed the Mayor's Office requesting information about the source of the private funds. On February 11, 2014, the citizen received a response from the Mayor's Deputy Communications Director/Press Secretary that read, in part:

> …We indicated to the Denver Post that private funds would pay for the trip. Not one individual…The Denver Post article reported: *Private funds are paying for the trip for Hancock and his immediate family, including his mother, "who rivals her son for*

Broncos fervor," the Mayor's Press Secretary said. The Press Secretary and Hancock's scheduler also are going, and their expenses are being paid through private funds.

The Mayor's trip was paid for with private funds raised through the Metro Denver Sports Commission (Commission), a 501(c)(6) organization. CH2MHill and Comcast were among the private donors supporting this trip. The city worked to ensure that no taxpayer dollars were used.

Going to the Super Bowl presents cities, like Denver, a unique opportunity to promote the city through free media exposure and to increase tourism, convention interest and economic development. While in New York, the Mayor spent his time promoting the city as a great place to live, work and play and potentially even to host a future Super Bowl.

Following receipt of the e-mail, the citizen submitted an inquiry to the Board of Ethics, indicating, in part:

Comcast is currently renegotiating its franchise with the city. CH2MHill just completed negotiating a $2.5 million contract with the city for planning related to Airport City (Council Bill 13-0932). I believe accepting these expenses may have violated Section 2-60(a)(5), (a)(6) of the Denver Code of Ethics. Certainly accepting such expenses for the Mayor's mother seems to violate the Code, and to indicate that the purpose of the trip was more related to the family enjoying the Super Bowl than to promoting the City of Denver.

The Board of Ethics received information from the City Attorney and from the President/CEO of Visit Denver, the Convention and Visitors Bureau, which is closely associated with the Metro Denver Sports Commission ("Commission" or "MDSC") and serves the Commission in an administrative capacity. Visit Denver's President/CEO provided the following information to the Board:

We wanted the Mayor to be part of our Super Bowl Bid delegation in the hopes of Denver's being selected as one of 3 cities to be considered for the 2019/2020 Super Bowl. An application to the NFL was put forth in 2012. It was important to be in New York since it was a cold city destination being played outdoors and we knew there would be a great opportunity with the media. In fact most every city that is hosting, bidding or submitted an application to bid was attending and promoting with a delegation….

The Commission has its own private funds to accomplish the mission MDSC which was founded in 2001 to help bring high-profile sporting events to Denver. We typically fundraise year round for efforts like a Super Bowl bid, Olympic bids, World Cup, etc. ….During the run up to the Super Bowl, the Commission solicited donors for the promotion of Denver and its Super Bowl Bid effort. The Mayor was part of our delegation and the MDSC paid the Broncos organization a total of $41,600 to have the Mayor, immediate family, and press staff available to promote Denver and promote our family-friendly Super Bowl bid. Two Sheriffs also accompanied the Mayor and the Department of Safety is reimbursing expenses related to the Mayor's safety.

The Broncos organization offered MDSC the same Super Bowl Trip and festivities package & price that was sold to VIPs on TV and in the newspapers. Each package cost

> $5,300 ($2,650 per person) and included airfare, double occupancy hotel accommodations, and ground transportation. To the best of our knowledge, game tickets cost $2,500 per person and tailgate tickets cost $750 each.
>
> Typically we would not disclose our fundraising efforts, but in an effort to help with your transparency concerns, outside of our ongoing fundraising efforts, we were able to secure Super Bowl bid promotional dollars for our efforts from Oakwood Homes $10,000, Brownstein Farber $5,000, Donna Lynne $1,000, Stanton Dodge $1,000. We had small, pledged commitments totaling $5,500 from CH2MHill and Comcast... Comcast is represented on the VISIT DENVER board and CH2MHill is a past board member, and regularly helps sponsor a variety of our efforts….I can tell you that there was never any coordinated effort to target entities that had contracts with the City. We make every effort to avoid even the appearance of impropriety as our reputation as a world class organization is also at stake.

On behalf of the Mayor, the City Attorney also provided supplemental information to the Board that read, in part:

> The Ethics Commission also asked for additional detail regarding the donors to MDSC. The information MDSC provided to you allows us to inquire into what relationship, if any, these donors have with the City of Denver. Notably, none of the donors made a gift to the Mayor, his family or Mayoral staff.
>
> Three pledged donors that are reflected in the MDSC letter engage in some form of business with the City. CH2MHill has responded to Requests for Proposals for City projects and currently has a contract with Denver International Airport regarding general airport development planning. Comcast has a Franchise Agreement with the City for cable services. Brownstein Hyatt Farber and Schreck is a law firm in a qualified pool of authorized outside counsel, however the law firm does not currently have any active contract with the City, nor did it at the time of the Super Bowl. The Mayor does not take direct official action over any of the three entities listed above. While the Mayor signed these contracts, his role is considered ministerial under Sec. 2-52(b) of the Ethics Code and is not considered direct official action within the meaning of the Code.

The solicitation, receipt and acceptance of gifts by Denver City officers, officials, employees and members of their immediate families are regulated by the Denver Code of Ethics, which provides:

> **Sec. 2-51. Legislative Intent.**
>
> It is the intent of the city that its officers, officials, and employees adhere to high levels of ethical conduct so that the public will have confidence that persons in positions of public responsibility area citing for the benefit of the public. Officers, officials, and employees should comply with both the letter and spirit of this ethics code and strive to avoid situations, which create impropriety or the appearance of impropriety.

As used in the Code, the phrase, “direct official action” is specifically defined as follows:

> **Sec. 2-52. Definitions.**

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

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

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

Direct official action does not include acts that are purely ministerial (that is, acts which do not affect the disposition or decision with respect to the matter). With regard to the approval of contracts, direct official action does not include the signing by the mayor, the auditor, the manager of finance or the clerk, as required by Charter, unless the mayor, auditor, manager of finance or clerk initiated the contract or is involved in selecting the contractor or negotiating or administering the contract. A person who abstains from a vote is not exercising direct official action.

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;

(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;…

(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;

c. The individual or entity which pays for the meal, ticket, or admission shall be considered the donor for purposes of this subsection regardless of whether that individual or entity is reimbursed for the cost;

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

(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.

Before rendering its decision, the Board noted that it is guided by the legislative intent of the Code, as set forth in Code § 2-51, which underscores the need for our elected officials to maintain a high level of ethical conduct and transparency in order to maintain the public's trust and confidence. The Board went on to observe that, most significantly, the Code exhorts our City officials, officers and employees to comply with both the letter and the spirit of the Code, and to "strive to avoid situations, which create impropriety, **or the appearance of impropriety**."

The Board of Ethics decided:

A. It was appropriate and important for the Mayor to represent the City of Denver at the 2014 Super Bowl and related events. It was also appropriate for the Mayor to be accompanied by a limited number of key staff members and a security detail. The Board recognized that the Super Bowl provided an important opportunity for the Mayor to promote the City, as well as to advance the City's specific interest in seeking to have Denver be selected as a future Super Bowl site.

B. The Commission itself did not have any current contract, business or regulatory relationship with the City. In addition, as defined by the Code, the Mayor did not exercise any "direct official action" with respect to the Commission. Therefore, any gifts from the Commission to the Mayor, his immediate family, or other City employees were not expressly prohibited by Code § 2-60(a).

C. Code § 2-60(b)(7) permits City officers, officials, employees and their immediate family members to accept "reasonable expenses paid by non-profit organizations" under certain circumstances. By its terms, this exception permits receipt of a gift of "reasonable expenses" related to a trip "if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city." Accordingly, the acceptance by the Mayor and his mother of reasonable expenses associated with the trip to represent the City of Denver at

the Super Bowl fell within this stated exception to the general prohibition against receipt of such gifts.

D. Notwithstanding the language of Code § 2-60(b)(7), the Board did not construe this exception to permit a donor who is the subject of "direct official action" to utilize a non-profit organization as a conduit for giving gifts that the Code otherwise prohibits. Such an interpretation would negate the intent of the general prohibition found in Code § 2-60 and eviscerate an important protection enshrined in the Code.

E. In a similar case, the Board previously determined that, even though it was proposed that a gift of airlines tickets would be made by a non-profit organization, the gift was nevertheless prohibited where the Mayor possessed direct official action authority over the airline. *See Case No. 3-30 – Request for an advisory opinion by then-Mayor John Hickenlooper*. Accordingly, the Board found that if the Code bars a gift because of the status of the donor, filtering the gift through another entity, such as a non-profit organization, would not alleviate the violation.

F. With respect to the current Inquiry, the Board concluded that it did not appear that the Mayor exercised any "direct official action" with respect to the Commission's donors, Comcast or CH2MHill, as that phrase is defined under the Code. Moreover, although the City has an existing contract with Visit Denver, with which the Commission is affiliated, the Mayor's signature on that contract was a purely ministerial act within the meaning of Code § 2-52(b).

G. Even if the Board were to assume the existence of "direct official action" by the Mayor with respect to Comcast and CH2MHill, such as would trigger the application of Code § 2-60(a), the receipt of four Super Bowl tickets and reasonable related travel expenses were exceptions permitted by the express terms of the Code. *See* Code § 2-60(b)(4) and § 2-60(b)(7).

H. As acknowledged by the City Attorney, the Mayor must disclose the gifts pursuant to the Financial Disclosure Ordinance.

Thus, for the reasons outlined above, the Board of Ethics unanimously decided that the inquiry must be dismissed because the facts, if proven, would not constitute a violation of the Code of Ethics. The decision concluded by discussing the general need for elected officials to avoid any appearance of impropriety, in accord with the "spirit" of the Code.

Case 14 – 4 (use of public office for private gain)

The Finance Director of the Police Department requested an advisory opinion as to whether it would violate any section of the Denver Code of Ethics if a police officer who was issued a credit card by the city (known as a PCard) to purchase items for the Police Department, "earned" reward points for some or all of those purchases and then redeemed the reward points for personal use.

Eight trusted police officers had PCards at the time, as well as many city employees in other departments. The Finance Director stated to the Board of Ethics that one police officer accumulated reward points from purchases made for Department purposes with a PCard at Best Buy and then redeemed some or all of those reward points for items such as a television set and/or computer for personal use valued at over $1000. The Board of Ethics did not ask for more specific facts of this

situation, on the assumption that the Department would thoroughly investigate the facts and, if appropriate, recommend discipline for the officer.

Section 2-67 of the Code of Ethics prohibits "use of public office for private gain:"

> **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…**(emphasis added)

The Board advised that there would be a violation of Section 2-67 of the Denver Code of Ethics, if it could be proven that any city officer or employee redeemed reward points from a city credit card given to him or her to make purchases for the city and used the items from the redeemed reward points for his or her personal use, etc.

The Board also recommended to the Denver Controller, who promulgates the Fiscal Accountability Rules, that she might want to clarify Rule 8.1(Procurement) and other documents relating to PCards to prohibit the personal use of reward points from the City's PCard program and that such should be mentioned in the training for PCard users. The Board specifically declined to discuss about travel rewards, such as frequent-flyer miles, which involve other issues.

Case 14-5 (no jurisdiction)

An elected official from another county filed a complaint regarding a Denver employee living in that county. The elected official quoted a Facebook post by the Denver employee, in which he endorsed a candidate to succeed the elected official, stated that the elected official's office "(needs) a big change of direction…" and made a factual assertion that the elected official said was "categorically false" and "libelous." He requested an investigation about whether the Denver employee "used City and County of Denver computers and/or other equipment to post this libelous statement."

The Facebook post was dated March 5, 2014 at 8:54 pm. The Denver employee indicated that the posting was made from his home on his home computer. Even if the Facebook statement was untrue, no section of the Denver Code of Ethics prohibits untrue statements. In addition, given the time of the post, it was unlikely that the Denver employee used a city computer. The posting also had nothing to do with any City and County of Denver business.

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

Case 14-6 (subsequent employment - waiver granted)

The recently-retired Senior Manager of Rates and Charges at Denver International Airport and her former supervisor requested an advisory opinion and/or waiver. One of her major duties for several years at DIA was to work on the "year-end settlement process—a process with major impacts on DIA's airline partners...which is currently underway and approaching some key milestones."

The supervisor described the importance of the settlement process as follows:

> The Rates & Charges portfolio is unique to airports, is highly specialized, and governs how DIA annually recovers hundreds of millions of dollars in airport costs—much of which comes from our airline partners who operate in a highly cost-competitive industry…DIA's Rates & Charges structure is one of the most highly complex in the Airport sector… Successfully completing the work requires detailed knowledge of DIA's Rates & Charges construct and can be worth several million dollars to an individual airline. Given the dollars at stake and impacts to DIA's competitive position, the process requires precision, transparency, and an ability to manage adversarial interactions with our airline partners

The supervisor indicated that no current employee of DIA had the expertise to close the settlement process for 2013, and that it would take quite some time to hire and train a replacement for the former employee.

Following her retirement from DIA, the former employee wished to work for a subcontractor at DIA, in order to complete the settlement for 2013. The former employee, however, was involved in the Request for Proposals process which resulted in the hiring by DIA in 2012 of the contractor that hired the subcontractor, and she also reviewed and approved invoices to DIA from the contractor and sub-contractor. The former employee indicated that if the subcontractor hired her, she would do part-time consulting for them on a project-by-project basis.

Subsequent employment is governed by Section 2-64(a) of the 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.

Direct official action regarding contracts is defined in Section 2-52(b) of the Code of Ethics as follows:

> 2-52(b) *Direct official action* means any action which involves:
>
> (1) Negotiating, approving, disapproving, <u>administering</u>, enforcing, or <u>recommending for or against a contract,</u> purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. (emphasis added)

Because the former employee was involved in the RFP process which selected the contractor with DIA and she also approved invoices for the subcontractor and the contractor, she "took direct official action" regarding the subcontractor during her employment with the city. Therefore, the Board of Ethics concluded that she would violate Section 2-64(b) if she did not wait at least 6 months before being employed by the subcontractor.

Section 2-54(f) of the Code of Ethics, however, empowers the Board of Ethics to grant a waiver "if it

finds that the waiver will serve the best interests of the city." The Board of Ethics decided that it would be in the "best interests of the city" to grant a waiver to allow the former employee to work immediately as an employee of the subcontractor, so that she can help complete the work of the year-end settlement process for DIA as soon as possible. If the process is delayed, DIA and the airlines that use DIA would have major financial uncertainties, if not losses, during the period of delay.

Case 14-7 (conflict of interest; former employment)

The recently-appointed Executive Director of the Community Planning and Development Department (CPD) requested an advisory opinion. CPD is in charge of managing planning and building within Denver, including designing and implementing citywide and neighborhood plans, establishing construction and design standards, coordinating revitalization efforts, managing historic preservation, issuing zoning and building permits, processing rezoning applications (for City Council action) and performing code inspections and enforcement.

He is an architect who resigned his position as a principal in a major Denver architectural firm to work for the City. He was with a smaller architectural firm for many years before that. The major firm purchased the smaller firm in 2011. He had no ownership interest in the major firm. The smaller firm is no longer in business.

He wished to know if his outside business interests, which he described in detail in his request for advisory opinion, posed any ethical issues.

The following sections of the Code of Ethics govern conflicts of interest regarding business interests and also former employment.

> **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:**
>
> (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**;…
>
> (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)

Sec. 2-62. Prior employment.

The purpose of this section is to indicate that persons are not disqualified from a city job because of prior employment, to avoid special advantage being given to former employers of city officers, employees or officials and to avoid special advantage being given to a city officer, employee or official by a former employer.

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

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

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…

The Board of Ethics determined that the Director has a wide scope of "direct official action" power regarding planning, zoning and development everywhere in the City and County of Denver. The Code of Ethics requires that he should never involve himself in any direct official action in which he or an immediate family member or a current business associate have a substantial interest. The Board concluded that:

- The Director's interests in his family's home in another county do not pose any ethics issues.
- He must not to take any direct official action on any matter in which the major architectural firm or any of his former clients there are involved during the first six months from the date of his termination of employment at the firm.

The Board also recommended that, in order to avoid the appearance of favoritism to the major architectural firm or any of his clients there, especially on major projects, he might wish to consider recusing himself from direct official action on such matters for a longer period of time than six months. The Board also encouraged him to return to the Board for additional advisory opinions if specific issues arise in the future that may require an action or recommendation from CPD regarding any Denver property in which he might have any interest. Finally, the Board recommended that he develop and document a way to communicate with former clients or business associates or colleagues regarding requests that they bring to him to ensure that they are not treated differently than any other citizens.

Case 14-8 (outside employment)

An architect in the Public Works Department submitted a request to his supervisor for approval for outside employment, pursuant to Section 2-63 of the Denver Code of Ethics. His supervisor encouraged him to obtain an advisory opinion from the Board of Ethics.

He indicated to the Board of Ethics that "potential clients have consistently asked if I would be their architect for either a residential or commercial construction project." The goal of his proposed company would be to provide architectural design for small projects which would be private, state or federal funded projects, not associated with the City and County of Denver. He would not have any role in selecting contractors to build any of the outside projects that he might design.

In Public Works, he regularly worked with private construction contractors, sub-contractors, on-call architects and consultants and would review, monitor, approve or disapprove and administer their work. Some of those duties would be included in the definition of "direct official action," in Section 2-52(b) of the Code of Ethics. Most of his city projects were built by on-call private contractors on contract with the city.

Outside employment or 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) City resources may not be used for any outside employment or outside business

activity.

Conflicts of interest are regulated by section 2-61:

> **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;…
>
> (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 Board of Ethics advised the architect that, in order to engage in outside business activity, he must first obtain written approval from his appointing authority, pursuant to section 2-63 of the Code of Ethics. If approved, he must take great care not to be employed by any outside clients who are or could be involved in any projects which he is involved in managing or reviewing for the city. If he did not do so, he could violate Section 2-61 by approving and/or administering a contract with one of his outside client/employers. As an example, he should not be hired by any person or entity that he has dealt with in his city job. As another example, he should not have any role in selecting contractors to build any of the private projects that will designs. The Board also recommended that he not work on any outside projects that might lead to a need for a variance from the Denver Board of Adjustment for Zoning Appeals or the Denver Board of Building Appeals. Finally, he must not use any city time or other resources for outside employment.

Case 14-9 (no jurisdiction)

A Denver citizen filed a complaint alleging that a police officer signed a "falsified affidavit" as part of an arrest warrant for the citizen dated January 30, 2012. She was convicted after a trial.

The Board of Ethics dismissed this complaint pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics, because the Board had no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics. In addition, the citizen had a trial and was convicted. The Board of Ethics has no jurisdiction to serve as an appellate body to review court decisions.

In addition, the acts of the police officer occurred on January 30, 2012, so they could not be considered by the Board of Ethics because Section 2-56(3) of the Code of Ethics prohibits "the board from

accepting complaints or inquiries about actions that took place more than two years prior to the date of filing." (This complaint was filed on May 5, 2014.)

Case 14-11 (no jurisdiction)

An attorney/judge in the Career Service Hearing Office requested an advisory opinion. He conducts hearings and issues opinions on appeals from disciplinary actions and grievances filed by Career Service employees. The 900 employees of the Denver Sheriff Department (DSD) are Career Service employees.

The Denver Sheriff asked him to attend meetings of the DSD Disciplinary Task Force. He attended one such meeting. After attending that meeting, he wondered about any potential ethical impropriety in attending that meeting or future meetings. He is subject to the Denver Code of Ethics and also the Colorado Code of Judicial Conduct (CJC) enacted by the Colorado Supreme Court.

The membership of the Task Force includes a Deputy Manager of Safety, senior DSD administrative staff, an Assistant City Attorney, representatives of the union for Deputy Sheriffs and citizen's groups. The purpose of the Task Force is to review the DSD disciplinary process and consider possible amendments or modifications.

The Board of Ethics advised him that no section of the Denver Code of Ethics prohibited him from further participation in the Disciplinary Task Force; nor would his attendance at meetings be precluded by any provision of the Code of Ethics. The Board pointed out that he should also consult the Colorado Code of Judicial Conduct, which likely governs the propriety of his participation on the Task Force in light of his role as a judicial officer who adjudicates appeals by DSD employees, as well as other Denver employees.

Case 14-12 (gifts; travel expenses)

The Director of the Forensics and Evidence Division of the Denver Police Department, also known as the Crime Lab, requested an advisory opinion regarding travel, lodging and meal expenses for a Forensic Scientist in the DNA/Biology Unit of the Crime Lab.

The United States Department of Homeland Security (DHS) funds a System Assessment and Validation for Emergency Responders Program (SAVER), which provides federal, state and local responders with "information they can use to make knowledgeable equipment purchase decisions" by testing and evaluating various kinds of equipment. DHS has a contract with the private national consulting company Booz Allen Hamilton to organize focus groups to test and evaluate Forensic Light Sources, which, according to the Forensic Scientist, "highlight sources of biological material invisible to the naked eye," as well as other focus groups for other types of forensic equipment or instruments.

Booz Allen Hamilton invited the Forensic Scientist to a focus group for Forensic Light Source equipment in North Carolina, indicating that it would pay for her travel and lodging expenses. She submitted a request for travel approval through the Police Department chain of command, which was denied by a Deputy Director of Safety who "was not comfortable approving this travel without having a FORMAL ethics opinion." Therefore, the Forensic Scientist did not travel to that focus group.

Nevertheless, the Director believed that it would be useful to have an official advisory opinion that would allow the Forensic Scientist or other Crime Lab employees to travel to similar SAVER focus

groups in the future. He anticipated that there be will other focus groups for other types of forensic instruments that the Forensic scientist or other Crime Lab employees might be invited to attend.

SAVER focus groups test and evaluate several instruments from different vendors or manufacturers. They are not marketing efforts. The funding for the focus groups or the travel expenses does not come from any of the vendors or manufacturers. The Forensic Scientist said that she does not have direct official action authority regarding purchases of equipment for the Crime Lab, although she acknowledged that she may be asked to recommend which equipment purchases would be best for the Crime Lab. No Crime Lab employees have any direct official action authority regarding the donor of the SAVER travel expenses, DHS and/or Booz Allen Hamilton.

Gifts, including travel and lodging expenses, are regulated by Section 2-60 of the Denver Code of Ethics, the pertinent part of which is:

> **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:**
>
> (6) **Travel expenses and lodging…**(emphasis added)

Since the Forensic Scientist lacks any direct official action power regarding DHS and/or Booz Allen Hamilton, the Board determined that the Code of Ethics would not prohibit her from accepting travel and lodging expenses from them for travel to a future SAVER focus group.

Since other Crime Lab employees may also be invited to such focus groups, the Board also advised that other Crime Lab employees would not be prohibited by the Code of Ethics from accepting travel and lodging expenses to attend future SAVER focus groups, so long as the circumstances remain unchanged and the conditions are satisfied. This opinion was limited to SAVER focus groups, because they are not funded by any vendor(s) that might wish to sell products to the Crime Lab.

Case 14-13 (outside employment)

A current full-time restaurant inspector in the Department of Environmental Health (DEH) requested an advisory opinion. He planned to retire from full-time city employment to own and operate a brewery in Denver. He also wanted to be hired back by DEH as an on-call, part-time restaurant inspector.

Section 2-63 of the Code of Ethics requires that “all city employees” must obtain written approval for any outside employment. The Code of Ethics does not specifically mention and the Board of Ethics has never specifically decided whether Section 2-63 applies to on-call employees or not. The definition of employee is:

Sec. 2-52. Definitions.

(a) *Employee* means any person in the employ of the city or of any of its agencies or departments and any person employed without compensation under the terms and provisions of chapter 18, article II, division 19 of this Code.

The Board of Ethics decided that the Denver Code of Ethics does apply to on-call employees.

The Board of Ethics advised the employee that:

- If he is hired back as an on-call employee, he must comply with Section 2-63 of the Code of Ethics by obtaining written approval for his brewery employment from his appointing authority.
- In order to avoid a conflict of interest or the appearance of a conflict, he should not be assigned to inspect any other liquor-serving establishment, including breweries, in the City and County of Denver. In addition, he should exercise discretion and sound judgment by avoiding any inspection of premises or businesses that would tend to create any appearance of impropriety or conflict in light of his ownership of a brewery in Denver.
- He should not solicit or attempt to sell any of his brewery products to any operators of establishments that he inspects, which could violate Section 2-67 of the Code of Ethics – use of public office for private gain.

Case 14-17 (gifts; travel expenses – waiver denied)

An Engineering Supervisor of the Public Works Department requested an advisory opinion. He was invited to participate in an annual users' conference in Canada by a company whose website says that the company:

> develops and markets Infrastructure Asset Management solutions used by agencies and private organizations of all sizes. Our software is widely used to manage pavements, roads, bridges, underground utilities, rail as well as many other types of infrastructure assets.

The company has had a contract for 17 years with Denver, which has been renewed several times. The Engineering Supervisor expected that the contract will be put out for bid sometime in the next few years, but he was not sure when. He advised the Board that "I am in a position to make contract decisions related to the consultant and the use of their software."

Initially, he determined that, in light of available budget resources, he would not attend the user's conference. He indicated that the company recently asked him:

> [T]o present a case study of the use and development of the software for the City of Denver. They have stated that they will comp the registration fees and travel costs associated with attendance. The combined costs for conference registration, travel and lodging are approximately $3,000.

He advised the Board that:

> The conference provides the opportunity for users to do an extensive amount of networking and have discussions on how they tackle the science and philosophy of asset management. As our

budget, along with every other government entity, has less buying power, asset management beyond simply repaving streets as a worst first strategy becomes increasingly important. We balance needs of many infrastructure elements, pavements, curbs, ADA accessibility, and other ancillary infrastructure elements that all compete for finite resources. The ability to discuss these issues and learn from other experts in the field from around the world…and see how different approaches can be made, can help Denver make sound decisions on the prioritization and expenditure of existing funds.

He also advised the Board that he or his staff have attended or will attend a number of other professional conferences this year where they can learn about and exchange ideas about pavement and infrastructure maintenance.

Receipt of gifts, including travel and lodging expenses, is governed 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;..** (emphasis added)

Because he will likely exercise direct official action in connection with the decision to renew the contract with the company, and because the City currently has an existing contract with the company, acceptance of the travel, lodging and registration costs would constitute a violation of section 2-60(a). Waivers for violations are permitted pursuant to Section 2-54(f), which provides:

> 2-54 (f) Waivers. Any current, former, or prospective officer, official, or employee may submit a written request for a waiver of any provision of the code of ethics. The board of ethics is empowered to grant a waiver **if it finds that the waiver will serve the best interests of the city.** (emphasis added)

After discussion and deliberation, a majority of the Board declined to grant a waiver, because it did not find that a waiver to be appropriate under the particular facts of this case, or compelled by the best interests of the City.

Case 14-18 (gifts; travel expenses)

The Department of Excise and Licenses, licenses, among many other things, fire and security alarm systems in Denver. The Director of Excise and Licenses requested an advisory opinion or waiver to

allow the Deputy Director to accept travel and lodging expenses from an outside contractor for a one or two-day trip, so that she could fully understand how the contractor was operating the alarm program at its headquarters in Texas and, in particular, how all of the records and applications of the contractor could be converted and maintained in Accela, a new software program acquired by the City. The contract is administered by another employee in the Department, not the Deputy Director.

On March 27, 2013, the Board of Ethics issued a related advisory opinion in Case 13–4 to the previous Director of Excise and Licenses, regarding similar travel expenses to the company's headquarters by a different employee. In summary, that opinion decided that:

> …the contract between the City and the contractor, PMAM, dated March 23, 2010, 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…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…will not violate the Code of Ethics.

Acceptance of travel and lodging expenses is regulated by:

> **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 Board advised the Director that, following the logic of the 2013 Board of Ethics opinion on a closely-related issue, acceptance of transportation and lodging expenses for the Deputy Director for such training at the company's Texas headquarters would not violate the Code of Ethics, because training is a requirement of the contract with the company and, therefore, is not a gift. In addition, the Deputy Director does not take direct official action regarding the company. The Board also repeated its recommendation from Case 13 - 4 that, in order to avoid the appearance of impropriety, the Deputy Director should only accept travel or lodging expenses that are not extravagant.

Case 14-22 (no jurisdiction)

A complaint was filed concerning the Director of the Downtown Denver Business Improvement District by vendors about their experiences with permits for vendors and entertainers on the 16th Street Mall.

Since the Denver Board of Ethics only has jurisdiction to investigate complaints concerning City of Denver elected officials, employees and board and commission members and, since the Director is not a City employee, the complaint was dismissed.