Denver Board Of Ethics

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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1– June 30, 2015

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2015 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 15-1 (gifts)

A former City Councilwoman requested an advisory opinion. She wished to host a reception for several outgoing City Council members and the outgoing Auditor following the municipal election. She is not a current City employee and, as a result, her conduct is not governed by the Denver Code of Ethics. However, she wished to know whether the honorees and other City personnel would violate the Code of Ethics by attending the reception.

She advised the Board of Ethics that she would ask for sponsorship funds for the reception, including refreshments, program, invitations, awards, etc. from the Downtown Denver Partnership and Visit Denver and from others who would make in-kind contributions such as printing and photography. She indicated that the budgeted cost of the reception would be $10,000. Several hundred people will probably attend the reception in addition to the honorees, including City employees, family members of the honorees, lobbyists and representatives of businesses that do business with the City.

There is no current City contract with Visit Denver or the Downtown Denver Partnership.

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

Executive Director

L. Michael Henry

Board Members

Brian J. Spano – Chair

Sylvia S. Smith – Vice Chair

Roy V. Wood

Andrew S. Armatas

Jane Feldman

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, or, if the donor is a lobbyist or representative, the donor's client:…**

(3) **Nonpecuniary awards that are publicly presented by an organization in recognition of public service if the award is not extraordinary when viewed in light of the position held by the recipient;**

(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;**

b. A donation from an employee of a business or entity shall be counted as a gift from the business or entity;..

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

The Board concluded that attendance at the proposed reception by any City officers, employees or officials would not violate Section 2-60 for the following reasons:

1. Section 2-60(a) only prohibits acceptance of a gift 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 City Council members and the Auditor have not negotiated or approved a contract with the proposed sponsors, since there are no such contracts. Therefore, they would not violate Section 2-60 by attending the reception.
2. Some other City personnel do or might "take direct official action" regarding the sponsors, such as the Zoning Administrator, Excise and Licenses Director and Environmental Health Director; however, they would be allowed to attend by the "4-meal or event per calendar year" from the

same donor exception in 2-60(b)(4), assuming that they have not already had 4 or more such meals in 2015. This reception is "reasonably related to the official or ceremonial duties of the officer, official, or employee."

3. Regarding the awards to be presented to the outgoing city officers, they are permitted under 2-60(b)(3) – "nonpecuniary awards that are publicly presented by an organization in recognition of public service…"

The Board advised that City officers, employees and officials are not prohibited from attending the reception or receiving the awards as proposed. The Board concluded that the reception will be a worthy recognition of outgoing officeholders for their years of service to the public. The Board also noted that City personnel should disclose attendance at the reception and/or receipt of awards according to the Financial Disclosure Ordinance.

Case 15-2 (travel expenses)

An employee at Denver International Airport, the Director of Business Affairs for DIA, served as chair of a committee that planned and hosted at DIA in 2014 a national conference of the Airport Minority Advisory Council (AMAC). The conference was very successful and AMAC's president has offered to pay the employee's travel and lodging expenses to go to AMAC's headquarters in Alexandria, Virginia to help plan for the 2015 conference in Fort Lauderdale, Florida. The employee said that the AMAC president "would like to have face to face time to discuss key issues and items in relation to the conference."

The employee advised the Board of Ethics that:

> AMAC does not have any existing, ongoing or pending contract, business or regulatory relationship with the City. Furthermore, AMAC serves mainly a nonprofit organization which supports minority airport business through their annual conference which focuses on educational and networking events. Overall the conference works to achieve AMAC's goal to increase diversity and eliminate barriers facing minority-owned, woman-owned, and disadvantaged business in the aviation industry though advocacy, business and professional development, and education.

Gifts to City personnel 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** (emphasis added)

The Board of Ethics concluded that the employee does not have any direct official action power regarding AMAC and, since AMAC has no contract or business or regulatory relationship with Denver, it would not be a violation of the Code of Ethics for the employee to accept these travel and lodging expenses. The Board also encouraged her to be sure that the expenses are reasonable and reminded her that she will need to disclose the gift of the expenses under the Financial Disclosure Ordinance.

Case 15 - 3 (outside employment –candidate for public office)

An employee in the Finance and Administration Division of the Public Works Department requested an advisory opinion. He lives in Lakewood and is considering running for the Lakewood City Council in the November 2015 election. If elected, he will be paid approximately $1000 per month for the part-time City Council job.

The relevant section of the Denver Code of Ethics is:

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. (emphasis added)

Another issue is whether there may be a conflict of interest between the employee's Denver responsibilities and the Lakewood City Council position. Section 2-61 of the Denver Code of Ethics provides:

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;…**

(3) **He** or she, a member of the immediate family, a business associate or an employer **is an officer in another party in the matter;**

(4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;

(5) **He** or she, a member of the immediate family, a business associate or an employer **is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter,** other than in a purely clerical capacity; or…

(6) He or she or a member of his or her immediate family participated personally in providing legal representation or lobbying for another party in the matter or owns five (5) percent or more of a law firm or lobbying firm representing 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)

The Board of Ethics determined that it is not a violation of the Denver Code of Ethics for a Denver City employee to be elected to a part-time public office in another jurisdiction. However, the Board concluded that:

1. Because the City Council position is a paid position, if elected to the Lakewood City Council, the employee must obtain written approval from his appointing authority to engage in the outside employment on an annual basis, in compliance with Section 2-63 of the Code of Ethics.
2. If he is elected and a matter arises at the Lakewood City Council related to his Denver job, he should recuse himself from dealing with it and, if his Denver job presents an issue that the

Lakewood City Council is dealing with, he should abstain from taking any official action on that matter.

3. He must not use any of his Denver time or other resources, including computers, paper or staff time for his Lakewood work.
4. If elected, the Board encourages him to keep track of his Lakewood-related time to ensure that he is not paid by Denver for his Lakewood-related activities.

Case 15-4 (outside employment and conflict of interest)

A Senior Transportation Engineer in the Public Works Department requested an advisory opinion. His primary responsibility relates to traffic signal design. He had been contacted by a consultant in civil engineering with emphasis in the geotechnical field and asked to become an advisor to his Fort Collins company. The company wishes to look for engineering projects in the Denver metropolitan area and seeks advice on the process and how to compete for civil design projects that are funded by the federal government, the Colorado Department of Transportation and/or local governments' capital improvement budgets. Outside employment is regulated by Section 2-63 of the Denver Code of Ethics:

> **Sec. 2-63. Contemporaneous or outside employment.**
>
> The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.
>
> (a) All officers other than elective officers and **all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity**. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
>
> (b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.
>
> (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.** (emphasis added)

Another issue is whether there may be a conflict of interest between the employee's Denver responsibilities and his proposed outside employment. Section 2-61 of the Denver Code of Ethics provides:

> **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;…**

(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;…**

(5) **He** or she, a member of the immediate family, a business associate or an employer **is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter,** other than in a purely clerical capacity; or…

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

(g) **No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.** (emphasis added)

The Board concluded that the employee:

1. Must obtain written approval on an annual basis from his appointing authority for this or any other outside employment.
2. Must not use any Denver city resources, such as city time, computers, paper or staff support for the outside work.
3. Must avoid doing any consulting for the company or anyone else that would involve any projects involving the Denver Public Works Department or any other City and County of Denver department inside the Denver city limits, which could be a conflict of interest which would violate section 2-61. He would be allowed, however, to consult for the company regarding any projects under the exclusive control of the Colorado Department of Transportation inside the Denver city limits.
4. Must not disclose any information to any client that could be deemed to be confidential, which could violate Section 2-68 of the Code of Ethics.
5. If the employee is asked to serve on any type of Denver evaluation panel for proposals or bids for projects for which the company is under consideration, he must decline to participate, because that would violate Section 2-61 of the Code of Ethics.

Case 15-5 (outside employment –candidate for public office)

An Analytics Administrator of the Right-Of-Way Services Division of the Public Works Department requested an advisory opinion. He intends to run for the Aurora City Council in November 2015. If elected, he would be paid $1000 per month. The Board issued an advisory opinion similar to its opinion in Case 15 – 3 above.

Case 15 - 6 (conflict of interest)

A citizen filed a complaint concerning a City Councilmember, alleging a conflict of interest. The citizen claimed that the Councilmember had a conflict of interest in voting to approve a Neighborhood Plan because her spouse lobbied regarding related matters. He also complained about several aspects of the Neighborhood Plan.

The Board of Ethics dismissed the complaint, saying that "Most of your complaints deal with city decisions, policies and plans, which are not regulated by the Denver Code of Ethics. The Board of Ethics has no authority to serve as an appeals board regarding City policy or planning matters."

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

> **Sec. 2-61. Conflict of interest while employed.**
>
> The purpose of this section is **to avoid influence on the official actions of city officers, employees or officials by their private or family interests.**
>
> (a) Except when advised by the city attorney that the rule of necessity applies, **an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family,** a business associate or an employer other than the city of the officer, official or employee **has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:…**
>
> (6) **He or she or a member of his or her immediate family participated personally in providing legal representation or lobbying for another party in the matter or owns five (5) percent or more of a law firm or lobbying firm representing another party in the matter….**

The Board concluded that it would probably have been a prohibited conflict of interest if the Councilmember took "direct official action" if her husband had lobbied "for another party in the matter or owns five (5) percent or more of a law firm or lobbying firm representing another party in the matter…." However, the Board concluded that there was no evidence that the Councilmember's spouse or his firm lobbied regarding "the matter" of the Neighborhood Plan or any other City matter on which the Councilmember ever voted.

Case15-9 (conflict of interest)

A Principal Project Manager in the Public Works Department requested an advisory opinion to supplement 2 opinions issued to him by the Board of Ethics in 2011 (Cases 11-14 and 11-43). His wife is a Senior Project Manager in a major engineering consulting firm which will probably be part of a

team that will respond to a request for proposals from the Colorado Department of Transportation (CDOT) to reconstruct the Interstate 70 viaduct between Interstate 25 and Colorado Blvd. The employee indicated that the firm intends for his wife to be on the team that bids for the work.

Although CDOT will be in charge of the I-70 project, the Denver employee had and will have a number of responsibilities regarding that project on behalf of Denver, including management oversight of the Denver engineers and planners working on various aspects of the total project. The employee signed a confidentiality agreement at the request of CDOT. He committed that he would not help his wife or her firm prepare their proposal, nor share any information that would give their team an advantage in bidding.

The Board concluded that it should advise the employee, as it did in 2011, that, under the described facts, he will not violate the Denver Code of Ethics, conditioned upon the representations that:

1. He will take no direct official action regarding the selection of the consultant;
2. He will not share any information about the project with his wife or anyone else at her firm;
3. He will not be the project manager or supervisor for the project.

Case15-10 (gifts)

The Procurement Supervisor in the Technology Division at Denver International Airport requested an advisory opinion. For many years, Microsoft has provided the "standard software products" for DIA, as well as the rest of City government. Each year DIA must pay Microsoft for its licenses for different products and also for "license support." This year, as part of its license support for DIA, Microsoft is offering free on-line training to all DIA employees (over 1000). The on-line training can be accessed in different modules at any time. No travel, lodging, food or other benefits are included in this training. Microsoft represents that the market value for the total of the training package is $14,570.28. There is no pending contract or contract renewal for DIA's standard software products.

The Board of Ethics has never before considered whether free on-line training courses should be considered and regulated as gifts. For a number of reasons, the Board concluded that acceptance of this specific package of on-line training courses by DIA or its employees would not violate the gift section:

- The on-line training is a component of the licenses and license support, which DIA is paying for. Therefore, it is not "any money, property, service or thing of value that is given to a person without adequate and lawful consideration. (Section 2-60(a)(1).
- The training is available to all DIA employees and is not targeted at anyone who is in a position to take direct official action regarding any Microsoft contracts.
- No travel, lodging, food or other items are included. In all other training cases considered by the Board in the past, this has not been the case.
- There is no pending contract or renewal for DIA's standard software products.

Cases 15–11 through 15-14 (lack of jurisdiction)

A citizen filed complaints concerning 4 Assistant City Attorneys who handled various aspects of prosecuting him in Denver County Court. After a trial at which the citizen represented himself, a

jury convicted him of a misdemeanor charge of disturbance by telephone. He has attempted to appeal various aspects of the case to the Denver District Court and the Colorado Supreme Court.

In his complaints, he alleged:

- An investigating police officer did not appear at the trial.
- The charges were unconstitutional, vague and lacked probable cause.
- The two witnesses for the prosecution lied on the stand.
- The 911 callers lied.
- One of the prosecuting attorneys was or is not licensed to practice law in Colorado.
- He was denied his speedy trial rights.
- There were double-jeopardy issues.
- There was bad-faith investigation, malicious prosecution and judicial misconduct.
- The courts and the attorneys made procedural and legal errors in the case.

The Board of Ethics stated:

> The issues you have raised concern your ongoing criminal conviction and appeal. It appears that you are attempting to assert similar arguments to the Colorado appellate courts and the Colorado Supreme Court Office of Attorney Regulation Counsel, which would maintain jurisdiction to address and resolve the issues that you have raised. However, the Board of Ethics has no jurisdiction over the issues you raised, nor any authority to intervene or interfere with the appellate review of judicial proceedings.

The Board noted, however, that the Colorado Supreme Court website confirms that the Assistant City Attorney in question is and was licensed to practice law in Colorado.

The Board determined that no section of the Denver Code of Ethics is implicated by any of the allegations and dismissed all of the complaints pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics after determining that the Board has no jurisdiction. The Board determined that the allegations, even if true, would not constitute a violation of any of the provisions of the Code of Ethics.

Case15-15 (board service by City employees)

On behalf of the Denver Police Department (DPD), the Director of the DPD Victim's Assistance Unit requested an advisory opinion concerning the potential application of the Denver Code of Ethics to circumstances under which officers and/or civilian employees of DPD may be appointed to serve as members of the board of directors of a non-profit organization. The board designees would not receive compensation from the non-profit organization for which they serve, but would be compensated as part of their regular pay by the City and County of Denver for the time spent serving as a board member, including attendance at board meetings.

The request for an opinion was precipitated by the need for DPD to appoint two representatives to serve on the board of directors of the non-profit Rose Andom Center (the Center), the purpose of which is to create and operate a one-stop center, to provide comprehensive services for victims of domestic violence. The articles and bylaws of the Center call for the establishment of

a board of directors, which will consist of 12-17 members and will have four initial standing committees, including fund development, finance, nominating and programming.

The Center is an independent 501(c)(3) organization that is not otherwise affiliated with the City and County of Denver. Accordingly, the board members are not regulated by, or subject to, the Denver Code of Ethics, unless such individuals are otherwise employed by the City and County of Denver and therefore subject to the Code.

The Board of Ethics recognized that DPD officers and/or civilians have served on different non-profit boards and that there are benefits to the City and County of Denver and its citizens from having DPD members serve as board members and lend their expertise to the operation of such non-profit organizations.

However, the proposed service as a board member creates potential tension between the duties owed by the DPD members to the City and County of Denver, and the duties and obligations as board members owed to the non-profit organization. In all respects, the Denver Code of Ethics counsels that City employees should avoid any appearance of impropriety, and this guiding principle should govern DPD officers and/or civilian employees who serve on non-profit boards when they encounter circumstances serving in such capacity.

The Board of Ethics believes that the following sections of the Denver Code of Ethics may be implicated by the service of DPD officers and/or civilian employees on the board of directors of the Center or other non-profit boards, and provides the following general guidance to those City employees who elect to serve on such boards:

A. Employment of Family Members

It is possible that an individual's service on a board may involve the hiring, retention or supervision of employees or staff for the non-profit. Section 2-59 of the Code of Ethics contains provisions intended to prohibit nepotism or favoritism with respect to immediate family members. It is not clear that these provisions govern the conduct of a City employee serving on the board of a non-profit, but in light of the anticipated compensation to be paid by the City for such service and in order to avoid any appearance of impropriety, it would be prudent for DPD officers and/or civilian employees who serve on the board of the Center to act consistent with these Code provisions.

For example, Section 2-59 of the Code of Ethics provides that unless he or she obtains a waiver from the Board of Ethics, the Code of Ethics prohibits a Denver officer, official or employee from appointing or hiring a member of his or her immediate family, as defined in Section 2-52(c) of the Code of Ethics. In addition, no Denver officer, official or employee is permitted to supervise or be in a direct line of supervision over a member of his or her immediate family.

B. Gifts to Officials, Officers and Employees

The Denver Code of Ethics contains prohibitions against the solicitation and acceptance of gifts by City employees. These provisions are intended to safeguard City employees and citizens alike from circumstances in which it may be perceived that there was undue influence wielded or a "pay to play" environment created. Again, in order to avoid any appearance of impropriety, it

would be prudent for DPD officers and/or civilian employees who serve on the board of the Center to act consistent with these Code provisions.

Subject to a number of exceptions specified in Section 2-60 of the Code of Ethics, no Denver officer, official or employee or member of their immediate family may solicit or accept a gift, honorarium or loan if the city has an existing or pending relationship with the donor of the gift and if the Denver officer, official or employee is in a position to take direct official action (such as negotiating, approving or disapproving a contract; enforcing laws or regulations; enforcing or regulating permits; selecting or recommending vendors) with regard to the donor.

Unless one of the exceptions in Section 2-60 of the Code applies, while serving in their capacity as board members, DPD employees should not solicit or accept gifts or loans from persons or entities that have existing or anticipated business with the Center. This might include, for example, individuals or entities who have contracts with the Center or who stand to gain financially from business dealings with the Center. These Code provisions are designed to avoid the actuality or appearance of special influence by those who give gifts to City personnel.

Significantly, Section 2-60(c) specifically permits solicitation of donations by City employees for charitable purposes to a 501(c) or other charitable organization. Board members from DPD, however, should be mindful that any individuals or organizations that may be solicited for donations to the Center should not feel compelled by the circumstances and the request of a DPD person to contribute or donate. The Board recognizes that the Center will likely be dependent on contributions to accomplish its charitable goals and mission, and accordingly, DPD officers and civilian employees should be guided by the overriding principle of the Code of Ethics to avoid the appearance of impropriety. Although the Board of Ethics cannot require this, it strongly discourages direct solicitation of any persons or organizations by Rose Andom Center board members from DPD in order to avoid the appearance of impropriety.

The Board cannot foresee all of the future issues that may arise in connection with the fundraising activities of the Center and would, therefore, invite a supplemental request for advisory opinion if and as circumstances arise that warrant additional guidance.

C. Conflicts of Interest

Section 2-61 of the Code of Ethics sets forth prohibitions against conflicts of interest by City employees. This Code section provides that a Denver officer, official or employee shall not exercise direct official action on any matter before the City if he or she (or a member of his/her immediate family, a business associate or employer other than the City) has a substantial employment, contractual or financial interest in the matter. These prohibitions are intended to ensure that City personnel will remain impartial and will not be influenced by their private, business or family interests. In the event that a substantial conflict of interest arises, the City employee is required to "disclose such conflict to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests."

The Board of Ethics offers the following additional suggestions, based on previous cases, which

should help ensure that DPD officers and civilian employees who serve on non-profit boards avoid conflicts of interest and any appearance of impropriety:

1. The non-profit organization should ensure that a secretary is appointed and that minutes of board and committee meetings are appropriately maintained. All votes and abstentions of the board members should be recorded.

2. A DPD person serving as a board member should, whenever abstaining from any vote or discussion due to a conflict of interest, verbalize the abstention clearly and state for the record the reason(s) for such abstention.

3. Whenever a DPD person serving on a board abstains from a vote or participation in a matter that comes before the board due to a conflict of interest, he or she should, after verbalizing his/her abstention, leave the board's meeting room and remain outside during the entire time of the presentation, discussion and voting on the matter.

4. A DPD officer or civilian employee serving as a board member who abstains should later review the minutes of any such meeting and verify that the minutes correctly reflect the fact of and reasons for such abstention.

5. The Board of Ethics understands that it is unlikely that the Rose Andom Center board of directors will involve itself directly with the delivery of services to specific individual victims of domestic violence; however, if such business comes before the Center board, Denver city employees, including representatives of the DPD, who may have previously dealt with such individuals should carefully consider the propriety of abstaining from any discussions or voting with respect to such business.

D. Prohibition Against Use of Public Office for Private Gain

Section 2-67 of the Code of Ethics provides that 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.

E. Use of Confidential Records

Section 2-68 of the Code of Ethics provides that 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.

F. Conclusion

The Board's preceding response to the request for an advisory opinion is necessarily general in nature since the board of directors of the Center has not yet been created, nor have the duties and responsibilities of the future board members been defined. The Board appreciates, however, the

proactive approach in seeking preliminary guidance concerning the issues and would welcome a continuing dialogue with the DPD as the Center begins its operations.

Case15-17 (no jurisdiction)

An employee filed a complaint. In early 2015, he learned of 2 advertised City vacancies for the position which he had formerly held for 9 years and applied to return to such a position. He was interviewed and was surprised to learn that he had not been selected for either vacant position. He was surprised at the outcome because he was the only interviewed candidate who had done the work of that position for many years and had received "exceeds expectations" ratings.

He indicated that he spoke afterwards with 2 of the 3 interviewers, who indicated that he had performed well in his interview and that the decision to hire others was reviewed by the supervisor of all of the interviewers (the subject of the complaint). He said that he spoke with a co-worker who told him that one of the interviewers told him that it was "common knowledge" that the supervisor "had decided in advance that I would not get either of the positions and that my interview team (or at least some members of that team) already knew this in advance of my interview." He deduced from this and other factors that the supervisor interfered in or overruled the interview process, making it a "charade" for him and the interviewers, as opposed to a legitimate step in the selection process, which is supposed to be merit-based.

In addition to the complaint to the Board of Ethics, the employee also filed a complaint with the Office of Human Resources (OHR). He mentioned in both complaints that he believed that he was retaliated against for filing the complaint with OHR by being assigned to "an all-evening rotation schedule all or mostly by myself."

The Board of Ethics was advised by OHR that 1) the subject of the complaint recently resigned from the City and 2) the complaint that the employee filed with OHR about the hiring process is being investigated by OHR.

The Board of Ethics concluded that there is nothing in the Code of Ethics regarding interfering in Denver's hiring process, which should be legitimately based on merit and qualifications, or regarding retaliation for reporting official misconduct.

The Board dismissed the 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 violations, if true, would not constitute violations of the Code of Ethics and pursuant to Section 2-56(6)(e) because the matter has become moot because the subject of the complaint is no longer an employee of the City and County of Denver. The Board stated, however, that, if they could be proven, allegations of improper interference in the hiring process and/or retaliation for reporting official misconduct undermine the ethical culture of any city department and should be dealt with by OHR and the Department in question.

Case15-19 (subsequent employment)

A Business Liaison at Denver International Airport requested an advisory opinion. She planned to retire from city government on June 26, 2015. Sometime later, she plans to establish her own consulting business "to work with small businesses as an independent contractor primarily with construction related firms, most of whom I have interacted with in some capacity during my work tenure for the City &

County of Denver… to advise and educate construction and construction related firms, on how to do business within the State of Colorado, which would include the City & County of Denver."

She described in detail for the Board of Ethics her work history from 1990, when she first joined the Denver City government, to the present including work with the Office of Economic Development and DIA. She advised the Board that "I was never involved in matters in which I was capable of taking any official action with businesses during my employment with the City & County of Denver."

She wished to know whether her planned consulting job would violate the Denver Code of Ethics, particularly Section 2-64(a) regarding subsequent employment, which provides:

> **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.

Based on the testimony and the facts submitted, the Board determined that the employee never possessed or exercised any "direct official action" power (as defined in Section 2-52(b) of the Code of Ethics) with respect to any of the businesses that she intends to engage as clients in connection with her proposed consulting business. Accordingly, the Board advises her that her proposed consulting business will not violate Section 2-64(a) of the Code of Ethics. The Board also advised that she should exercise care not to share or disclose with any third parties any of the confidential information or documents that she may have acquired during her tenure with the City.

Case15-20 (gifts - rewards)

The Director of the Right-of-Way Services Division in the Public Works Department requested an advisory opinion. The Director indicated that:

> One of our…employees located a vehicle wanted by the police. She was out on regular patrol when she found the vehicle. She had seen a news story on TV that morning and was aware of the description of the vehicle and put two and two together. The driver of the vehicle was also wanted by the police… Quick recognition and action by our employee resulted in her calling DPD through 911, and the police apprehended a murder suspect without additional harm to anyone! Crimestoppers now wants to acknowledge our employee's action. They may want to offer her the reward of $1000. Are there existing rules in place that preclude her from receiving this award and acknowledgement?

A reward from Crimestoppers could be defined as a gift under Section 2-60(a)(1) of the Denver Code of Ethics: "any money, property, service, or thing of value that is given to a person without adequate and lawful compensation." However, Section 2-60(a) would not prohibit the employee from accepting a reward or gift from Crimestoppers for reporting information resulting in the arrest of a crime suspect, because the employee in question is not in a position to take any direct official action regarding Crimestoppers (the donor of the reward) or the Police Department.

However, Section 1.2.12 of the Denver Charter provides that "No…employee shall…receive…anything of value…directly or indirectly…for the performance of official duties except lawful compensation or salary," which leads to the question of whether it is an "official duty" of right-of-way-enforcement agents to contact the police to report something suspicious or dangerous that they encounter on the job. The Class Specifications for Vehicle Control Agent I do not specify that agents have any responsibility for crime prevention or looking for or reporting stolen cars, murder suspects or other crime-related matters.

The Board of Ethics determined that there is no prohibition in the Code of Ethics for a city employee to accept a reward for preventing and/or reporting a crime so long as she or he has no direct official action power regarding the donor of the reward. In addition, although the Board of Ethics is not the sole interpreter of the City Charter, it is the Board's opinion that an employee would not be prohibited from accepting such a reward by the Charter, so long as that is not an official duty of that employee.

The Board of Ethics stated that it believes that this is a unique situation, and therefore strongly cautions city personnel that this advisory opinion is based on the unusual facts presented in this request, and that different facts easily could result in a different opinion. This opinion should not be taken as permitting city officials and employees generally to accept rewards for actions taken while on city time. The Board therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions.