Denver Board Of Ethics

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DENVER BOARD OF ETHICS
DIGEST OF OPINIONS
January 1– June 30, 2017

PLEASE NOTE: This is a set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2017 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 16-27 (use of public office for private gain)

A former seasonal city employee filed a complaint concerning her former supervisor, alleging that the supervisor had failed to submit to the city, as required, payments that the supervisor had received from members of the public for golf lessons given at city golf courses as part of her duties. Had the supervisor done so, she would have received 84% of the payments after processing by the city

The section of the Denver Code of Ethics implicated by this complaint is:

> **Sec. 2-67. Use of public office for private gain.**
>
> No officer, official or employee shall use his or her public office or position… in order to obtain private gain for himself or herself…

The Board of Ethics learned that her department has disciplined the supervisor for violating Section 2-67 of the Code of Ethics and other violations of the Career Service Rules. The Board dismissed this complaint pursuant to Section 2-56(6) (g) of the Code of Ethics because "the appointing authority has already taken action as a result of finding a violation and the Board believes the action was appropriate."

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The Board of Ethics also communicated about this issue to the Denver Auditor's Office so that the Auditor's Office can determine whether to review the current process for handling fees received by employees for golf lessons.

Cases 17-1 and 17-2 (no jurisdiction)

A citizen filed complaints concerning an Assistant City Attorney and an employee of the Clerk and Recorder's Office alleging that a foreclosure of her home in 1998 had been mishandled and that she was owed surplus funds. The Board of Ethics concluded that there was no evidence of any violation of the Code of Ethics by either city employee and dismissed both complaints.

Case 17-3 (gifts – travel expenses – waiver granted)

A department head requested an advisory opinion. He and 2 other city officials were invited to meet with a potential investor to discuss and inspect projects in 2 West Coast cities. The discussion could lead to related projects in Denver for that investor. The department head believes that significant social benefits would result from such possible developments. The Denver personnel would have their travel expenses between Denver and the West Coast paid for by their departmental budgets. However, the investor offered to fly the Denver delegation on a private plane from one West Coast city to the other, because the very tight time schedules of the Denver persons and the investor could not be coordinated and discussion time would be minimized if a regular airline were used.

Acceptance of gifts, including travel expenses, is governed by Section 2-60(a) 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:
>
> (6) Travel expenses and lodging;

The Board of Ethics decided that if any development/investment by the investor were to take place in Denver in the foreseeable future, the department head would be "in a position to take direct official action," regarding the investor as a result of any requests for permits or other actions that would be processed by his department. As a result, the department head would violate Section 2-60(a) if he accepted free travel on the private plane unless he obtained a waiver from the Board of Ethics.

The Board of Ethics is authorized to grant waivers by Section 2-54(f) of the Code of Ethics:

> **Sec. 2-54. Advisory opinions and waivers.** 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…

The Board decided to grant the department head a waiver to accept free travel on the private plane, because it will be in the best interests of the city to allow additional discussion among the key parties about beneficial possible development(s) in Denver during the time on the private plane flight. Such discussion would not be able to occur otherwise due to the tight schedules and timing issues.

Case 17 – 4 (conflict of interest)

A newly-appointed member of the Denver Housing Advisory Committee (HAC) requested an advisory opinion. He is the Deputy Director of Denver Programs for a national nonprofit focused on supporting affordable housing.

The HAC is given staff support by the Office of Economic Development (OED). In late 2016, OED issued a Request for Proposals (RFP) to various entities for consultant services to help develop a Comprehensive Housing Plan for Denver.

There were 2 firms under consideration for the consulting contract. The HAC member advised the Board of Ethics that "My colleagues from the separate public-sector consulting and technical assistance arm of my company, responded to the RFP and have subsequently been invited to interview for the contract."

OED will convene a selection committee of staff from different city departments (not including any HAC members) in the near future to make the final selection of the consultant.

If his employer is selected, the HAC member stated to the Board that he will not participate in the consulting work.

When the Comprehensive Housing Plan has been completed in approximately September of 2017, the HAC will review it and vote whether to submit it to City Council for its approval or modification. The HAC member advised the Board that he will abstain from voting on the Plan.

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:
>
> (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;…**
>
> (f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote

thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests…(emphasis added)

The Board concluded that the HAC member would violate Section 2-61(a) of the Code if he were to take direct official action by being involved in the selection process for the consultant; however, neither he nor any other members of the HAC will be involved in the selection process.

If the HAC member's employer is selected to be the consultant, it might have the appearance of impropriety if he were to vote as a member of the HAC to submit the Comprehensive Housing Plan developed by the consultant to City Council. However, he agreed "to recuse myself/abstain from any direct actions that the HAC may be asked to take with respect to the Comprehensive Plan and/or my employer."

The Board of Ethics decided that the committee member would not violate Section 2-61 of the Denver Code of Ethics so long as:

- He is not involved in any way in the selection process for the consultant to help develop the Comprehensive Housing Plan and
- He abstains from voting to send the Comprehensive Housing Plan to City Council if the consultant arm of his employer is selected to be the consultant.

Case 17 – 5 (use of public office for private gain)

A citizen filed a complaint against a city employee who is her estranged half-sister, alleging that she had forged their deceased father's will and obtained a false witness and false notarization of the will. The city employee denied the allegations.

The Board of Ethics determined that, even if the alleged forgery, false notarization and false witnessing could be proven, although reprehensible, it would not violate any section of the Denver Code of Ethics. In particular, there was no evidence that the city employee used any aspect of her "public office or position" to violate Section 2-67:

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

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

The Board did not express an opinion as to whether the alleged conduct occurred or not. The Board advised the complaining party that she may wish to consult an attorney or to present her information to the Denver District Attorney's Office and/or the Notary Division of the Colorado Secretary of State's Office.

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

Case 17 – 6 (outside employment, conflict of interest)

A city employee who works for Denver International Airport (DEN) requested an advisory opinion regarding her desire to be a candidate for the Aurora City Council. If elected, she would be paid for her service on the Council. The employee says that her DEN job responsibilities have nothing to do with transportation planning or land use.

The Board advised the employee as follows:

- The Denver Code of Ethics does not prohibit her from being a candidate for or serving as an elected official.
- Since Aurora City Council members are paid, she must comply with Section 2-63 by obtaining her appointing authority's written permission.
- She cannot use any city resources, including time, computers or paper on her campaign or in work for Aurora.
- She should recuse herself from involvement in any DEN issues that might conflict with her responsibility to Aurora.
- She should maintain detailed records and documentation regarding any expense or time related to work for Aurora for which she might receive reimbursement from DEN.
- She may not disclose any information or records that are not available to the public, which were acquired in the course of official DEN duties in connection with her service as an Aurora City Council member. Such disclosure would violate Section 2-68 of the Denver Code of Ethics.

Case 17 – 7 (subsequent employment) waiver granted

An airfield planner at Denver International Airport (DEN) worked with United Airlines concerning possible expansion of Concourse B and oversaw the paint program for the entire airport. He left city employment in March 2017 and was hired by United Airlines as Manager of Aviation Planning at the United headquarters in Chicago, Illinois. He requested an advisory opinion.

He advised the Board of Ethics that:

> My job was not a role in decision making but more in providing recommended solutions and alternatives. United has gate layouts at DEN that are inefficient and United is changing their aircraft fleet. So the apron needs to be realigned to better accommodate the existing and future aircraft fleet mix. The project is still ongoing and United and Denver are still discussing alternatives.

He also signed a Confidentiality and Non-Disclosure Agreement in which he agreed not to disclose information from DEN or other airlines to United.

Subsequent employment is regulated by Section 2-64(a) of the Denver Code of Ethics:

Sec. 2-64. Subsequent employment.

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

(a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city. (emphasis added)

The Board concluded that, if the former employee did not take any "direct official action" during his work at DEN, he would not violate section 2-64(a) and, therefore a waiver would not be needed.

However, the Board was uncertain whether his actions at DEN amounted to any "direct official action" such that he would violate Section 2-64(a) if he worked for United on any projects at DEN without waiting for 6 months. However, the Board concluded that, in any event, it will be in the best interests of the City and County of Denver and DEN to allow him to work for United now on any DEN-related projects and, therefore, the Board granted him a waiver to allow him to do so.

Case 17 – 8 (conflict of interest)

The executive director of the North Denver Cornerstone Collaborative (NDCC) requested an advisory opinion. The NDCC was established in 2013 in the Denver city government to coordinate planning and building activities in North Denver She advised the Board of Ethics:

> As the Executive Director of the North Denver Cornerstone Collaborative (NDCC), one of my roles is to develop partnerships with stakeholders throughout the Globeville, Elyria, and Swansea neighborhoods and the RiNo District in North Denver. The NDCC is an initiative of Mayor Hancock to coordinate the many projects being planned in North Denver including the National Western Center, Central 70, Brighton Corridor and neighborhood improvements.

She was invited to serve on the board of directors of Laradon Hall, a Denver nonprofit founded in 1948 with its main facility now within the sphere of influence of NDCC. Laradon Hall provides services to approximately 600 children and adults with intellectual, developmental and other disabilities, supporting their independence in daily life.

The relevant section of the Denver Code of Ethics is:

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:….

(3) **He or she, a member of the immediate family, a business associate or an employer is a board member or 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.

The Board of Ethics concluded that nothing in the Denver Code of Ethics would prohibit the executive director from serving on the board of Laradon Hall. However, she should be watchful about any situations that may pose a conflict of interest and then, if such a situation occurs, recuse herself from voting or making other decisions as Executive Director of NDCC or as a board member of Laradon Hall.

Possible examples would be if Laradon Hall wishes to expand or rezone its location in a way that might interfere with the city's plans for the area or seeks city grants or other funding for its programs or if another matter or vote arises where the interests of the City and Laradon Hall may not be aligned.

In addition, the Denver Code of Ethics does not prohibit her from serving as a board member of any other non-profit organization that is compatible with her duties as Executive Director of NDCC and does not adversely affect the interests of the City.

Case 17 – 9 (gifts)

A City Councilmember requested an advisory opinion as to how the new provisions of the Denver Code of Ethics (adopted by City Council on March 6, 2017) would apply to free tickets that all Councilmembers received from the Denver Zoological Foundation to attend the VIP reception at its annual fundraising gala on June 15, 2017. Tickets to the VIP reception cost $500 for the general public.

Acceptance of event tickets is regulated by the following sections 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;…

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

(9) Meals except as provided for in subsection (b)(4) of this section.

(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…**:

(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. The value of any meals, tickets, or free or reduced price admissions accepted from the same donor in any calendar year shall not exceed three hundred dollars ($300) and shall be subject to the reporting requirements set forth in Article V of this Chapter 2;

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

g. Officers, officials and employees may accept the following donations of tickets or free admissions to events, <u>regardless of the annual cap on the value of such donations set forth in paragraph a of this subsection: tickets or free admission to a charitable event, as long as the ticket or free admission is offered directly by and at the expense of the charitable or other non-profit entity hosting the event</u> and not directly or indirectly offered by any sponsor of the event or other donor to which the gift restriction set forth in subsection a of this section applies. Any ticket or free admission to an event accepted under this paragraph g shall be subject to reporting requirements set forth in Article V of this Chapter 2 (emphasis added).

An amendment to the Financial Disclosure Ordinance in early 2017 requires that the semi-annual report for officers "shall include the identification, estimated value and source of any gifts which may be accepted under Sections 2-60(b)(4), (7) and (10)…"

In summary, under new Section 2-60(b)(4)(g), donations of tickets or free admission to a charitable event given directly by the charitable or other non-profit entity hosting the event are not subject to the annual cap of $300 per donor, but must be disclosed under the Financial Disclosure Ordinance.

The Board of Ethics advised the Councilperson as follows:

- City Council members are in a position to take direct official action concerning the Denver Zoological Foundation, the sponsor of the annual charitable fundraising event.
- Since the tickets to the VIP reception charitable event were given directly to members of Council by the Zoological Foundation, the value of the ticket does not count against the $300 per calendar year cap set by Section 2-60(b)(4)

- What should be disclosed in the semi-annual disclosures by officers under the Financial Disclosure Ordinance is the face value of the ticket to the charitable event, in this case $500 for the ticket for the VIP reception.

Case 17 – 10 (outside employment)

An employee with the Denver Purchasing Division (part of the General Services Department) requested an advisory opinion. She was considering setting up a corporation by which she could conduct an outside consulting business. She told the Board that she understands that she must not try to develop clients for her company from contacts made in her city job.

Outside business activity is regulated by Section 2-63 of the Code of Ethics:

> **Sec. 2-63 Outside employment or business activity.**
>
> 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. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.
>
> (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.

The Board of Ethics advised the employee that the Denver Code of Ethics does not prohibit outside business activity such as she described, so long as she:

- Obtains written approval on an annual basis from her appointing authority, as required by Section 2-63

- Does not use any city time or other city resources for her outside business activity
- Does not use any city files or contacts that she made in her city job to develop prospective clients for her business
- Do not advertise that she works for the Denver Purchasing Division.

The Board also recommended that she record the time she works for her company to document that she is not devoting any city time to her business.