July 1-December 31, 2002

Board of Ethics
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Digest of Advisory Opinions
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Case 02-30

An employee of the Forestry Division requested an advisory opinion concerning whether he could 1) obtain a tree-trimmer's license from the Forestry Division and 2) establish a part-time tree and shrub care business in Denver as outside employment. The employee is a crew supervisor in the Forestry Division, who supervises tree trimmers who care for trees on City-owned properties and monitor trees in hazardous conditions. He is not in a position in his City job to recommend tree trimmers to any property owners in need of tree-trimming services or to negotiate in any way with any contractors or vendors. The Denver Forestry Division is not in competition with private tree-trimming companies.

The licensing process for Denver tree-trimmers, which is conducted by the Forestry Division is a written, objective test which, if passed, is followed by a field test of climbing abilities, etc. The head of the Forestry Division advised the Board of Ethics that the employee will not receive any preferential treatment in the licensing process.

The Board determined that, so long as the employee obtained written permission from his appointing authority to engage in outside employment, he will not violate Section 2-63 of the Code of Ethics. In addition, the Board determined that no conflict of interest prohibited by Section 2-61 will result from the employee's involvement in a private tree-trimming company under the facts presented to the Board.

Case 02-31

An arborist in the Forestry Division requested an advisory opinion. He wished to obtain outside employment consulting with a landscape company doing yard inspections and plant material consulting outside the City and County of Denver.

The Board of Ethics determined that the employee would not violate Section 2-63 of the Code of Ethics if he obtains written permission to engage in the outside employment from his appointing authority. The Board also found that none of the conflict of interest provisions of Section 2-61 would be violated, because an arborist for the City is not in a position to "take direct official action."

Case 02-32

The Fire Department captain who requested an advisory opinion in Cases 02-28 and 02-29 regarding acceptance of travel and lodging expenses from vendors doing business with the Denver Fire Department, requested reconsideration of those cases due to his different position with the City. The captain had recently been promoted to the position of assistant chief and re-assigned to the Office of Emergency Management. He advised the Board of Ethics that, in that new assignment, unlike his former position, he would not be in a position to recommend

specifications for products to be purchased by the Fire Department or to recommend for or against the initiation or continuation of contracts or purchase orders or to recommend vendors to do business with the City.

Based upon those representations, the Board determined that the assistant chief's acceptance of travel and lodging expenses from the two specific vendors in question would not be prohibited by Section 2-60 of the Code of Ethics. The Board cautioned him not to engage directly or indirectly in preparing any specifications relating to those vendors or directly or indirectly to provide information to Fire Department employees regarding the advisability of purchasing or not purchasing the products offered by the vendors.

Case 02-33

Two City employees who are working together to implement aspects of the City's land use and transportation plan requested an advisory opinion. The issue was whether a former City employee who worked on the development of the plan may work for a company which seeks to perform contract work for the City related to the plan.

The former City employee, after he left his employment with the City, was hired by an architectural and engineering firm which has an on-call contract with the City to provide professional services. The former City employee had no role in approving that on-call contract and he had no role in developing the land use and transportation plan that could be defined as "direct official action" according to Section 2-52(b) of the Code of Ethics.

The Board of Ethics therefore determined that the former city employee would not be in violation of Section 2-64 (a) of the Code of the Ethics, which provides:

(a) During six (6) months following termination of office or employment, no former officer, official or employee shall obtain employment 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.

Case 02-34

The director of the Community Planning and Development Agency requested an advisory opinion regarding potential conflicts of interest for two individuals who were being considered for appointments to the Denver Planning Board.

The first potential appointee, a daughter of the Mayor, was a salaried associate attorney in a law firm which sometimes represents clients regarding land use matters in Denver. She indicated that she does not practice land-use law. She did not have any ownership interest in the law firm.

The second potential appointee is a real estate developer in Denver who was engaged to be married to the manager of the Denver Parks and Recreation Department.

The Board of Ethics found that neither of the potential appointees would be disqualified from serving on the Planning Board by having a "substantial interest" as defined by the conflicts of interest provisions in the Code of Ethics in Section 2-61(a). The Board of Ethics, however, urged both potential appointees to avoid any appearance of a conflict of interest if specific matters come before the Planning Board. In particular, the Board of Ethics recommended that the first potential appointee should abstain from participating in any matter before the Planning Board in which a client of her law firm is involved. The Board of Ethics also recommended that the

second potential appointee should abstain from participating in a matter before the Planning Board in which she has or had any ownership interest or in which the Parks and Recreation Department (while it is headed by her husband) is involved.

Case 02-35

A member of the Public Safety Review Commission (PSRC) requested an advisory opinion. She indicated that she would be resigning from the PSRC and moving to another state. She asked if the Code of Ethics would prohibit her from being hired by the PSRC, after she had resigned her membership, to serve as an independent investigator of certain complaints filed by citizens against members of the Denver Police Department. The PSRC had a backlog of cases in which the PSRC was authorized by Section 2-250(o) of the Revised Municipal Code to hire independent investigators.

The Board of Ethics applied section 2-64(a) of the Code of Ethics and decided that the person could be hired by the PSRC as an investigator, following her resignation from the PSRC. Such hiring, however, would only be permissible if she did not, while a PSRC member, undertake or participate in efforts to 1) establish criteria by which the investigators would be selected; 2) determine which cases would be assigned to investigators; 3) select the pool of investigators or 4) take any other direct official action (as defined in 2-52(b) of the Code of Ethics) with regard to the selection or use of investigators by the PSRC.

Case 02-36

A commander in the Police Department requested an advisory opinion regarding acceptance of donations for a Police Department Family Christmas Party. A committee planning the event wished to accept donations of toys and food items from various businesses for use at an annual holiday party for officers, civilian staff and family members of the Police Department. The Board of Ethics determined that acceptance of such donations from businesses or persons in the City and County of Denver is prohibited by Section 2-60(a) of the Code of Ethics. That section prohibits solicitation or acceptance of gifts 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 definition of "direct official action" in 2-52(b) of the Code of Ethics includes "enforcing laws or regulations." The Board of Ethics concluded that police officers are able to and expected to "enforce laws" in a wide variety of situations, times and places and, in doing so, they are not limited to their specific assigned job tasks. Police officers, therefore, are "in a position to take direct official action" with regard to any business or person in the City and County of Denver.

The Board noted that a holiday party for members of the Police Department and their families is not a "charitable purpose" of the type that is given an exception from the gift provisions by Section 2-60(c) of the Code of Ethics.

Cases 02-37 through 02-48

A citizen filed inquiries against twelve City Council members, alleging that they improperly accepted gifts (free passes to allow them access to the Denver Grand Prix automobile races in Denver) from the Denver Grand Prix when those Council members had voted to approve an ordinance that suspended the application of traffic, noise-control and air-pollution-control

ordinances for the Denver Grand Prix. The Board of Ethics also learned that the Council members had been invited to attend a free dinner in connection with the Grand Prix.

The Board of Ethics found that four City Council members attended neither the Grand Prix nor the related dinner and dismissed the inquiries against those Council members.

Six members attended either the Grand Prix or the related dinner or both and indicated that they believed that their attendance "was reasonably related to their official or ceremonial duties," which is an exception in Section 2-60(b)(4)d, which permits up to four such free events or meals per calendar year from the same donor even if the city officer, official or employee is in a position to take direct official action with regard to the donor. The Board of Ethics consequently dismissed the inquiries against those Council members.

The Board of Ethics indicated, that, in the future, it will interpret the phrase "official or ceremonial duties" to apply only to all elected officials of the City, members of the Mayor's cabinet who have a direct relationship to an event and other City officials or employees who have a direct relationship to an event. The Board indicated that, if a person is within such a group, the Board will evaluate, among other things, the nature of the event and the job duties of the free or reduced price attendees to make its determination.

Two other City Council members accepted free passes to the Grand Prix, but, instead of attending themselves, gave the passes to others. Those Council members, since they did not use the passes, could not claim the exception for "official or ceremonial duties" and, therefore, violated Section 2-60(a) of the Code of Ethics. However, the Board dismissed the cases against those Council members, pursuant to Section 2-56(11) because the members received little or no benefit from the gifts, because this was the first time that the Board had considered this issue, and because the Board believed that the members violated the Code through oversight and that they would comply with this ruling in the future.

The Board indicated that, in the future, it will not look favorably at situations in which a person subject to the Code of Ethics transfers a gift to one or more persons and there is no applicable exception available under the Code of Ethics.

Case 02-49

A commander in the Police Department requested an advisory opinion about whether the Code of Ethics would allow police officers to accept airline travel passes as gifts from the airline or from airline employees. The Board of Ethics concluded that police officers "enforce laws" in a wide variety of situations (which is one of the definitions of "direct official action" in the Code of Ethics). Therefore, acceptance of airline travel passes from the airline or from airline employees would be a violation of Section 2-60(a) for any police officers assigned to the airport.