July 1-December 31, 2003

Board of Ethics
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DENVER BOARD OF ETHICS DIGEST OF SELECTED OPINIONS July 1–December 31, 2003

Case 03-27

A city employee filed an inquiry against a co-worker in her department, concerning allegedly false information given by the co-worker regarding the co-worker's job classification. The Board of Ethics dismissed the case during the Board's screening review, after determining that the Board of Ethics has no jurisdiction to regulate or review job classifications, which are under the authority of the department heads and the Career Service Authority.

Case 03-28

The executive director of the Denver Election Commission advised the Board that the Election Commission no longer had sufficient funds in its budget to pay for the printing of "I Voted" stickers that are customarily given to citizens after they have voted at their precinct polling places. She requested an advisory opinion about whether a citizen could raise funds and donate the funds for the printing of such stickers. The Board concluded that such a donation would not violate the gift section of the Code of Ethics because the donation would be to the city, rather than to any city officer or employee, and that no city officer or employee would derive any personal benefit from the donation.

Case 03-29

The deputy director of the Mayor's Office of Economic Development and International Trade (MOED/IT) requested an advisory opinion concerning an application by a former employee of that agency for a small business loan from MOED/IT. The former employee worked as an economic development specialist at MOED/IT and made recommendations to her supervisor as to whether loan requests met necessary qualifications. The former employee left her employment at MOED/IT on March 31, 2003. The Board noted that Section 2-64 of the Code of Ethics prohibits former city employees from taking direct advantage of information and relationships unavailable to others relating to their former positions with the city during the first six months after leaving city employment. The Board found that the former employee would have a direct advantage from being in the direct line of the MOED/IT decision-making on loan applications and that both the letter and the spirit of the Code of Ethics require that former employees must honor the six-month period of not benefiting from the advantage gained by city employment.

Case 03-30

Mayor John Hickenlooper requested an advisory opinion regarding travel expenses. In early 2003, the Metro Denver Network (MDN), a 501(c)(6) not-for-profit corporation affiliated with the Denver Metro Chamber of Commerce, began planning a trip to California to meet with California business leaders to encourage them to do business in the Denver area. Shortly after the Mayor

was elected, MDN officials invited him and approximately two members of his staff to join several Denver-area business executives, MDN officials and Chamber of Commerce officials on the trip to California. MDN officials contacted Frontier Airlines, which agreed to provide round-trip airline tickets for the entire delegation, including the Mayor and his staff, from Denver to and from San Jose, California. MDN, through a fund that it had been collecting for several years, would pay for the balance of the expenses for the entire delegation, including the Mayor and his staff, such as meals, hotel rooms, ground transportation and a reception.

Frontier Airlines leases several gates and other facilities at Denver International Airport, which is owned by the City and County of Denver. Frontier Airlines was seeking to lease additional gates at DIA. The Board of Ethics found that the Mayor was in a position where he would have to approve or disapprove any renegotiated leases or contracts with Frontier Airlines, which would amount to "direct official action" as defined in Section 2-52(b) of the Code of Ethics.

Section 2-60 of the Code generally prohibits, with several exceptions, a city officer, official or employee or members of their immediate families from accepting gifts, including "travel expenses and lodging" 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." One of the exceptions to this general prohibition, Section 2-60(b)(7), allows acceptance of "reasonable expenses paid by non-profit organizations or other governments for attendance at a …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."

The Board concluded that the Mayor and any of his staff who would be in the "formal line of decision making" on issues related to Frontier Airlines are prohibited from accepting airline tickets or travel expenses or other gifts from Frontier Airlines. The purpose of this prohibition is "so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public" and "to avoid situations which create the appearance of impropriety" (section 2-51 of the Code).

The Board, however, recognized that Section 2-60(b)(7) of the Code provides a specific exception for payment of travel expenses by a non-profit organization where the person is representing the city. Therefore, the Board concludes that the Mayor and his staff may accept meals, hotel rooms, etc., from MDN, since it is an established non-profit organization and the Mayor is representing the city under the terms of Section 2-60(b)(7). Acceptance of airline tickets or other travel expenses from Frontier Airlines, however, would violate the Code.

Case 03-33

A member of a city committee that was reviewing proposals from various vendors to sell computers to the city requested an advisory opinion. One of the prospective vendors wished to offer a ten percent discount to all city employees who might wish to purchase one of the company's computers for personal or family use. The committee wished to know whether such an offer complied with the Code of Ethics. The city does not solicit such discounts from vendors and does not give added weight or points to proposals from vendors who offer such discounts. The Board indicated that Section 2-60(b)(12) gives an exception to the gift prohibitions in the Code of Ethics to "items which are similarly available to all employees of the city or the general public on the same terms and conditions." Therefore, the proposed discount would not violate the Code of Ethics. The Board, however, encouraged city purchasing personnel to take

measures to publicize such discount programs to all city officers, officials and employees, so that they are truly "available to all."

Case 03-34

A police sergeant requested a waiver from Section 2-59(b) of the Code of Ethics, which prohibits a city employee from supervising an immediate family member who is also a city employee. The sergeant recently married a patrol officer who was assigned to the same police district. The sergeant's shift overlaps his wife's shift by thirty minutes each day. In addition, depending on circumstances such as emergency situations, there may be other times when the sergeant and his wife would be working together, with the sergeant perhaps being in a direct line of supervision over his wife. The Board determined that it was in the best interests of the city to grant a waiver to the sergeant, to allow him to be in a direct line of supervision over his wife in the infrequent occasions of this situation, so long as the sergeant abstains from participating in any personnel actions regarding his wife.

Case 03-35

A major in the Sheriff's Department requested a waiver from the prohibition in Section 2-59(b) of the Code of Ethics against the supervision by a city employee of an immediate family member who is also a city employee. Due to city budget issues, the Sheriff's Department recently added responsibility for an additional facility to the major's supervisory responsibilities. The major's wife, a deputy sheriff, is assigned to the facility recently assigned to the major. The working shifts of the major and his wife significantly overlap. The Board determined that it was in the best interests of the city to grant a waiver to the major so that he and his wife may remain in their assignments, so long as the major abstains from participating in any personnel actions regarding his wife.

Cases 03-36 and 03-37

A human resources representative of a department that deals with many real property issues filed these inquiries, requesting the Board of Ethics to investigate whether two employees of the department might have violated Section 2-63 of the Code of Ethics by engaging in outside employment or business activity without written approval of their appointing authority. The two employees were affiliated with a small real estate firm, one being the broker and the other employee being an associate broker.

During its preliminary screening, the Board determined that the employee who was the broker had disclosed the outside business activity and obtained written approval from his appointing authority; however, the employee who was the associate broker did not make any such disclosure or obtain such approval. The associate broker indicated that she had only obtained her real estate license recently and, at the time that she signed her annual disclosure, she did not have any listings and therefore believed that she had no need to disclose her affiliation with the real estate company.

The Board dismissed both inquiries after the preliminary screening; however the Board advised the associate broker to amend her disclosure to indicate her association with the real estate company, even if she does not have any active listings at the time. The Board also cautioned both employees to disclose to their appointing authorities any listings or other potential real estate transactions, as they might arise, in which either of them might have a conflict between

their public responsibilities as city employees and their private interests in the real estate transactions.

Case 03-38

An employee of the Denver Office of Information Technology informed the Board that the City and County of Denver pays license fees to a vendor of particular computer software and is seeking to expand the use of the software to additional city computers in the future. The software vendor invited the employee and a few other city employees to attend a "users' conference" in Toronto, Canada at the expense of the company. The company and the city employee both indicated that they believed that the payment of the expenses by the company were not gifts to the employees, because the city's contract with the company provides that the company would pay those expenses. The employee requested an advisory opinion as to whether acceptance of the travel and lodging would violate the Code of Ethics and, if so, requested a waiver. The Board determined that all of the invited employees were in a position to take direct official action regarding the software company and that the City and County of Denver has an existing and pending contract with the company. As a result, the Board determined that acceptance of travel expenses and lodging by those employees would violate Section 2-60(a) of the Code of Ethics. According to the Board, the reason for this prohibition is that the public, including competitor vendors, should have confidence that contracts are awarded or extended based on merit and are not influenced by gifts of any kind to city employees or officers who are in a position to take direct official action regarding the contracts. The Board then considered and denied the request for a waiver, indicating that waivers regarding travel expenses and lodging should be granted only in emergency, unusual or exigent circumstances.

Case 03-39

The Chief of Police requested an advisory opinion regarding whether the gift section of the Code of Ethics would allow him to solicit contributions to pay health care claims from Denver police officers, firefighters and their families. The claims should have been paid by an existing fund, which is experiencing financial trouble and is unable to pay many of the claims. The Board found that such solicitation of donations for charitable purposes is specifically allowed by Section 2-60 (c) of the Code.

Case 03-40

A Department of Environmental Health inspector who conducts restaurant inspections requested an advisory opinion. He wishes to seek outside employment to teach sanitation at a local cooking and restaurant institute. The institute also operates an associated restaurant which is regulated by the Department of Environmental Health. The inspector has agreed that he will not be involved in any inspections, reviews of inspection reports or any enforcement decisions or actions regarding the restaurant associated with the institute. The Board determined that the Code of Ethics will not be violated if he obtains written permission from his appointing authority as required by Section 2-63 and that the appearance of impropriety will be avoided if the inspector complies with his agreement to abstain from any involvement in the regulation of the restaurant affiliated with his outside employer.

Case 03-41

A citizen filed an inquiry against a city employee who is his next-door neighbor, alleging a number of instances of rude and un-neighborly behavior, such as weeds, barking dogs and insults. The Board dismissed the inquiry, after its preliminary review, finding that the Board did not have jurisdiction over such complaints.

Case 03-42

The Deputy Chief of the Fire Department requested an advisory opinion as to whether the Department could accept a donation of used weight equipment from a hotel undergoing renovation. The equipment would be placed in a fire station different from the one responsible for conducting fire inspections at that hotel. The Board found that acceptance of the weight equipment for use in a firehouse does not violate the Code of Ethics because the gift is not to an individual officer, official or employee, but rather to the city or the Fire Department.

Case 03-43

A golf course superintendent requested an advisory opinion or, if necessary, a waiver. He is considering whether to be a candidate for a position on the board of a national non-profit association of golf course superintendents. If he is elected to the national board, the association would pay the superintendent's travel expenses and lodging at national meetings and would provide the use of a laptop computer and a clothing and luggage allowance. He wished to know whether acceptance of such expenses and items would violate the gift section of the Code of Ethics. The Board concluded that, since there is not any contract, business or regulatory relationship between the City and County of Denver and the national association, the acceptance of the expenses and other items by the superintendent from the national association is not prohibited by Section 2-60(a) of the Code of Ethics.

Case 03-44

An assistant chief in the Fire Department requested an advisory opinion concerning outside business activity by a firefighter and advertising for the outside business showing Denver Fire Department equipment and uniforms. The Board decided that the firefighter could engage in his outside business activity, providing mortgage services, and that he can advertise to fellow Denver firefighters, so long as he obtains written permission to engage in the business activity from his appointing authority, as required by Section 2-63 of the Code of Ethics. If the firefighter does receive permission from his appointing authority to do so, the Board recommended that, in order to avoid the appearance of impropriety, he should not solicit citizens that he has dealt with in his capacity as a Denver firefighter as potential customers (this might give the citizens the impression that they might get special treatment from the Fire Department if they do business with him). He should also not use any Fire Department or city records or databases to contact potential customers, should not conduct any outside business activities during on-duty hours or in his Fire Department uniform or in any city workplaces and should not use or depict Denver Fire Department uniforms, vehicles or equipment in his advertising information.

Case 03-45

A deputy chief of the Police Department requested an advisory opinion about whether the Code of Ethics gift section would be violated if police officers solicit donations on behalf of the Denver Police Officers Foundation. The purpose of the foundation is to provide assistance to Denver police officers and their families when needs arise due to death, disability, illness, injury or

similar catastrophic circumstances. The Board found that, even though most police officers are in a position to take direct official action through their ability to enforce laws throughout the city, Section 2-60 of the Code of Ethics would not be violated by solicitations for the foundation because Section 2-60(c) specifically permits solicitation of donations for charitable purposes, so long as an officer soliciting a contribution or a member of the officer's immediate family does not keep or use the gift.

Case 03-46

A citizen, who had been the principal sponsor of an initiated ballot issue, filed an inquiry against a member of City Council, alleging that the Council member repeatedly made insulting and/or false comments about the ballot issue and the citizens who supported the initiative. He also alleged that the Councilperson improperly used his city web-site to repeat the insulting or false comments. The Board dismissed the inquiry after its preliminary screening based upon Sections 2-56(6)(a) and 2-56(6)(b), which allow the Board to dismiss an inquiry if the Board has no jurisdiction or if the alleged violation, if true, would not constitute a violation of the Code of Ethics.

Case 03-47

A police commander requested an advisory opinion about outside business activity. He has established a company to provide security officers to protect utility operations such as electrical facilities or water supplies. He has agreed not to employ any other Denver police officers or other City and County of Denver employees and that the company will not contract to protect any locations within the City and County of Denver. The Board indicated that Section 2-63 of the Code of Ethics permits outside business activity by any city employee so long as written permission is granted by the employee's appointing authority. The Board also recommended in order to avoid the appearance of impropriety, he should not enter into any contracts with any clients to deal with facilities inside the City and County of Denver, should not hire or solicit to hire any Denver Police Department employees or other City and County of Denver employees to work for the company and should not conduct any activities for the security company in his police uniform or in any city workplace. These conditions will alleviate any pressure that police officers, other City and County of Denver employees or potential clients might feel in dealing with him regarding the security company.