July 1-December 31, 2004

Board of Ethics
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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
July 1 – December 31, 2004

Case 04-30

A City Council aide has obtained permission from her City Council member to engage in outside employment by a research firm to engage in political and corporate research on behalf of state and federal candidates and issue campaigns and corporate and non-profit clients doing business in other states and municipalities. The aide indicated that she would not engage in any outside work that involved the City and County of Denver government. The City Council member requested that the aide request an advisory opinion from the Board of Ethics.

The Board of Ethics advised that the aide's appointing authority (the City Council member) has the final authority to approve or disapprove outside employment or outside business activity pursuant to Section 2-63 of the Code of Ethics. The Board also indicated that the conflict of interest section of the Code of Ethics, 2-61, would prohibit the aide from taking direct official action, as defined in Section 2-52(b) (including doing research for or scheduling appointments for a City Council member or other city officer regarding contracts, leases, franchises, grants, etc.) which would involve the research firm or one of its clients.

The Board of Ethics also recommended that the aide, in order to avoid the appearance of impropriety, should not do any private work during city time, in a city workplace, or with city equipment or facilities and that she should not do any private work that is involved in any way with the City and County of Denver government.

Case 04-31

An employee of the Department of Parks and Recreation manages the city greenhouse. The employee and his spouse have operated a small retail florist shop in another city for a few years. The employee and his appointing authority both requested guidance from the Board of Ethics regarding this outside business activity.

The Board of Ethics concluded that the Code of Ethics does not prohibit the employee from owning and operating a private florist business so long as his appointing authority approves such outside business activity in writing, as required by Section 2-63. The Board also concluded that Section 2-61 of the Code of Ethics would prohibit him from taking any direct official action, such as negotiating or approving or recommending a contract for the city to purchase flowers or other items from his private florist business. The Board also recommended that the employee should not conduct any of his private business on city time or with the use of any city equipment or property.

Case 04-32

A Deputy Police Chief requested an advisory opinion to see if the Code of Ethics would allow a police officer to solicit contributions for a fundraising benefit for the Police Orphans' Fund. The

officer indicated that the actual solicitation would be done by a professional fund-raiser, who is not employed by the Police Department or the City and County of Denver.

The Board of Ethics determined that this proposal would not result in a violation of the Code of Ethics because 1) the actual fundraising would be done by someone who is not employed by the Police Department and 2) even if the fundraising were done by an employee of the Police Department, the fundraising would be permissible under the "charitable purpose" exception in Section 2-60(c) of the Code of Ethics.

The Board, however, recommended, in order to avoid the appearance of impropriety, that police officers should not solicit charitable contributions from any persons or businesses in the City and County of Denver, because police officers are in a position to take direct official action by enforcing laws anywhere in Denver. This would avoid any perception that the soliciting officer might look more favorably in enforcing laws on a person or business that had contributed or less favorably on a person or business who had failed to contribute. In addition, the Board recommended that police officers should not attempt to recruit any subordinate police officers in their direct chain of command to participate in the fund-raiser in order to avoid any sense of "pressure" to participate.

Case 04-33

A restaurant inspector in the Department of Environmental Health requested an advisory opinion on two separate issues. First, he has been asked to serve on a volunteer steering committee to advise a non-profit business incubator organization that provides training and facilities for small businesses, including several that are food-related. The organization provides a central kitchen for the food-related businesses, which requires inspection by the Department of Environmental Health.

Second, he is considering setting up an outside paid consulting business in which he would consult on various matters relating to restaurants, such as food safety plans, cost control issues, cleaning schedules, training, etc., for restaurants outside the City and County of Denver. He indicated that he would not consult for any multi-location entity that operates restaurants both inside and outside of Denver.

The Board of Ethics concluded that the employee would have to obtain written approval from his appointing authority for any paid consulting work, pursuant to Section 2-63 of the Code of Ethics. The Board also determined that, in the circumstances of this case, he is not required to obtain approval from his appointing authority to consult on an unpaid basis with the non-profit organization, but indicated that he might wish to advise his appointing authority as a matter of courtesy. The Board specifically indicated that it had no opinion as to whether the appointing authority should approve the paid consulting activity or not. If the appointing authority does approve the paid consulting activity, the Board recommended that the employee should recuse himself from any involvement in inspections by the Department of Environmental Health of any facilities or restaurants connected with either the non-profit business incubator or any of his consulting clients.

Case 04-34

An administrator in the Office of Safety Information requested an advisory opinion as to whether a new employee in that office would be allowed to finish working on a computer consulting

contract that he had with the Denver Police Department. In other words, could the employee be both a city employee and a contract consultant to the city at the same time?

The Board stated that Section 2-63 of the Code of Ethics requires that any city employee must obtain his or her appointing authority's written approval to engage in "outside employment" or outside business activity."

The Board also indicated that a former provision of the Denver Charter which had provided that "…no officer or employee (of the City and County of Denver) shall hold or enjoy any other public office or public employment for which he or she is paid any compensation" was repealed by a vote of the people in May 2003. That section of the Charter was replaced by Section 1.2.8, which provides that "no employee or appointed Charter officer shall have any other employment or hold any public office that is incompatible with his or her duties." The Board determined that there is no conflict of interest or incompatibility between this employee's employment with the city and his pre-existing consultant contract with the same department in the city. In particular, the Board found that there is not the type of conflict prohibited by Section 2-61 of the Code of Ethics, since the employee did not have any "direct official action" role in approving or negotiating for the city his consulting contract.

Case 04-35

A Deputy Police Chief requested an advisory opinion as to whether the Code of Ethics would permit civilian employees in the Police Department to solicit donations for a fundraiser to aid a fellow employee who is ill.

The Board of Ethics determined that solicitation of donations to assist a city employee affected by illness does not violate Section 2-60 of the Code of Ethics because it is a "charitable purpose" as allowed by sub-section (c) of that section; however the Board recommended that, in order to avoid the appearance of impropriety, the solicitation should only be done by city employees who are not in a position to take direct official action with regard to the donor. This would include civilians in the Police Department, but not police officers, who are in a position to enforce laws anywhere in the city.

Cases 04-36 and 04-37

A citizen filed inquiries (complaints) alleging that two city employees improperly failed to produce loans for his company and that the City and County of Denver owes him significant compensation for this failure. The citizen also complained that several other individuals who were employed by the city acted improperly regarding this matter from 1984 to the present.

The Board of Ethics dismissed these cases, indicating that the Board of Ethics only has authority and jurisdiction to administer the Denver Code of Ethics and no section of the Code of Ethics deals in any way with the type of allegations raised by the complaining party. The Board of Ethics also indicated that it has no authority to require or even recommend that the city pay compensation to anyone. In addition the Board stated that, pursuant to Section 2-56(3) of the Code of Ethics, the Board may not consider inquiries about actions that took place more than two years prior to the date of filing of the inquiry.

Case 04-38

A deputy sheriff requested an advisory opinion as to whether the Code of Ethics would permit her and her husband, also a deputy sheriff, to solicit donations and sponsorships for a fund-raising golf tournament for the Correctional Peace Officers' Foundation (CPO), a 501(c)(3) charitable tax-exempt organization. She indicated that neither she nor her husband have any "direct official action" power with regard to any contracts, etc., with the city or the Sheriff's Department. She indicated that the fundraising letters would be on CPO letterhead, rather that Sheriff's Department stationery.

The Board determined that the deputy sheriff and her husband would not violate the Code of Ethics if they solicit vendors, contractors bail-bond companies or other entities to donate to a fund-raising event for CPO, because CPO is a charity and the solicitation will be for a charitable purpose, as permitted by Section 2-60(c) of the Code of Ethics. The Board also found that neither she nor her husband is in a position to take direct official action with respect to any of the prospective donors. The Board recommended, however, in order to avoid the appearance of impropriety, that solicitation should not be done on City and County of Denver letterhead and that any other Denver Sheriff Department members who are in a position to take direct official action with respect to prospective donors should not participate in the solicitation of those prospective donors. In addition, the Board reminded the deputy sheriff that she and her immediate family members must not keep or use any of the donations and that solicitation and financial records should be maintained. (The latter requirement pertaining to records was added by the City Council in an amendment to section 2-60(c) on September 7, 2004.)

Case 04-39

A sergeant in the Police Department is assigned to direct a program for volunteers who wish to help and support the Police Department in various ways, Volunteers in Policing (VIP). He requested an advisory opinion to determine if the Code of Ethics would be violated if some of the volunteers would solicit gift certificates from various businesses to be given to police officers as part of a Thank the Officer program. He indicated that no police officers would be involved in the solicitation of gifts and that donors of gifts would not be able to select which officers would receive specific gifts.

The Board of Ethics determined that VIP volunteers are not "employees" of the city, as defined in Section 2-52(a) of the Code of Ethics and, in addition, are not in a position to take direct official action as defined in Section 2-52(b). Therefore, the prohibition in Section 2-60(a) against soliciting gifts by certain city employees, officers and officials, does not apply to VIP volunteers and they may solicit gifts to be given to police officers. The Board did note that this type of gift does not meet the intention of the "charitable purpose" exception in Section 2-60(c). The Board strongly recommended that no police officers should be engaged in the solicitation of gifts and that no Police Department stationery should be used in the solicitation, because police officers are able to "enforce laws" throughout the city, and, therefore, they can take direct official action with respect to any potential donor in the city.

Case 04-40

A citizen filed an inquiry (complaint) concerning the Mayor, indicating that the Mayor has an ownership interest in a restaurant very close to Denver Union Station and claiming that the Mayor should not publicly advocate in favor of the FasTracks initiative on the November 2, 2004 ballot which, if it passed, would fund the construction of several light rail transit lines converging at Denver Union Station. The citizen stated that passage of FasTracks would benefit the

Mayor's "personal self-interest" and would violate the Code of Ethics. The complaining party also described several policy disagreements that he had with FasTracks.

The Board of Ethics stated that the Board only has authority and jurisdiction to administer the Denver Code of Ethics and that no section of the Code of Ethics deals with these types of allegations and no section of the Code attempts to prohibit an elected officer or any city employee from expressing an opinion about a public issue. The Board re-iterated a statement from an earlier advisory opinion to the Mayor from 2003, Case 03-20 which said:

…The Board recognizes that, as chief executive of the City and County of Denver, you will be obligated to set general citywide policies for all city agencies and departments, including policies that will affect all restaurants in the city, and the Board recognizes that such general policymaking is neither unethical nor inappropriate…

The Board determined that FasTracks was a major general policy matter for the entire metropolitan area, not a specific issue that affected the Mayor's restaurant in particular.The Board dismissed the inquiry pursuant to 2-56(6)(a) of the Code of Ethics because the Board has no jurisdiction over these issues and pursuant to 2-56(b) because the allegations, if true, would not constitute violations of the Code of Ethics.

Case 04-41

A Workforce Center Manager of the Division of Workforce Development of the City and County of Denver's Office of Economic Development (OED-DWD) requested an advisory opinion. One of the manager's job responsibilities is to be the operations liaison with a college which has a contract to operate and manage OED-DWD's Quick Start project. The original decision by OED-DWD to contract with the college was made before the manager was employed by the City and County of Denver and he had nothing to do with the decision to contract with the college.

The college recently agreed to hire the manager's wife to be one of several case managers in the Quick Start program. The manager requested an advisory opinion as to whether the hiring of his wife will cause a violation of the Denver Code of Ethics.

The manager and his supervisors in OED-DWD advised the Board of Ethics that the manager is not in a position to take direct official action with regard to the contract with the college by negotiating, approving or recommending any approval or termination or modification of any future contract between OED-DWD and the college. His supervisors in OED-DWD advised the Board that he is the best choice to be the operations liaison with the college because his office location is in the closest geographic proximity to the college and because he has the required skills to be best able to monitor the operations of the Quick Start program.

The Board concluded that there would be a violation of Section 2-61 of the Code of Ethics if the manager recommends to the city that the contract with the college should be renewed or not, so long as his wife is employed by the college, and that there would not be a violation, so long as he does not make such a recommendation. The reasoning for this is that a favorable recommendation might benefit his wife's job situation within the college and an unfavorable recommendation might harm his wife's job situation. Also, the Board of Ethics stated its understanding that the manager will not supervise his wife in his capacity as operations liaison for the Quick Start program at the college, which would be a violation of Section 2-59(b) of the Code of Ethics.

Case 04-42

A department head filed an inquiry and requested the Board of Ethics to investigate the facts and to determine if a violation of the Code of Ethics had occurred by a supervisor in the department who requested and received loans of money from employees under the supervisor's supervision.

Preliminary investigation by the Board of Ethics confirmed that the supervisor had requested and received loans from some of the employees under the supervisor's supervision.

The Board of Ethics reviewed Section 2-60(a) of the Code of Ethics, which provides that city employees should not solicit or accept gifts (which include loans) from those over whom the city employee is in a position to take direct official action. The Board determined to dismiss this case, without having a hearing because 1) this is a case of first impression for the Board of Ethics and this issue had not earlier been publicized to city employees; and 2) the amounts of loans which the supervisor received recently were minor and have mostly been repaid.

The Board, however, stated that it strongly believes that it is a poor employment practice for a supervisor to solicit or to accept loans of any amount from an employee under his or her supervision. Such loans may lead to the appearance of impropriety, even if no intimidation of the employee is intended by the supervisor. The Board indicated that few employees would feel comfortable in refusing a loan to or requesting repayment of a loan from a supervisor. A supervisor often has a position of power over the employee, namely the power to reprimand, transfer to a less desirable assignment, suspend or terminate. Even if a supervisor is not the appointing authority with power to take such personnel actions directly, a supervisor has the power at a minimum to recommend such actions to the final decision-maker.

Case 04-43

An employee in the Division of Workforce Development (DWD) filed a request for an advisory opinion. DWD received a grant in 2004 from the federal government and DWD has contracted with two Denver non-profit agencies to administer the grant. The employee's daughter is employed as a case manager by one of those agencies. The employee wished to know if a violation of the Code of Ethics is caused by this situation.

The DWD employee's daughter has been employed by the non-profit agency for two years under a separate grant and the daughter has nothing to do with and she will not be paid with funds from the 2004 grant. The DWD employee indicated that she did not have any decision-making role in the selection of the two non-profits and did not prepare the application for the 2004 grant.

Conflicts of interest are regulated by Section 2-61 of the Code of Ethics. The Board determined that the DWD employee would not violate Section 2-61, particularly since she had no role in obtaining the 2004 grant or selecting her daughter's employer to administer a portion of the grant. The Board recommended, however, in order to avoid the appearance of impropriety, that, if the non-profit agency should transfer the daughter to any program being overseen by the DWD employee, she should not have any role whatsoever in supervising her daughter or recommending any type of personnel action relating to her daughter. In the future, the DWD employee should also not take any direct official action of any type regarding the federal grant under which her daughter is employed.

Case 04-44

A division chief in the Police department requested an advisory opinion to determine whether the gift section of the Code of Ethics would permit a police officer to accept a reward from a grateful citizen and, if not, the chief requested a waiver. The chief indicated that a police officer sustained severe cuts from broken glass and other injuries during a scuffle with a person suspected of using a stolen credit card at a store on the officer's beat. The store owner wished to present the officer with gift certificates from a restaurant totaling $100 along with a letter of appreciation.

Acceptance of gifts is governed by Section 2-60 of the Code of Ethics, including:

(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 or 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) Any reduction in price or any discount that is not similarly available to all city officers, officials, and employees on the same terms …

"Direct official action" is defined in Section 2-52(b) of the Code of Ethics and includes:

(1) Enforcing laws or regulations or issuing, enforcing, or regulating permits…(emphasis added)

In several past cases, the Board of Ethics determined that police officers are "in a position to take direct official action" concerning all citizens and businesses within their beat because they "enforce laws" in many different situations. Because of the unique responsibility of a police officer to enforce laws in many different situations on his or her beat, acceptance of a gift over the value of $25.00 by a police officer from the owner of a business on his or her beat would violate Section 2-60(a) of the Code. None of the exceptions in Section 2-60(b) apply to the facts of this case.

Because of the circumstances of this specific case, however, the Board granted a waiver to the officer pursuant to Section 2-54(f), which empowers the Board to grant a waiver "if it finds that the waiver will serve the best interests of the city." The gift from the store owner was modest in size, was unsolicited, expressed appreciation for service as well as for injury suffered in the line of duty and was not motivated by any desire to gain favor with the officer or the Denver Police Department.

Case 04-45

A landscape architect in the Parks and Recreation Department requested an advisory opinion concerning outside employment or business activity. The employee's work responsibilities include managing capital improvement projects within the Denver parks system, including playground renovations. As project manager, he oversees the budget, design and construction and has the responsibility of specifying the type of materials / equipment that will be used on such projects. Regarding playground renovation projects, he typically manages between one

and two projects a year. He does not supervise any other landscape architects in the Parks and Recreation Department.

He wished to seek an outside employment opportunity in which he would market and sell playground equipment on weekends and evenings to users such as developers, churches, day-care centers, schools, parks and recreation districts on behalf of a new American branch of an international manufacturing company which has never done business in Denver or Colorado before. The employee advised the Board of Ethics that, even though landscape architects for the city can decide which products to order for their projects, he will refrain from ordering or recommending any equipment from the company which he wishes to represent for any of his City and County of Denver projects and that he will defer such decisions to others in the Department.

Section 2-63 of the Code of Ethics requires that city employees must obtain written approval from their appointing authorities before engaging in outside employment or outside business activity.

Section 2-61, which governs conflicts of interest, specifies that a city 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, among other things, if he or she, a member of the immediate family, a business associate or an employer other than the city is the other party in the matter. The Board determined that the employee has "direct official action" authority regarding purchases for his projects in the Parks and Recreation Department. To avoid a conflict however, he agreed that he will not "influence the purchasing decisions of any of my co-workers or specify the playground equipment for any project that I am personally managing as an employee of the City and County of Denver."

The Board has determined that the employee will not violate the Code of Ethics so long as he obtains written permission from his appointing authority to sell equipment on behalf of the company and so long as he does not recommend or negotiate or approve any contracts between the City and County of Denver and the company. If he does recommend or negotiate or approve any such contracts, that would be a violation of Section 2-61.

In addition, the Board strongly recommended that he should not do any of his outside work during city time or with city equipment or office space or stationery and that he should not use any confidential city documents or databases in his outside employment. The Board also strongly recommended that he should not attempt to influence any of his Parks and Recreation co-workers to order equipment from the company.

Case 04-46

A detective in the Police Department, who has recently graduated from law school and passed the Colorado bar examination, requested an advisory opinion to determine whether the Code of Ethics will allow him to practice criminal and/or civil law in his off-duty time.

Section 2-63 of the Code of Ethics requires that a city employee must obtain written permission from his or her appointing authority before engaging in outside employment or outside business activity. In this case, the Chief of Police will have the ultimate decision.

The Board of Ethics determined that, so long as he obtains written approval from the Chief of Police, he will not violate the Code of Ethics by practicing civil and/or criminal law in off-duty time. The Board, however, strongly recommended that he should observe nine conditions which were outlined in the Board's letter to the detective.

It should be noted that Career Service Authority Rules 15-41 through 15-43 prohibit, with certain exceptions, the private practice of law by "all attorneys of the Department of Law." This, however, does not apply to a police officer who is an employee of the Department of Safety.

Case 04-47

A citizen filed an inquiry concerning an employee of the Denver Community Planning and Development Department (CPD). Different divisions of CPD administer the zoning code, investigate allegations of zoning violations and issue building permits. If a zoning violation is found by the Neighborhood Inspection Services Division (NIS), NIS cooperates with the City Attorney's Office to issue cease and desist orders that can be prosecuted in the Denver County Court.

The citizen has claimed for several years that her next-door neighbors are violating zoning regulations by operating a business illegally out of their residentially-zoned home and garage. She or her son made numerous videotapes of what they allege are illegal activities by the next-door neighbors. Based on their complaints, NIS inspectors issued a number of cease and desist orders to the neighbors and court cases were filed; however, these cases were either resolved before trial and/or dismissed by the County Court.

On a number of occasions, the CPD employee had telephone conversations with the citizen and her son and wrote several letters to them explaining the status of their complaints. On at least one occasion, he drove by and observed the situation at the neighbors' home. On another occasion, he met with the complaining party's son.

The Board of Ethics stated that the complaining party and her son apparently believe that the CPD employee was rude, incompetent and/or biased in dealing with their complaints against the neighbors. The Board determined that none of these allegations, even if true, would violate any provision of the Denver Code of Ethics and found that the weight of evidence indicates that not only the CPD employee, but also several other city employees went far beyond the call of duty to investigate these numerous complaints and to communicate frequently in a fair and courteous manner with the complaining party and her son.

The Board of Ethics dismissed this inquiry pursuant to section 2-56(6)(a) of the Code of Ethics because the Board does not have jurisdiction over complaints of this nature and also pursuant to section 2-56(6)(b) because the alleged violation, if true, would not constitute a violation of the Code of Ethics.