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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
July 1– December 31, 2007

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between July 1 and December 31, 2007 in response to fact-specific requests for advisory opinions or complaints. **They should not be used as conclusive guidance for situations where the facts may differ**.

Case 07-5

A citizen filed a complaint alleging that a member of the Denver Landmark Preservation Commission (LPC) acted unethically by making an offer to purchase real property which was being considered by the LPC for recommendation to the Denver City Council for designation as a landmark district. The price offered (which was not accepted) was substantially less than the owners (who opposed the landmark designation) had listed the property for. After a public hearing, the Board of Ethics decided that the LPC member had not violated the conflict of interest section of the Code of ethics (2-61) because she abstained from voting on the recommendation that the property should be designated a landmark district. The Board of Ethics also decided that there was not clear and convincing evidence that she had violated Section 2-67 of the Code of Ethics, which prohibits the use of public office for private gain, because there was no evidence that she would gain financially if she had purchased the property. The Board found,

however, that the LPC member had violated the legislative intent of the Code of Ethics (Section 2-51) by creating an appearance of impropriety, stating that "to become personally involved after the petition for designation had been filed was an error in judgment which does not comply with the spirit of the Denver Code of Ethics."

Cases 07–19, 07–21, 07–22, 07–25, 07-26, 07-45 and 07-46

The Board of Ethics dismissed all of these complaints against employees of the District Attorney's Office because the allegations of misconduct relating to the handling of criminal charges filed against the complaining individuals are not subjects covered by the Denver Code of Ethics.

Cases 07-23 and 07-24

These complaints by a city employee against two co-workers in the Denver County Court, which alleged various improper conduct and poor business practices such as mishandling of records and computers were dismissed by the Board of Ethics which found that none of the allegations, even if they could be proven, would be violations of the Denver Code of Ethics. The Board, however, with the complaining party's permission, forwarded the complaints to the agency heads for review.

Cases 07-27 and 07-28

These complaints by two inmates of the Denver County Jail against employees of the Denver Sheriff's Department were dismissed by the Board of Ethics. The complaints alleged that the employees unfairly and/or incompetently "wrote up" the inmates in the Community Corrections programs. The Board of Ethics decided that such issues are not regulated by the Denver Code of Ethics.

Cases 07-29 and 07-30

The Board of Ethics dismissed these complaints against police officers because allegations that persons have been improperly arrested or criminally charged are not subjects covered by the Denver Code of Ethics. The Board informed the complaining party of his right to file a complaint with the Office of Independent Monitor.

Case 07-31

An employee at Denver International Airport requested an advisory opinion regarding the decision by the Contractor Licensing Division to deny his application to renew his HVAC supervisor certificate, which he would have needed to continue his outside employment with a private contractor, which had been approved by his city appointing authority. The Board of Ethics concluded that there would not be a conflict of interest or any other violation of the Denver Code of Ethics for him to work for that outside contractor, so long as he has written annual permission of his appointing authority. The Board, however, decided that it does not have authority to override a decision by the Contractor Licensing Division or any other city agency or to interpret or apply sections of the Denver Building Code. The Board suggested the employee might wish to ask the Contractor Licensing Division to reconsider the denial of the certificate.

Case 07-32

An employee in the Office of the Denver Medical Examiner requested an advisory opinion. He was considering running for the elected office of coroner in a large adjoining county. If he were to be elected, he wished to continue to work in his present full-time city job for a few more years until retirement. The Board of Ethics advised the employee that:

- He may not serve as the paid coroner in another county unless he receives written annual permission from his appointing authority pursuant to Section 2-63 of the Code of Ethics
- The Board concluded that his current city job was incompatible with being the elected coroner in a large adjoining county in violation of Section 2-61(g) of the Code of Ethics because "one person could not do justice to the demands of the two jobs" and because Denver and the other county share a long border, "there is a risk of many conflicts of interest or issues between the two county offices when the exact place of a death, and therefore jurisdiction, may be uncertain.

Case 07-33

A city employee who has applied for a promotion to a management position requested an advisory opinion. The employee is serving as an unpaid

president of a labor union local which represents a number of employees, supervisors and managers of the City and County of Denver. He wished to know whether membership in a labor union and/or holding unpaid office in a labor union precludes acceptance of a managerial position with the city. The Board of Ethics analyzed Section 2-61 of the Denver Code of Ethics and determined that the Code of Ethics does not prohibit a city employee who is a union member or a union officer from being considered for or being promoted to a management position. The Board, however, encouraged the employee to analyze with his appointing authority: 1) whether there would be any specific situations in which the union membership or officership might become "incompatible with his duties or that adversely affect the interests of the City," which is prohibited by Section 2-61(g) of the Code of Ethics; 2) whether the time commitments as a union officer would compromise the time commitments of the management job and 3) what should be done if the union were to initiate an effort to obtain collective bargaining rights for employees in the employee's department (in which case, the Board suggested that he should probably resign his union officership).

Case 07-34

An employee in the Public Works Department who is in a position to negotiate contracts and select vendors requested an advisory opinion regarding a potential conflict of interest. Her spouse is the owner of a small engineering firm, which does not have any current or pending contracts with the City and County of Denver. The Board of Ethics determined that, if she were to take any direct official action regarding her husband's engineering company, she would be in violation of Section 2-61 of the Code of Ethics. The Board advised that, if a transaction came to her attention in which her husband's company is involved as a contractor or subcontractor or in which she has reason to believe that his company is likely to be involved, she must abstain from any involvement in the transaction by following section 2-61(f) by:

- Disclosing the conflict to her supervisor or appointing authority
- Not taking any action regarding the transaction, including reviewing bids or other documents related to the transaction, interviewing bidders, signing any documents, overseeing the project, etc.
- Not attempting to influence others in dealing with the transaction
- Working with her supervisor or appointing authority to ensure that the transaction is assigned to someone without conflicting interests

The Board also advised that if the engineering firm were to be hired by a contractor to be a subcontractor after a bid has already been awarded or a purchase order issued, she should also follow the steps above.

Case 07-36

The Board dismissed this complaint by a city employee against the office manager in her agency in the Department of Safety, alleging "unfair and punitive" decisions regarding compensation and leave decisions. The Board determined that these types of personnel issues are not regulated by the Denver Code of Ethics.

Case 07- 38

A member of the board of directors of the newly-established Denver Preschool Program (DPP), a private non-profit organization, requested an advisory opinion regarding DPP's search for an executive director. DPP resulted from a Denver ballot issue imposing an additional sales tax to assist preschool families and programs. The two finalists for the position were both city employees and the question was whether Section 2-64(a) of the Denver Code of Ethics applied to these employees. That section provides:

> **Sec. 2-64. Subsequent employment.**
>
> (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.

The Board of Ethics determined that one of the finalists had no involvement in setting up the ballot issue or the programs for DPP and, therefore, would not violate Section 2-64(a) if he were to be hired as the executive director of DPP. The Board found that the other finalist had been involved as a city employee in a number of DPP activities, including staffing a DPP subcommittee which developed the job description for the executive director. The Board of Ethics concluded that these activities amounted to "direct official action" and created the potential for a violation of Section 2-64(a) if that employee were to be hired as executive director of DPP without waiting six months. The Board, however, granted the second finalist a waiver, pursuant to Section 2-54(f) of the Code of Ethics. The Board found

that a waiver was in the best interests of the city for several reasons which included:

- The mission and goals of the City and County of Denver and DPP are very similar – encouragement of the young children of Denver to have high quality learning experiences. The city and DPP are not competitors in this effort, but their efforts will be complementary.
- A waiver would also enable the DPP board to be able to choose from two finalists in the very near future, instead of being limited to one or re-opening the search process, which would likely delay the process at least for several weeks.

Case 07-39

An employee of the lost and found department at Denver International Airport and the DIA human resources director requested an advisory opinion concerning a gift given to the employee. The employee had assisted an airline passenger by finding and arranging to send to the passenger's home a misplaced piece of luggage which contained medication for the passenger's son and other valuable items. The passenger sent the employee a monogrammed heart keychain from Tiffany and Company, which the employee determined was worth approximately $95.00.

Acceptance of gifts by city employees, officers or officials is regulated by Section 2-60 of the Code of Ethics:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> (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:…
>
> > (5) Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of twenty-five dollars ($25.00) or less, such as inexpensive tee shirts, pens, calendars, books, flowers, or other similar items;

The Board of Ethics found that the employee was not in a decision-making position to take direct official action with regard to the airline passenger; nor did the passenger have "an existing, ongoing, or pending contract, business, or regulatory relationship" with the City and County of Denver." In addition, the gift from the grateful airline passenger was unsolicited and modest in value. Therefore, the Board found that the employee would not violate Section 2-60 by accepting the gift. In addition, the gift would not be very useful to anyone else except the employee, or someone with the same initials, because the passenger had the gift monogrammed.

The Board also determined that, if DIA has a stricter ethics policy discouraging or prohibiting acceptance of any gifts by employees, an advisory opinion or a waiver from the Board of Ethics does not overrule a stricter departmental ethics policy, pursuant to Section 2-51 of the Code of Ethics. However, the Board urged individual city departments to consider the specific facts and circumstances of each case and also any findings and recommendations from the Board of Ethics.

Case 07-40

A labor union trustee filed a complaint, on behalf of a union member, against a division manager in the General Services Department concerning issues about hiring personnel to maintain the Webb Municipal Office Building. The complaint alleged that the division manager 1) violated Section 2- 62 of the Code of Ethics by hiring employees of the private management/maintenance company to take over the maintenance work on behalf of the city, since the division manager had earlier been employed by the same company and 2) unfairly denied city employees an opportunity to compete for the Webb Building jobs.

Section 2-62 provides:

> **Sec. 2-62. Prior employment.**
>
> …Officers, officials, and employees shall not take any direct official action with respect to their former employers for a period of six (6) months from the date of termination of the prior employment.

The Board found that the division manager left his employment with the private company approximately one year before he hired the private company employees to become city employees. In addition, he hired individual (former) employees of the company, not the company itself.

The complaint also alleged that the division manager acted in his city job to hire many employees of his former employer to maintain the Webb Building without allowing other city employees to compete for the jobs pursuant to Career Service Authority hiring rules. However, no specific details of such unfairness were given. In addition, the Board of Ethics, in most situations, does not have jurisdiction to hear complaints or appeals regarding the Career Service Authority hiring process.

The Board of Ethics dismissed the complaint because the Board has no jurisdiction over personnel or hiring issues of this type and because there was no evidence presented of a violation of the Code of Ethics.

Case 07-42

An employee of Technology Services requested an advisory opinion. She had been invited to a conference to be conducted by a major computer software company. The City and County of Denver uses a significant amount of software from the company and the employee is responsible for dealing with many of the applications. The employee indicated that she is not the person in Technology Services who signed or approved any contracts with company; however she will likely have a role in reviewing or recommending in favor of or against any potential renewals of contracts with the company. The company asked the employee to speak on a panel at the conference regarding Denver's 311 program and offered to waive her conference fee, as it does for all speakers. For a non-speaker, the conference fee would be approximately $1600. A person with a pass to the conference is able to attend all conference sessions, attend exhibits and network with

fellow attendees. Technology Services would pay for the employee's hotel lodging and air-fare from its budget. The employee and also the company wished to know if acceptance of the waiver of the conference fee would comply with the Denver Code of Ethics.

Gifts are regulated by Section 2-60 of the Denver Code of Ethics:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> (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;
>
> (2) Any honoraria or payment for participation in an event;..

The Board of Ethics determined that the employee is "in a position to take direct official action" with respect to the company by virtue of her likely role in recommending for or against renewal of a contract with the company and that "the city has an existing, ongoing, or pending contract, business, or regulatory relationship with" the company. Therefore, the employee must comply with section 2-60 of the Code of Ethics. However, the Board finds that the waiver of the conference fee does not amount to a gift as defined in Section 2-60(a), because it is "adequately compensated" for by the employee's preparation for and participation on the panel. The Board, however, urged the employee to comply with Section 2-60 by using the conference pass for activities that would benefit the city and not for any events which involve recreation or personal gift items.

Case 07-43

An employee and the human resources and operations manager in the Community Planning and Development Department (CPD) asked for an

advisory opinion and/or a waiver regarding supervision of an immediate family member. The employee has worked at CPD in various capacities for several years. Her daughter was recently hired as an administrative support assistant in CPD. CPD has asked the employee to step in temporarily to supervise/monitor the work group in which her daughter is working because the former supervisor did not pass the promotional probationary period. This would only be until a permanent supervisor is hired. Supervision of immediate family members (including daughters) is prohibited by Section 2-59(b) of the Denver Code of Ethics; however subsection (c) provides that the Board off Ethics should "not unreasonably withhold waivers:"

Section 2-59. Employment and supervision of family members

(b) No officer, official, or employee shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.

The Board of Ethics found that the facts that the supervision will be temporary, the mother is familiar with the supervisory position since she held that position a year ago, the supervisory arrangement was neither arranged nor motivated by the mother or the daughter and the mother will not take any direct personnel actions regarding her daughter all indicate that a waiver (authorized by Section 2-54(f) of the Code of Ethics) would be in the "best interests" of the city. The Board, therefore, granted a waiver from Section 2-59(b) of the Code of Ethics to the employee to allow her to supervise her daughter for a period of approximately ninety days, on condition that she not take any direct personnel actions regarding her daughter.

Case 07-44

Two city employees assigned to the Denver Urban Area Security Initiative (UASI) requested an advisory opinion. UASI coordinates federal homeland security programs and funds for the City and County of Denver and the Denver metropolitan area.

The employees indicated that they had ethical concerns about their continued involvement with a new non-profit program, the mission of which is to carry out citizen preparedness educational and informational activities One of the city employees is acting as Project Manager and Director of Training for the nonprofit and devotes approximately one-half of her city time to the nonprofit. The governing body and decision-maker for the nonprofit is a working group, comprised of representatives of member jurisdictions in the Denver region. The City and County of Denver will need to contract with the nonprofit to carry out citizen preparedness educational and informational activities. Neither of the city employees is a member of the working group and neither will be officers or board members of the nonprofit, but will serve in advisory capacities.

The ethics issue is whether or not there might be a conflict of interest between their work as city employees and their work as advisory board members or in any other role with the nonprofit. Conflicts of interest are regulated by Section 2-61 of the Code of Ethics.

The Board of Ethics concluded that their important roles in establishing the nonprofit and in obtaining federal funding for the nonprofit's programs amount to "direct official action" as defined in Section 2-52(b) of the Code of Ethics, particularly "recommending for or against a contract." This would normally prohibit them from taking any further "direct official action" on the city's behalf with respect to the nonprofit, pursuant to Section 2-61(a)(5) since their work in negotiating the contract or preparing a bid, proposal, response to a request for qualifications, or similar document for another party in the matter" was more significant than a purely clerical capacity.

However, the Board determined that it was in the best interests of the city for both employees to continue to be involved in the nonprofit's important work and therefore, the Board granted both a waiver pursuant to Section 2-54(f) of the Code of Ethics.

The Board also reminded the employees that they should not take payment from the nonprofit for any outside employment services without complying with Section 2-63 of the Code of Ethics and should not consider subsequent employment with the nonprofit without complying with Section 2-64(a) of the Code of Ethics.

Case 07-47

The Board of Ethics dismissed this complaint against an attorney in the Public Defender's Office because Public Defenders are not subject to the Denver Code of Ethics and because the allegations of improper sentencing and/or inadequate legal representation are not subjects covered by the Denver Code of Ethics.