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DENVER BOARD OF ETHICS
WEBB MUNICIPAL BUILDING
201 West Colfax, 2nd Floor - (2.H-13)
Department 703 - (for U.S. Mail)
Denver, CO 80202-5330
E-mail: michael.henry@denvergov.org
Website: www.denvergov.org/ethics
Phone: (720) 865-8412
Fax: (720) 865-8419

DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
July 1– December 31, 2012

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between July 1 and December 31, 2012 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 12-32 (conflict of interest)

A former city employee filed a complaint alleging that the employee's former supervisor had a conflict of interest because the supervisor's spouse received payment for providing training to young people through a non-profit organization that partnered with the city agency. The Board dismissed the complaint after determining that the city supervisor had not taken any direct official action relating to hiring or paying the spouse.

Cases 12-33 and 12-34 (no jurisdiction)

A citizen-author filed complaints about 2 city employees, alleging unfairness and mismanagement of the One Book One Denver program, which resulted in the author's book not being selected for the 2012 program. The Board of Ethics dismissed the complaints, indicating that there was no evidence of conflict of interest or any other violation of the Code of Ethics and that the Board has no jurisdiction, authority or expertise to involve itself in the administration of this city program.

Case 12-35 (gifts)

An administrator at the new Police Department Crime Lab requested an advisory opinion on 3 issues regarding acceptance of travel expenses.

First Issue. He had been invited by the construction company that built the crime lab to be a speaker at a conference in California hosted by two federal government departments and a non-profit association. The construction company offered to pay for his travel and lodging expenses.

The city administrator was a member of the selection committee that recommended the company for the construction contract, he had a substantial role in overseeing the construction and has recently continued to work with the company on a final "punch list" to complete remaining items on the construction job. As soon as the punch list corrections are completed, he will have a major role in resolving any possible future warranty issues.

Section 2-60(a) of the Code of Ethics provides:

> **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** (emphasis added):
>
> (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation…
>
> (6) Travel expenses and lodging…

If a person would violate 2-60(a) by accepting a gift, one of the exceptions in 2-60(b) is:

> (7) Reasonable expenses paid by non-profit organizations or other

> governments for attendance at a convention, 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 of Ethics concluded that the administrator had "direct official action" power regarding the construction company since he served on the panel to select the construction company and continues to have such power in working with the company on the punch- list and, later, will have such power regarding any issues relating to the warranty. Therefore, the Board concluded that he is prohibited by Section 2-60(a) from accepting travel expenses from the company. Since the company is for-profit, the exception in 2-60(b)(7) does not apply.

The Board then considered whether to grant a waiver to allow the administrator to accept travel and lodging expenses to attend the conference pursuant to Section 2-54(f) of the Code of Ethics, because his attendance will be "in the best interests of the city." Although the Board believes that waivers for travel expenses should be rare, in this case the Board decided to grant him a waiver because it found that his attendance at the conference will be in the best interests of the city by helping to showcase Denver's commitment and national leadership in sustainable building practices as well as Denver's new cutting-edge DNA-certified crime lab at a conference devoted to that subject.

Second Issue. A for-profit company that sells laboratory consumables used in forensic laboratories invited the administrator to speak at conferences in Miami and Charlottesville. The company would pay for his travel and lodging expenses. The administrator advised the Board of Ethics that the crime laboratory orders only one product from this company infrequently that costs less than $200.00 and that he has no role in the decision to purchase this product, as the DNA scientists in the laboratory are responsible for those decisions. In addition, he indicated that attendance at the conferences will provide continuing education to him on changing scientific developments and practices and will help disseminate the lab's research results. The Board concluded that the administrator does not have a "direct official action" role regarding negotiating, approving or administering the purchase orders for the small purchases from the company. Therefore, the Board determined that Section 2-60(a) would not prohibit him from accepting travel expenses from the company.

Third Issue. The administrator also wished to know whether city personnel may accept travel expenses or other gifts "on their own time" if it would violate the Code of Ethics for them to accept such a gift during work time. The Board determined that if acceptance of a gift by any city officer, employee or official would violate the Code of Ethics, there is no difference whatsoever between whether it is accepted during city time or off-duty time. The intention of the gift section of the Code of Ethics is the same in either case – "to avoid special influence by those who give gifts to city officers, employees or officials."

Cases 12–36 through 12-42 (no jurisdiction)

Two citizens filed 7 complaints concerning members and an employee of the Board of Adjustment for Zoning Appeals, an employee of the Zoning Administration and an Assistant City Attorney alleging mishandling of an appeal that they had filed regarding a zoning permit received by a neighbor. The Board of Ethics dismissed the complaints because it has no jurisdiction over such issues and, in addition, because they were filed more than 2 years after the actions complained about had taken place, which complaints may not be considered by the Board pursuant to Section 2-56(3) of the Code of Ethics.

Case 12-43 (use of public office for private gain, improper use of confidential information)

A city employee filed a complaint concerning a co-worker, alleging that the co-worker used city facilities and equipment for personal purposes and improperly accessed e-mails not directed to him. The Board of Ethics concluded that, if it could be proven, personal use of city facilities or equipment at no cost could be violations of Section 2-67 of the Code of Ethics and unauthorized access to another city employee's e-mails could be a violation of Section 2-68. However, the Board dismissed this complaint because there does not appear to be "clear and convincing evidence" (the standard required by section 2-56(13) of the Code of Ethics) which would substantiate any violations of the Code if the Board were to decide to have a public hearing in this case.

Case 12- 44 (no jurisdiction)

An electrical contractor filed a complaint concerning an electrical inspector, alleging that the inspector made rude comments and vindictively initiated a summons and complaint for doing work without a permit. The Board of Ethics concluded that, even if the allegations could be proven, the behavior would not violate any section of the Code of Ethics. The Board indicated, however, that it does believe that all city employees should be courteous and respectful to everyone that they deal with.

Case12- 45 (improper use of confidential records)

A suspended police officer filed a complaint alleging that a Police Department employee improperly disclosed information that was confidential and/or false, which, if proven, might have violated Section 2-68 of the Code of Ethics. The Board dismissed the complaint because it was filed more than 2 years after the disclosure complained about had taken place, pursuant to Section 2-56(3) of the Code of Ethics.

Cases 12 – 46 (use of public office for private gain)

A city employee filed a complaint alleging that a supervisor on many occasions arrived late for work and did not properly "clock-in" to the City's Kronos time-keeping system and, on one occasion, used a city facility for personal use. The Board of Ethics decided that**,** if it could be proven, failure to work for the requisite number of hours per pay period could amount to a violation of Section 2-67 of the Code of Ethics:

> **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.

The Board of Ethics stated that it "is concerned that all city employees should work the requisite number of hours per pay period on city business. However, the Board dismissed this complaint pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics. Such allegations can best be handled by supervisors administering the Career Service Authority Rules, rather than by the Board of Ethics. The Board of Ethics does not have the expertise or the authority to be in the position of time-clock or payroll monitors or auditors."

Cases 12-47 through 12-49 (improper use of confidential information, use of public office for private gain)

The Mayor's Office terminated the employment of a Mayoral appointee. The attorney for the former appointee filed complaints against the Mayor, the Mayor's Press Secretary and a city employee who had complained about alleged misconduct by the former appointee. The complaints to the Board of Ethics alleged that the Mayor and the Press Secretary had improperly disclosed confidential information, in violation of Section 2-68 of the Code of Ethics, and that the employee had accused the former appointee for private gain in violation of Section 2-67.

The Board of Ethics concluded that the Mayor and the Press Secretary did not violate Section 2-68, because they responded briefly and discreetly to requests from the press and that they did not disclose any information or records except in the performance of their official duties or as required by law, namely, the Colorado Open Records Act.

The Board also concluded that there is no evidence that the city employee's complaint about misconduct by the former appointee had anything to do with "private gain" within the meaning of Section 2-67 or that the employee attempted to benefit from this situation.

The Board also concluded that the former appointee was an "at-will" appointee of the Mayor to serve at the Mayor's pleasure and could be terminated without any written specifications or protection of Career Service procedures or hearings. Appointees of any Denver Mayor are not Career Service–protected. The issues relating to this termination are governed by employment law and not the Code of Ethics.

The Board of Ethics dismissed all 3 of these complaints under Section 2-56(6) of the Code of Ethics because there was not sufficient evidence or information of any violation of the Code.

Case 12-50 (no jurisdiction)

This complaint was dismissed because it named a state employee, rather than a Denver officer, employee or official.

Case 12-51 (hiring or supervision of immediate family)

The Clerk and Recorder and the Director of Elections requested an advisory opinion regarding hiring or supervision of immediate family members during election periods**.** In an opinion dated May 8, 2002 in Case 02–13, the Board of Ethics denied a waiver request to allow Election Commission personnel to hire their own immediate family members to substitute for temporary election workers who have cancelled and are unable to work on election days. The Board concluded in 2002 that the hiring by family members of any members of their own immediate families without a waiver would violate Section 2-59(a) of the Code of Ethics:

> **Sec. 2-59. Employment and supervision of family members.**
>
> The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members.
>
> (a) Unless he or she obtains a waiver pursuant to section 2-54, no officer, official, or employee shall appoint or hire a member of his or her immediate family **for any type of employment, including, but not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.** (emphasis added)

The Clerk and Recorder and the Elections Director asked whether the opinion in Case 02-13 is still applicable in light of a number of conditions that have changed since 2002. Those changed conditions include:

- The Election Commission has been disbanded and changed, due to a Charter change, to the Elections Division.

- Two opinions from Assistant City Attorneys state that "election judges are not employees," for purposes of analysis under Federal Fair Labor Standards Act, tracking them under the city's Kronos timekeeping process, I9 verification and Career Service Rules regarding recruitment, classification and benefits.

- The current system of selecting temporary election workers and judges is based upon lists submitted by the major political parties and those on the lists must undergo criminal background checks and must attend a training class and obtain a passing score on a test. About 2000 persons are assigned for each major election according to an algorithm in a computer program. The Election Division would not assign relatives to the same polling place and do not allow any candidates or relatives of candidates to be election workers or judges.

- This practice has developed a list of approximately 150 "contingencies" – additional persons who have undergone this process and who will be readily available to fill in if assigned judges or workers do not show up for any reason.

Section 2-52(a) of the Code of Ethics defines "employee" as:

> (a) *Employee* means any person in the employ of the city or of any of its agencies or departments and any person employed without compensation under the terms and provisions of chapter 18, article II, division 19 of this Code.

The Board of Ethics concluded that the term "employee" in Section 2-59(a) includes temporary election judges or workers, even though the term "employee" does not include such short-term workers for many other purposes.

The Board of Ethics also wished to clarify that Section 2-59(a) does not prohibit more than one immediate family member from serving as election judges or workers, but only prohibits a city person from hiring or supervising a member of his or her own immediate family as an election worker or judge. As in 2002, the Board does not wish to grant waivers for this purpose. However, due to the current selection practices for temporary workers in the Elections Division, it does not appear that there will be any likelihood of anyone in the Elections Division being able to or needing to hire a member of his or her own immediate family. Family members of City employees are allowed to apply for and serve as election judges or temporary workers based on the current system described to the Board, as long as they are not assigned or supervised by their own immediate family member. The process, mandated by state statute (C.R.S. 1-6-101), is acceptable and does not appear to result in the hiring of immediate family members within the meaning of the Code of Ethics. Under the process for developing the statutory list of 2,000 and assigning election judges from the list, City employees do not and are not able to assign or give preference to family members because the assignments are done according to a computer program and/or a coordinator who would not himself or herself be assigning family members.

Cases 12–52 and 12-53 (travel expenses)

Two executives with the Office of Economic Development and Denver International Airport requested an advisory opinion and/or waivers with regard to 2 offers of free airfare for several city government personnel. The **first request** concerned Volaris Airlines, which will inaugurate flights between Denver and Mexico City on December 8, 2012. DIA and OED have been working since 2009, when Volaris established a partnership with Southwest Airlines, to establish such an international flight. The request was for a waiver to allow acceptance of free airfare from Volaris between Denver and Mexico City on December 6 and December 8, 2012 as follows:

> We are requesting a waiver for the Mayor, three members of Denver City Council and two Mayoral appointees. The only request is for airfare; there is no request to cover lodging or any other function as these items were not offered by Volaris or any other entity. Lodging, transportation and meals will be covered by the City & County of Denver. The estimated value based on current ticket prices is $653 per ticket… Meetings will include discussions with serious prospects related to both new and increased foreign investment from Mexico into Denver. In addition, the Mayor will meet with officials from the City of Mexico City to discuss increased ties and he will also meet with the CEO of Volaris to discuss the new service. The trip also offers the opportunity to promote Denver as both a tourist and business destination to one of Denver's most important markets through a reception that the City of Denver will host in Mexico City…

The Board of Ethics concluded that the Mayor, any City Council members and probably the Mayoral appointees will be responsible for negotiating and/or approving/and/or administering any leases or contacts between DIA and Volaris. Thus, they are in a position to take direct official action with respect to Volaris. Therefore, any of those city personnel or members of their immediate families who accept such travel expenses would be in violation of 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:…**(emphasis added)
>
> (6) Travel expenses and lodging;

The exception in Section 2-60(b)(7) –

> Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, 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;

does not apply because Volaris is not a nonprofit organization or government. The next question is whether the Board should grant waivers. The Board of Ethics is empowered to grant a waiver, pursuant to section 2-54(f) of the Denver Code of Ethics if the acceptance of the travel expenses would be "in the best interests of the city." The requestors advised the Board of Ethics:

> New international air service has a tremendous impact on Denver's economy in terms of job creation and GDP growth and is a priority of Mayor Hancock's administration. Approval of these waivers is in the best interests of the City because these trips (to Mexico City and also Tokyo) are designed to leverage the new air service to generate new business and tourism activity for the City over the long term. Such activity will boost the economy, create jobs and benefit the citizens of Denver. Both trips are focused on business outcomes with full meeting agendas for each business day; therefore, spouses will not be invited to participate on either of these trips.

The Board granted the requested waivers for airfare for 6 city persons from Volaris for the Mexico City inaugural flight, concluding that "the successful negotiation of this international air connection and the outcome of various meetings with government officials and potential investors in Mexico City will generate significant economic benefit, including trade and tourism, to Denver and Colorado, which is in the best interest of the city. The Board also stated "it is clear to the Board that the Denver personnel will be doing much productive work during their trips."

The **second request** was very similar. United Airlines will be inaugurating flights between Denver and Tokyo, Japan on March 31, 2013. DIA and OED have been working for more than 10 years to establish such an international non-stop flight. The request was for a waiver to allow acceptance of airfare from United Airlines between Denver and Tokyo on March 31, 2013 as follows:

> This marks Denver's first-ever nonstop flight to Asia and culminates decades of efforts by various administrations and community leaders. Flights will operate daily on United's new Boeing 787 aircraft. This new service is estimated to generate more than $130 million in annual economic impact and create close to 1,500 new jobs across the state.
>
> To help promote this new service, Mayor Hancock will lead a delegation to Japan traveling on the outbound inaugural flight from Denver to Tokyo on Mar. 31. The group will participate in three full days of business and governmental meetings in Tokyo including: presentations to Japanese chambers of commerce and export promotion agencies; meeting with the Ministry of Foreign Affairs; meeting with United's Star Alliance partner All Nippon Airways (ANA); and meetings with foreign investment prospects. In addition, the Mayor will take part in media interviews and several large events at which he will promote Denver, Denver International Airport and the value of this new flight. Denver is a relatively unknown entity in Asia, and the success of this new flight depends heavily on our efforts to promote Denver and the connectivity provided at Denver International Airport.

> We are requesting a waiver from the Board of Ethics regarding payment of airfare by City & County of Denver officials to Tokyo, Japan, for activities related to this new service by United. United has offered to waive the airfare for a select number of officials, including, but not limited to, City & County of Denver officials. Specifically, we are requesting a waiver for the Mayor, two members of Denver City Council, three Mayoral appointees and two Department of Aviation staff. The only request is for airfare; there is no request to cover lodging or any other function as these items were not offered by United or any other entity. Lodging, transportation and meals will be covered by the City & County of Denver. The estimated value based on current ticket prices is $3,500 per ticket.

The Board of Ethics adopted the same reasoning as above regarding Volaris Airlines and concluded that acceptance of the free airfare from United Airlines would violate section 2-60(a). However, the Board decided to grant the requested waivers for airfare for 8 city persons from United Airlines for the Tokyo inaugural flight since it would be in the best interests of the city.

Case 12-54 (outside employment)

An employee in the Office of Economic Development (OED) requested an advisory opinion regarding possible outside employment. The employee is a Program Coordinator for a federally-funded grant program in OED's Youth Services Division. The employee recently formed a company to provide consulting, mediation and restorative justice services. She advised the Board of Ethics that:

> Several different government and community organizations will refer youth to *Work 4 $uccess* training and, based on assessment, qualified youth will then be referred to case management. Among the organizations referring, will be Denver District Attorney's Office of Diversion. There is no monetary gain from Diversion to the program or from the program to Diversion in this relationship.

The employee requested an advisory opinion as to whether the Code of Ethics would allow her company to obtain outside employment from the Denver District Attorney's Office of Diversion to provide consulting, mediation and restorative justice services to the Office of Diversion for approximately 10 cases per year in her off-duty hours.

Outside employment is governed by section 2-59 in the Code of Ethics:

> **Sec. 2-63. Contemporaneous or outside employment.**
>
> 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.

(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.

Regarding conflict of interest, the Board of Ethics concluded that, as program coordinator at OED, the employee probably has the ability to take direct official action regarding the program. However, no payments are made between the program and the Office of Diversion and she does not appear to be in a position to impact the referrals or other decisions of the Office of Diversion.

The Board of Ethics advised the employee that there will be no violation of the Code of Ethics if she accepts outside employment from the District Attorney's Office of Diversion, so long as she:

- Obtains her appointing authority's written approval on an annual basis;
- Does not use any city resources, including city time, for her outside employment;
- Does not take any action in the course of her outside work which would or may adversely affect the interests of the City, which would violate Section 2-61(g) of the Code of Ethics.

Case 12-55 (gifts)

An employee in the Mayor's Office gave a presentation to an outside conference, after which the conference organizer sent her a $100 gift card. The card would allow her to direct the $100 to any project posted on the Donorschoose website - www.donorschoose.org, which is an online charity which allows teachers throughout the country to post requests for small donations to their classes, such as 20 copies of a certain book title. The website indicates that the program is a 501(c)(3) tax-exempt organization and has safeguards to be sure that the requests are legitimate.

The employee asked for an advisory opinion about 1) whether she may accept the gift card and 2) to whom she may contribute the gift. The Board of Ethics concluded that the employee is not in a position to take any "direct official action" concerning either the conference organizer or Donorschoose, therefore, accepting the gift card would not be prohibited by section 2-60(a) of

the Code of Ethics. Also, the Board concluded that this is a gift that cannot be kept or used by the employee personally. In addition, Section 2-60(c) of the Code of Ethics specifically permits acceptance of such a gift which will be redirected for charitable purposes, even if the employee were in a position to take direct official action:

> **Section 2-60(c)** It shall not be a violation of this article for an officer, official, or employee to solicit or accept donations to the city or to solicit, accept or redirect donations for charitable purposes to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided that solicitation and financial records are maintained and provided that the soliciting person or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom.

The Board also suggested that, since the employee spoke at the conference as a representative of the City and County of Denver, she might want to donate the $100 to one or more projects in Denver.

Case 12-56 (travel expenses)

An employee in the Department of Finance requested an advisory opinion. One of his responsibilities is that he chairs the Board of Trustees of the City and County of Denver's Deferred Compensation Plan. He and an associate were invited to attend a pension reform symposium in New York City in December 2012 sponsored by a major retirement fund provider.

The fund does not currently provide financial services to the City and County of Denver or to the Deferred Compensation Plan; however, it will likely respond to a request for proposals (RFP) to be issued in early 2013 for deferred compensation plan providers. The fund offered to pay travel and lodging expenses; however, the Department of Finance will pay for all of the expenses related to the conference. The employee believes that it will be a valuable opportunity to learn about the latest issues and developments in the field and that the conference will not be a sales-job by the fund. He also confirmed that there is no conference registration fee that will be paid by the fund.

The employee requested advice from the Board of Ethics as to whether simple attendance at the conference would violate the Code of Ethics.

The gift section of the Code of Ethics (2-60(a)) prohibits acceptance of gifts by a person in a position to take direct official action from a donor with an existing, ongoing or pending contract…with the city. The employee will most likely be in a decision-making position in dealing with the proposals submitted by providers of deferred compensation services.

The Board of Ethics advised the employee that attendance at the symposium co-sponsored by the fund will not violate the Code of Ethics, because he and any other attendees from the Department

of Finance will not be accepting travel expenses or any other gifts from the fund and because the Department of Finance will be paying for the travel expenses. In addition, in order to avoid the appearance of impropriety, the Board cautioned the employee that:

- all of the activities by representatives of Denver at the symposium should be of a professional nature and of modest cost, regardless of who is paying the cost, and that the activities should not give the appearance of a junket;

- the processing of all proposals from providers of deferred compensation services must be handled according to standard procedures and criteria and not be influenced by the invitation to the symposium;

- if the employee or anyone else in a position to take direct official action regarding the fund or any other entity wishing to do business with the City and County of Denver, were to accept meals or event tickets from such an entity, acceptance would be governed by Section 2-60(b)(4) of the Code of Ethics. That section provides that gifts of meals or tickets to events for which admission is charged must be limited to no more than four from the same donor in a calendar year and must be reasonably related to the employee's official or ceremonial duties.

- travel expenses, even if paid by the City, and any other related gifts or expenses must be disclosed on the employee's annual financial disclosure, pursuant to DRMC 2-72(c).

Case 12- 57 (conflict of interest)

An employee of the Purchasing Division requested an advisory opinion. The employee was working to prepare and process a Request for Proposals (RFP) for a contract to provide services at a city-owned venue. One major international company (the company) that will likely make a proposal operates a shop in Denver. The employee's spouse is the manager of that shop, but is not an officer of the company and owns no stock in the company. That company does not have the current contract. The company has 250,000 employees serving clients in 22 countries.

The employee will "have an active role in facilitating this process" and advised the Board of Ethics:

> We will…approve the evaluation criteria established in the RFP. We are working in tandem with the City Attorney's Office and the agency staff including the agency head. Budget and the Mayor's Office are also engaged. Purchasing will facilitate the process by which the evaluation committee will score the proposals… The evaluation committee will score against the established evaluation criteria and the Purchasing Department will not score proposals but will validate and approve the selection process.

In light of the likely bid from the company that employs the spouse, the employee requested "a ruling on my involvement in a City Request for Proposal (RFP) process."

Section 2-61 of the Code of Ethics provides:

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;

(2) **He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;**

(3) **He or she, a member of the immediate family, a business associate or an employer is an officer in another party in the matter;**

(4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;

(5) He or she, a member of the immediate family, a business associate or an employer is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter, other than in a purely clerical capacity; or

(6) A member of his or her immediate family performs more than a nominal portion of the work in the matter, or supervises or manages more than a nominal portion of the work…

(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…

The Board of Ethics concluded that none of the definitions of "substantial interest" apply to the employee or the employee's spouse, who has only a minor role as an employee/manager in a very large international company and is not an officer or a stockholder.

In addition, the definition of "direct official action" in Section 2-52(b) does not apply to the employee's role in the decision process:

> 2-52(b) *Direct official action* means any action which involves:
>
> (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
>
> (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
>
> (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
>
> (4) Appointing and terminating employees, temporary workers, and independent contractors.
>
> (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

The Board advised that the Code of Ethics does not prohibit the employee from being involved in the oversight of the RFP process by the Purchasing Division, because the employee do not have a "substantial interest" in the contract as defined by the Code of Ethics and also because the employee's role, as described it to the Board, does not amount to "direct official action" as defined by the Code.

However, the Board encouraged the employee, in order to avoid the appearance of impropriety:

- Not to share any information whatsoever with the spouse about the RFP documents or process;
- To share the Board's opinion with the employee's supervisor;
- To make sure that the development of the RFP and the processing of all proposals from prospective vendors must be handled according to standard procedures and criteria and not be influenced by extraneous factors. The employee's involvement should be strictly procedural.

In addition, a number of the members of the Board indicated that they had serious concerns that, despite the fact that the Code of Ethics does not prohibit the employee's involvement in the RFP process, some members of the public and/or competitor vendors and/or the media could believe that there might be unfairness in the RFP process because the spouse is employed by one of the likely bidders and the employee has not stepped away from any involvement in the RFP. Those members of the Board suggested, but cannot require, that the employee might want to recuse completely in order to protect the appearance of credibility of the process.

Cases 12-58 – 12-62 (no jurisdiction)

An inmate at the Downtown Detention Facility filed complaints concerning 5 Sheriff Department personnel, making numerous allegations of misconduct. The Board of Ethics dismissed all of the complaints because none of the allegations dealt with the subjects contained in the Denver Code of Ethics. The Board encouraged him "to file any good-faith and well-founded complaints with the Sheriff Department Internal Affairs Bureau and/or the Office of Independent Monitor, which do have jurisdiction over these issues."