DENVER BOARD OF ETHICS
DIGEST OF OPINIONS
July 1– December 31, 2016

PLEASE NOTE: This is a set of summarized opinions given by the Denver Board of Ethics between July 1 and December 31, 2016 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 16-14 (subsequent employment)

This request for an advisory opinion was withdrawn by the requester.

Case 16-15 (conflict of interest)

A Denver citizen filed a complaint concerning a City Councilperson. The complaint alleged that the Councilperson violated the conflict of interest section of the Denver Code of Ethics and also violated recommendations from the Board of Ethics to her and her husband in Board of Ethics Cases 15-18 and 15-21 by not recusing herself from voting on controversial Council Bill 16-0306. That bill increased sanitary sewage service charges and storm drainage service charges for Denver property-owners. The bill passed after a 3-hour hearing by a vote of 8 in favor, 3 opposed and 2 absent. The Councilwoman in question voted in favor after briefly commenting that there should be increased public information about water flows and flooding. Much of the controversy and testimony at the hearing related to the "Platte to Park Hill" proposal for stormwater drainage.

The complaint alleged that the Councilwoman should not have voted on the bill because her husband, the Deputy Director for Parks and Planning at the Department of Parks and Recreation (DPR), had and will have a key role in planning for the redesign of a significant part of the City Park Golf Course to serve as a temporary water detention area in the event of a major flood. The Board recognized, however, that the bill did not address such issues, but only increased sewage service and storm drainage rates and did not budget or appropriate any funds to any specific projects relating to the proposed stormwater infrastructure changes, including any potential modifications to the City Park Golf Course. Such budgeting and/or appropriations will presumably be accomplished at a later date through separate Council action. The Board also noted that a majority of the planning, analysis and presentations about the proposed stormwater rate increase, as well as the entire Platte-to-Park Hill project, were performed by the Denver Public Works Department, not DPR.

Conflicts of interest are regulated by the following sections of the Denver Code of Ethics:

> **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;…

(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. (emphasis added)

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

The definition of "direct official action" is as follows:

Sec. 2-52. Definitions.

(b) *Direct official action* means any action which involves:

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.

Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;

Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city; (emphasis added)

Appointing and terminating employees, temporary workers, and independent contractors.

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 of Ethics concluded that none of the provisions of Section 2-61 would prohibit the Councilwoman from voting on Council Bill 16-0306, the purpose of which was to increase sanitary sewage service charges and stormwater rates for all City taxpayers. The Board noted that the Councilwoman's spouse did not stand to benefit from the proposed rate increases the bill. In addition, DPR the City Park Golf Course are not mentioned or referenced in the bill and her husband was not "directly involved in negotiating" the bill or related documents within the meaning of Section 2-61(a).

In addition, the Board found nothing in the Board's advisory opinions in Cases 15-18 and 15-21 that preclude the Councilwoman from casting a vote on the bill.

The Board of Ethics dismissed the complaint pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics because the Board has no jurisdiction over the subject of this complaint and the allegations, even if true, would not constitute a violation of any section of the Denver Code of Ethics.

The Board recognized that the Platte-to-Park Hill project and the potential modifications to the City Park Golf Course have been the subject of significant debate in the City by various interested parties and will be the subject of continuing consideration by City Council. The Board indicated that the legislative process, including the public's right to be heard, provides an appropriate forum for the exchange of differing opinions and the Board encouraged participation by interested parties in the process.

Case 16-16 (no jurisdiction)

A Deputy Sheriff filed a complaint concerning the Civilian Review Administrator in the Department of Safety. The deputy received a 3-day suspension from the Department of Safety for conduct in a courtroom, as recommended by the administrator.

The deputy appealed the penalty to a Career Service Board hearing officer, who conducted a hearing. The deputy was represented in the hearing by an attorney. A Sheriff Department captain was in the hearing room as an advisory witness. When the administrator was testifying as a witness. the complaint alleged that she whispered twice and later texted to the captain "Tell him (the Assistant City Attorney representing the Sheriff Department) to ask me" something which the deputy could not understand.

The deputy advised the Board that, on cross-examination, her attorney, specifically asked the administrator, under oath, if she was texting the captain and the administrator responded "No."

The hearing officer affirmed the 3-day suspension.

The Board's Executive Director interviewed the captain, the assistant city attorney and the hearing officer and found that none of them recalled the whispering and/or texting that the deputy alleged.

The Board of Ethics concluded that, if it could be proven to have occurred, whispering and/or texting by the Administrator and/or lying under oath, would have been improper. However, there is no section of the Code of Ethics that would be violated by such conduct. In addition, given the conflict in the testimony that would be given by witnesses at a Board of Ethics hearing, it would be very unlikely that a violation could be proven by "clear and convincing evidence," as required by Section 2-56(13) of the Code of Ethics.

The Board dismissed the complaint pursuant to Section 2-56(6)(a) of the Code of Ethics because the Board has no jurisdiction over such a complaint and Section 2-56(6)(b) because the alleged violation, if true, would not constitute a violation of the Code.

Case 16-17 (no jurisdiction)

A licensed private investigator filed a complaint against a police officer. An attorney had hired the investigator's company to serve the officer with a subpoena to attend and testify at a hearing at the Colorado Department of Revenue Motor Vehicle Division.

One of the investigator's process servers went to the officer's home to serve him with the subpoena. According to the process server's written statement, the officer "came out the garage door…and told me to '(obscenity).'" After some more interactions, the officer allegedly said "if I came back he would blow my head off…(obscenity)….If myself or anyone else returns to his home he will 'blow all of your heads off.' He said he is sick of this and it is harassment. He then told me to 'obscenity' again…"

In his response, the officer admitted and apologized for his remarks. He also indicated that he was stressed because he had received death threats from a different DUI defendant recently and he was concerned about the safety of his wife and young daughter, who were in the house at the time of the encounter with the process server.

The Board of Ethics concluded that the threats and intimidation by the officer, which the officer admitted and apologized for, were reprehensible. However, nothing in the Denver Code of Ethics prohibits such conduct.

The Denver Police Department Rules and Regulations, however, do provide:

- Rule and Regulation 114: Officers shall not intimidate any person for personal reason under the color of authority.
- Rule and Regulation 140.2: Officers shall not verbally assault, berate or verbally abuse any member of the public.

The Board of Ethics dismissed the complaint pursuant to Section 2-56(6)(a) of the Code of Ethics because the Board has no jurisdiction over such a complaint and Section 2-56(6)(b) because the alleged violation, if true, would not constitute a violation of the Code.

Case 16-18 (subsequent employment)

A manager who has worked with Parking Operations for several years requested an advisory opinion. Although he had not yet been offered a job, he was considering subsequent employment with a national parking management company which had contacted him. He had not had any role in dealing with the company in his city job, except the recent discussion about possible future employment. Although the company does have a contract at Denver International Airport for shuttle service, that contract was not handled in any way by the manager. He did, however, acknowledge that he had helped to prepare requests for proposals for management of City parking facilities in the past.

Subsequent employment is regulated by Section 2-64(a) of the Code of Ethics:

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (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 concluded that, since the manager had no contractual dealings on behalf of the City with the company and since the company may or may not choose to bid in the future for one or more contracts to manage City parking facilities, he would not be prohibited from working immediately for the company (or for another parking company with the same facts). In addition, the Board has no authority to prevent the company in question or any other company from submitting any proposals to the City.

However, the Board advised the manager that, if he were to be hired by the company or another parking management company, he must not be involved in any way with any potential contracts with the City and County of Denver during the first six months following termination of his employment with the City because he did have involvement with drafting two past requests for proposals for parking management services for the City.

In addition, the Board advised the manager that he should not disclose any confidential information or records to any subsequent employer, which would violate Section 2-68 of the Denver Code of Ethics.

Case 16-19 (gifts, travel expenses)

A top executive at Denver International Airport (DEN) requested an advisory opinion. He was recently elected to the 20-member board of directors of the American Association of Airport Executives (AAAE), a nonprofit organization. AAAE serves its membership through representation in Washington, D.C., and delivers a wide range of industry services and professional development opportunities, including training, meetings and conferences, and an accreditation

program. Board members do not receive any salary, meeting attendance fee(s) or other compensation from AAAE.

The executive advised the Board of Ethics that AAAE asks board members to attend three meetings a year at various sites around the country, and occasionally, to attend an international meeting. To help defray the travel costs associated with these meetings, AAAE offers each board member an annual travel stipend of $5,000, which can only be spent for travel costs such as airline tickets, hotel, shuttle, cab etc. It cannot be used for *per diem* / food / beverage/ conference registration, compensation or anything other than travel-related costs. These funds are disbursed by AAAE upon submitting receipts for these approved travel related costs. Board members are required to submit expense reports, including applicable receipts, to AAAE for reimbursement.

The executive asked the Board of Ethics whether accepting such travel cost reimbursements would violate the Denver Code of Ethics.

Gifts to City officers, officials and employees are regulated by Section 2-60 of the Denver Code of Ethics, which provides:

> 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:..
>
> (6) Travel expenses and lodging;
>
> (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:
>
> (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;…(emphasis added)

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

> 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.

Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;

Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;

Appointing and terminating employees, temporary workers, and independent contractors.

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.

In addition to the provisions of the Denver Code of Ethics, the Board also noted that Section 1.2.12 of the Denver Charter provides: "No official or employee shall solicit or receive any pay, commission, money or anything of value…for the performance of official duties except lawful compensation or salary…"

The Board of Ethics concluded that the executive has not exercised any "direct official action" with respect to the AAAE, nor would be expected to do so. Accordingly, the Code of Ethics does not prohibit him from accepting reimbursement for travel expenses associated with his AAAE Board membership. The Board also noted that, even if he exercised any "direct official action" with respect to the AAAE, he would be permitted to accept reasonable reimbursement for travel expenses from the AAAE pursuant to Section 2-60(b)(7) of the Code referenced above.

Cases 16-20 through 16-22 (no jurisdiction)

A Denver citizen filed complaints against two City Councilmembers and a Council staff member. The citizen had attended and testified at a City Council hearing on September 19, 2016, against Council Bill 625, which was sponsored by the Councilmembers in question, to establish a program to develop more affordable housing units in the city. The staff member keeps minutes, records votes and assists citizens to sign up to testify for City Council hearings.

The hearing was a 1-hour "courtesy" hearing, as opposed to a hearing that is required by the charter or an ordinance. The citizen was one of approximately five citizens who spoke against the ordinance. Approximately eighteen spoke in favor of the ordinance. After a great deal of internal discussion, the Council passed Council Bill 625 by a vote of 9 to 4.

In summary, the citizen's complaints were:

- That Council Bill 625 would be passed was a "done deal" before the hearing was conducted.
- That one of the Council members would not allow her to raise a "point of order" from the audience.

- That one of the Council members improperly provided snacks and t-shirts (saying Yes on 625) for those supporting Council Bill 625 in her office before the hearing.
- That the Council staff member did not provide proper assistance in explaining the bills or scheduling the speakers.

The Board of Ethics concluded that the complaints did not allege anything that is prohibited by the Denver Code of Ethics. In addition, the citizen did testify at the City Council hearing and the courtesy hearing was conducted according to the Council's rules and protocols. There is nothing unethical or illegal about any Council member's providing of snacks for citizens who attend a late-night Council meeting. Finally, even if the majority of the Council members had made up their minds before the hearing, this was a legislative hearing, not a quasi-judicial hearing where members of a decision-making body must not make up their minds until they have heard all of the testimony at a hearing.

The Board dismissed all 3 of these complaints pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics because the Board has no jurisdiction over the subject of these complaints and the alleged violations, if true, would not constitute a violation of any section of the Code of Ethics.

Case 16 – 23 (subsequent employment)

The Mayor's Chief of Staff requested an advisory opinion concerning her new job as the Chief Executive Officer of the Denver Center for the Performing Arts (DCPA), which is an independent 501(c)(3) non-profit organization that is not an agency or department of the City and County of Denver. However, the City owns the land that lies beneath the 12-acre DCPA complex in downtown Denver.

She inquired whether her participation in the following projects would be prohibited by the 6-month period specified in the Section 2-64 of the Code:

> Next Stage – master planning process for the DCPA campus involving Arts and Venues (a City department) – "I believe it is imperative that I am able to participate in The Next Stage planning efforts to ensure that the master planning aligns with the core mission and values of the DCPA."

- General Obligation Bonds – preparation of recommendations for projects to put on the City ballot in November 2017, including those which may fund projects associated with the DCPA.

- Arts and Venues - the City agency that oversees the contractual relationship with the DCPA…there are ongoing conversations…related to parking, cleaning, lighting, improvements, retail, sponsorships and activation of the complex etc. Ensuring that the DCPA has a strong working relationship with Arts and Venues is of tremendous importance to the company, and "I would like to ensure that I am able to communicate and negotiate with Arts and Venues, as well as other city agencies that support the complex."

- City Partnership and Communications: Denver's cultural partners, primarily the Tier 1 organizations, often have standing meetings with Mayor Hancock and members of his Administration throughout the year… "it will be my responsibility to schedule and participate in these meetings, which often include updates on the status of DCPA, community outreach, organizational development, education programming and a coordinated commitment to ensuring that arts and culture are available for everyone in our community."
- Site Modifications: There are a number of proposed projects that will impact the overall experience of the DCPA staff and artists, guests, theatre-goers and education program participants. "To ensure the experience of our internal and external customers is considered throughout decision making processes, I believe my involvement is important to help inform the outcomes of these efforts."

She acknowledged that, when she was the Mayor's chief of staff, she monitored the City's planning and outreach related to Next Stage and participated in meetings with DCPA's CEO and Chairman, and occasionally facilitated the resolution of issues related to the DCPA.

Subsequent employment is regulated in the Denver Code of Ethics by Section 2-64, which provides:

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (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. (emphasis added)

The definition of "direct official action" is defined in the Denver Code of Ethics, Section 2-52 as follows:

> 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.

Previously, in Case 04-22, the Board of Ethics rendered an advisory opinion concerning the subsequent employment of a former city employee who was the Senior Projects Director in the Mayor's Office of Economic Development (OED) and who had been hired as the Assistant Director of the Denver Urban Renewal Authority, an independent entity that is separate from the City and County of Denver. The former employee intended to work on many of the same projects at DURA as she had worked on for OED. The Board of Ethics determined that the former employee's work on the projects would constitute a violation of Section 2-64(a) "if you assume major responsibility during your first six months at DURA for the same projects for which you had a major responsibility while you worked for the City." However, the Board granted the former employee a waiver, pursuant to Section 2-54(f) of the Code of Ethics, after determining it was in the best interests of the City to do so. The Denver Board of Ethics reasoned as follows:

> The Board finds that the interests of DURA and the City appear to be identical on the … projects. The Board consequently finds that it is in the best interest of the City to waive the six-month waiting period for you to work for DURA on these same projects on which you took direct official action during your employment with the City.

The Board concluded that it is uncertain whether the former chief of staff exercised "direct official action" with respect to the DCPA in her prior role as the Mayor's chief of staff. However, to the extent that she did so, the Board concluded that it would be in the best interests of the City to grant a waiver in order to permit her to immediately and fully perform her duties as CEO of the DCPA. The Board recognized that the fulfillment of the mission of the DCPA requires the participation of its CEO, and the City and DCPA have a shared interest in the successful accomplishment of the pending projects. Pursuant to Section 2-54(f), the Board determined that a waiver would be in the best interests of the City, and therefore granted a waiver to her.

Case 16 – 24 (gifts)

An attorney with a Denver law firm requested an advisory opinion. The firm previously entered into a contract with the City and County of Denver to handle certain overflow and conflicts litigation, and other legal matters as necessary through 2018. The attorney advised the Board of Ethics that an Assistant City Attorney "is a contact for our firm in connection with some of the legal services that we provide to the City."

Several months ago, there was a serious fire in the home of the Assistant City Attorney. A family member suffered serious injuries as a result of the fire and is still recovering.

The law firm expressed a desire to help the Assistant City Attorney and his family by providing free legal services to the family in connection with the fire. In addition, the law firm wishes to contribute financially to a fund to assist the family through GoFundMe.

The firm asked for an advisory opinion regarding whether these potential contributions or gifts to the Assistant City Attorney and his family would be permitted under the Denver Code of Ethics. In connection with its request, the firm advised the Board of Ethics as follows:

> We have performed a significant amount of work for the city during the last 12 months... The Assistant City Attorney has been a primary contact on certain legal matters and he will likely still be involved in certain matters we handle for the City when he returns to work.
>
> We understand that the City Attorney's Office anticipates and hopes he will return to work. Since the contract does not expire for some time, it is uncertain who will be involved in making recommendations about whether it is renewed or continued.

The request for advisory opinion implicates the following sections 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:
>
> (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;…

The definition of "direct official action" is as follows:

> 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…
>
> (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city…

The Board of Ethics concluded that by virtue of his role in the City's relationship with the firm, the Assistant City Attorney previously exercised "direct official action" with respect to the law firm. As an Assistant City Attorney and one of the principal City contacts for the law firm, he

functioned in a supervisory role in which he was authorized to administer, enforce or recommend for or against the renewal of the City's contract for legal services with the law firm.

This "direct official action" with respect to the law firm would implicate Section 2-60(a) of the Denver Code of Ethics. The Board of Ethics determined that the Assistant City Attorney's acceptance of financial contributions or *pro bono* legal services from the law firm would be prohibited by Section 2-60(a) of the Code of Ethics if he remained in a position to exercise "direct official action" with respect to the law firm. A financial contribution by the firm to the Assistant City Attorney or his immediate family, or the firm's rendering of *pro bono* legal services on their behalf, would constitute money or services "given without adequate or lawful consideration" to the Assistant City Attorney and his family within the meaning of Section 2-60(a)(1) of the Code.

The Board determined that the Assistant City Attorney's receipt of *pro bono* legal services and financial contributions from the law firm would not be precluded by the Denver Code of Ethics, so long as he is not permitted, upon his return, to resume a position with the City in which he would be in a position to exercise "direct official action" with respect to the law firm.

Case 16 – 25 (subsequent employment)

A former employee of the City and County of Denver requested an advisory opinion. Her last Denver job was as the Director of Business Affairs for Denver International Airport (DEN). Following that, she was hired as the Vice President of Strategic Partnerships for a large food-related company that serves several airports in the United States with many restaurants plus restaurants in airports and train stations in several other countries.

DEN recently released requests for proposals for a few food concession opportunities and the former employee wished to understand any limitations that Section 2-64(a) of the Denver Code of Ethics may place on her or her new employer. She said that the company "is considering bidding on several of the packages."

She advised the Board that her job at DEN had nothing to do with any direct official action regarding any contracts or concessions. She indicated that she never sat on any selection panel for DEN or had anything to do with preparing requests for proposals. She described her role as "neutral problem-solving" between DEN and current and aspiring businesses at DEN.

She advised the Board that she had not participated in any activity for her new employer regarding the DEN RFPs and she will not do so until at least six months after her last day of work at DEN.

Subsequent employment is regulated by Section 2-64(a) of the Denver Code of Ethics:

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (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.

(emphasis added)

Direct official action is defined as:

> Section 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.

Based on her description of her job responsibilities at DEN, the Board of Ethics concluded that she did not take any direct official action regarding her new employer or any other entity. Therefore, she is not required to wait six months from the time she left employment with the City and County of Denver before working for the company or performing any particular functions for the company. In addition, the Denver Code of Ethics does not regulate any private entities and, therefore, the company is not restricted from responding to DEN's recent requests for proposals.

The Board, however, stated that it would be wise for her to avoid any possible appearance of impropriety by refraining from any involvement whatsoever on behalf of the company regarding the DEN RFPs until at least six months after she left her employment with DEN.

Case 16 – 26 (outside employment)

A Technician in the Police Department requested an advisory opinion. He and his business partner, also a DPD officer, and another non-DPD partner have developed a smart-phone app and wish to sell it. The concept is to speed up response time and to improve communications among first-responders and employees of such facilities as schools, universities or offices where violent threats may occur.

They intend that the program and technology be offered at no charge to the Denver Police Department and other law enforcement agencies and first responders around the United States, while other interested entities would pay for the program and technology.

Outside business activity is regulated by Section 2-63 of 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.

In addition, Section 2-67 of the Code of Ethics provides:

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.

Therefore, the Board concluded that the Technician and his partner must:

- Obtain written approval for this outside business activity from their appointing authority.
- Not use any city time or other city resources, such as computers, telephones, paper, etc., on this project.
- Not use their public office or position or disclose or use any city confidential information in order to obtain private gain for yourselves or your families or your business entity.
- Not wear a city uniform during time devoted to outside employment or business activity or in any material advertising the outside employment or business activity.