May-September 2001

Board of Ethics
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DIGEST OF SELECTED ADVISORY OPINIONS
ISSUED BY DENVER BOARD OF ETHICS

PLEASE NOTE: This is a selected set of summarized advisory opinions given by the Board of Ethics between May and September, 2001 in response to fact-specific requests. They should not be used as conclusive guidance for situations where the facts may differ. The full texts are available for review.

(Cases 01-1 and 01-2 and a number of other cases will not be digested.)

1. Case 01-3

The Police Department requested an advisory opinion regarding whether there would be a violation of the Code of Ethics if a police officer would be allowed to operate an off-duty outside business in which he would lease and manage private parking lots for use by people attending concerts and other special events in the vicinity. The parking lots were in the police district where the officer was on patrol while on duty.

Under Section 2-61 of the Code of Ethics, an actual conflict of interest would occur only if the officer were required to take "direct official action" regarding persons or situations involving one of the parking lots in which he had a "substantial interest". The Board urged the Department and the officer to consider whether such outside employment would constitute an "appearance of impropriety" and whether it was wise to place the officer in a situation where he might be forced to choose between his interests as a police officer and his interests as a business owner.

2. Case 01-4

A deputy director of a city agency requested an advisory opinion regarding whether the Code of Ethics would be violated if the deputy director's brother applied for a business loan from the agency.

There would not be a violation of the Code under the above facts if the deputy director was not involved in any manner in reviewing, recommending, discussing, or monitoring the loan application or the loan, if granted.

3. Cases 01-5 and 01-6

Two city employees requested advisory opinions from the Board regarding the propriety of businesses for which their spouses work applying for city contracts. Both employees work for a city agency that is involved in reviewing and monitoring city contracts.

Section 2-61 of the Code would not be violated as long as the two employees have no involvement in their spouses' businesses and as long as they are not involved in any manner as city employees in reviewing, recommending, discussing, or monitoring the contracts or in supervising anyone who does.

4. Case 01-7

The executive director of a city agency requested an advisory opinion concerning whether it would constitute a violation the Code of Ethics if a city commission recommended the award of a contract to a non-profit agency whose executive director was also a member of the commission.

Section 2-61 of the Code would not be violated so long as the commission member 1) did not participate in any way in recommending, or discussing or deliberating or voting on the contract between the City and the non-profit agency and 2) did not receive any compensation or any other direct benefit from city funds as part of her duties of the non-profit agency.

5. Case 01-8

A request was received from a city employee regarding the propriety of employees soliciting door prizes, food and other donations for the Games Day event at City Team Week. The employee is a member of the committee planning the event, which offers entertainment, social and sports activities, and food for city employees and their families.

The solicitation of such items does not violate Section 2-60 (c) of the Code regarding the acceptance of gifts because Section 2-60 (c) of the Code specifically grants an exception for Denver officers, officials or employees to solicit donations to the City for charitable purposes so long as the person doing the solicitation or a member of that person's immediate family does not keep or use any of the donated items or funds.

However, the Board strongly recommended that the city employees refrain from soliciting donations from persons or businesses if the city employee has any type of regulatory or enforcement or contractual or other type of relationship with the person or business. For example, a police officer should not solicit a donation from a restaurant in the area that he or she patrols.

6. Case 01-9

The City Attorney requested an opinion as to whether it would constitute a violation of the Code of Ethics if the City hired a law firm in which the Mayor's brother was a partner to do bond work on a proposed real estate transaction. The request stated that the Mayor did not initiate the proposed contract with the firm or have any involvement in selecting, recommending, or negotiating with the law firm.

Under the Code of Ethics, officials are prohibited from taking direct official action on any matter if the official has any substantial interest therein, as that term is defined in Section 2-61. Direct official action in Section 2-52 (b) excludes the signing of a contract by the Mayor unless the Mayor "initiated the contract or is involved in selecting the contractor or negotiating or administering the contract." Under the above facts, the Mayor's signing of the contract would not constitute direct official action and would be permissible.

7. Case 01-10

The Police Department requested an advisory opinion as to whether it would be a violation of the Code of Ethics if police officers in an honor guard who were to present the colors for the national anthem at a Denver Broncos game accepted free tickets for the Bronco game from the Denver Broncos.

Under Section 2-60 (b) 4 of the Code of Ethics, a gift of a free ticket to an event for which admission is charged may be accepted by a City employee, so long as no more than four such tickets are received from the same donor during the same calendar year. The board also cautioned that the individual employees should determine whether or not the gift tickets are of sufficient value to require disclosure under Denver's Financial Disclosure ordinance, 2-72 Denver Revised Municipal Code.

8. Case 01-17

A manager at a city department requested an advisory opinion regarding three situations in which city employees would be asked to sit on non-profit boards that have contracts with the department.

In the first situation, the employee requested to sit on the board is not an employee of the city department awarding the contracts. There would not be a conflict of interest here because the employee would not be in a position to take "direct official action" regarding the proposed contract.

In the second situation, the city employee works for the city department that will be awarding the contract to the non-profit on whose board the employee is asked to sit, but the employee is not involved in the program involved in the contract. The Code would not be violated by the mere fact that the employee sits on the board of the non-profit. However, it would be wise for the department to take steps to ensure that the employee is completely removed from having any involvement in program areas involved in the contract.

In the third situation, the employee is directly involved in the program area which is the subject of the contract with the non-profit agency. The Board, cautioned that in such a situation it would appear highly likely that the employee would be called upon to take "direct official action" regarding the contract with the non-profit agency and that therefore the department should consider whether it is in keeping with the spirit of the Code, which strives to avoid the appearance of impropriety, as well as in the best interest of the City, to place an employee in a situation in which the employee might be called to take direct official action on a matter involving the non-profit agency.

If the Department determines that it is in the best interests of the City to have the employee in such a situation sit on the board of the non-profit agency, strict measures should be taken to ensure that the employee in fact takes no direct official action on any matter involving the non-profit agency.

9. Case 01-18

The manager of a city department requested an advisory opinion regarding whether a conflict of interest exists because he also sits on the Denver School Board, which has contracts with the department he heads.

Serving in both capacities does not in and of itself constitute a violation of the Code of Ethics. A violation of the Code will be avoided if the manager takes steps, which he has done, to ensure that as a city official he will take no action regarding contracts with the School Board. Steps should be taken to ensure that as a member of the School Board he also takes no direct official action regarding contracts with the City.

10. Case 01-19

The City Attorney requested an opinion regarding the propriety of the appointment of an individual to the Board of Environmental Health who holds a concession from the Department of Parks and Recreation to operate a restaurant on city property. The restaurant is subject to regulation by the Board of Environmental Health.

The appointment of the individual to the Board does not constitute a violation of the Code. The Board on which the person sits has no connection with the granting or denying of the concession. However, to avoid a conflict of interest the appointee must excuse himself from participating in any quasi-judicial hearing conducted by the Board involving his restaurant. The Board member is not prohibited from participating in a rule-making proceeding of the Board involving the restaurant business because the definition of "direct official action" does not include the issuance of rules or regulations.

11. Case 01-22

A police officer who attended a national conference and won a contest prize of a computer device worth approximately $300 requested an advisory opinion as to whether acceptance of the prize would violate the gift provision of the Code of Ethics. The contest was sponsored by a software vendor which is interested in providing software to the City of Denver.

The Board of Ethics determined that the officer could accept the prize without violating the Code of Ethics because he is not in a position within the police department to take any direct official action regarding the decision on which vendor will receive the software contract with the City of Denver.

12. Case 01-24

A department supervisor requested an advisory opinion regarding whether or not it would be a violation of the Code for an employee to hire two of his cousin's sons for seasonal work.

Section 2-59 regarding employment of family members, prohibits an officer, official or employee from hiring a member of his or her immediate family for any type of employment with the city. Immediate family is defined in Section 2-52 of the Code to include husband, wife, son, daughter, grandmother, grandfather, grandchildren, brother, sister and domestic partner. Since cousins or children of cousins are not included in this definition, the employee's hiring of his cousin's sons would not constitute a violation of the Code.