

2019

City and County of Denver

DENVER BOARD OF ETHICS 2019 ANNUAL REPORT

Submitted: February 14, 2020

Introduction

The Denver Board of Ethics hereby submits its nineteenth annual report to the Mayor and City Council, as required by Section 2-66 of the Denver Code of Ethics.

The mission of the Board of Ethics is:

To encourage and guide city officers, officials and employees to adhere to high levels of ethical conduct so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public.

Brief biographies of the current members of the Denver Board of Ethics (all unpaid volunteers) are below in Appendix A.

The Board expresses appreciation to all City elected officials, employees, board and commission members and citizens who requested ethics advice or help in 2019.

The Board continued to meet monthly in 2019. This report is a summary of the work accomplished by the Board during that time.

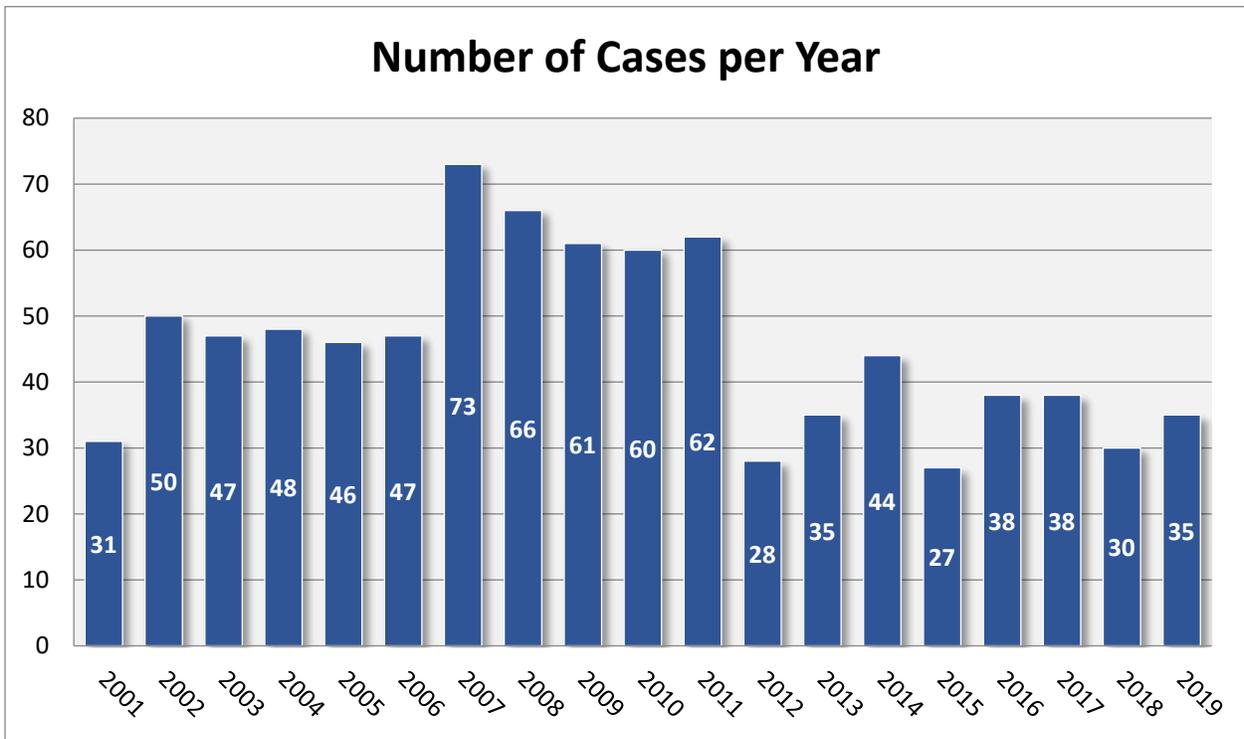
Advisory Opinions, Waivers, Complaints

In 2019 the Board received a total of 35 formal cases - as compared with:

- 30 cases in 2018
- 38 cases in 2017
- 27 cases in 2016
- 44 cases in 2015
- 35 cases in 2014
- 28 cases in 2013
- 62 in 2012
- 60 in 2011
- 61 in 2010
- 66 in 2009
- 73 in 2008

- 47 in 2007
- 46 in 2006
- 46 in 2005
- 48 in 2004
- 47 in 2003
- 50 in 2002
- 31 in 2001

Nineteen of the formal cases received in 2019 were requests for advisory opinions, while sixteen were complaints.



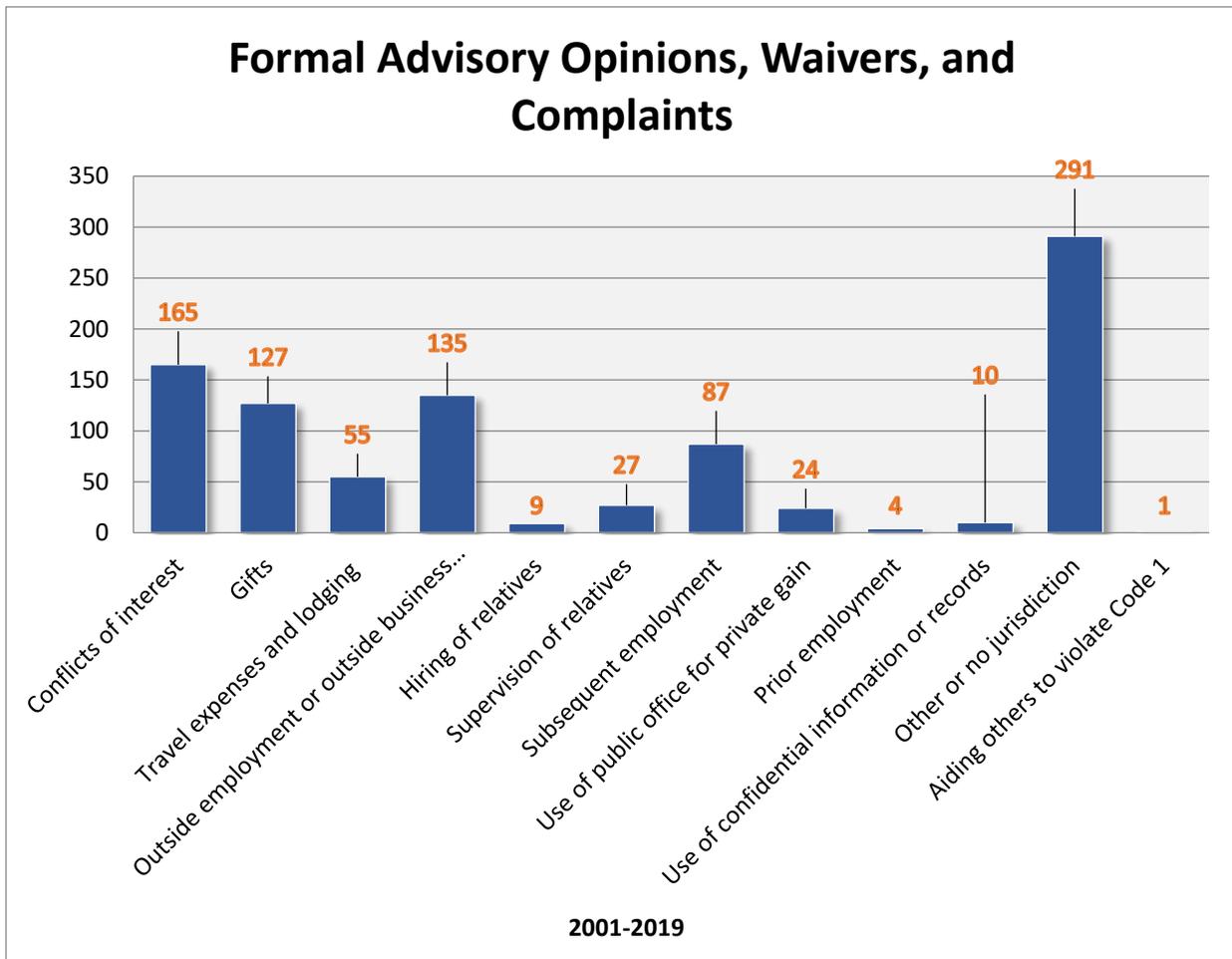
A digest of the Board’s 2019 opinions is printed below as Appendix B and is posted on the Board of Ethics website at <http://www.denvergov.org/ethics>. The Board is pursuing posting full opinions on the website.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2019, the Board of Ethics received a total of 874 written formal cases.

The subjects of the requests for formal advisory opinions or waivers and complaints decided during the entire 2001-2019 period break down as follows, with the number of 2019 cases in parentheses:

- conflicts of interest – 165 (6)
- gifts – 127 (5)
- travel expenses and lodging – 55 (1)
- outside employment or outside business activity– 135 (6)
- hiring of relatives – 9 (0)
- supervision of relatives – 27 (2)
- subsequent employment – 87 (2)
- use of public office for private gain – 24 (3)
- prior employment – 4 (0)
- use of confidential information or records - 10 (0)
- other or no jurisdiction – 291 (13)
- aiding others to violate Code 1 (0)

(Some requests involved more than one subject.)



In addition to the written official complaints and requests for advisory opinions and waivers, the Board's Executive Director in 2019 received approximately 281 telephone, e-mail or in-person **requests for unofficial, informal consultation about the Code of Ethics or other ethics issues**, as compared with:

- 212 in 2018
- 237 in 2017
- 271 in 2016
- 225 in 2015
- 249 in 2014
- 223 in 2013
- 275 in 2012
- 309 in 2011
- 249 in 2010
- 260 in 2009
- 277 in 2008
- 277 in 2007
- 254 in 2006
- 266 in 2005
- 249 in 2004
- 192 in 2003
- 130 in 2002
- 50 in 2001

The Board and its Executive Director take pride in responding promptly.

III. Ethics Handbook

As there were no amendments to the Code of Ethics in 2019, the Board did not revise the ethics handbook, however; the 2018 ethics handbook can be found at www.denvergov.org/ethics. In addition, the Board of Ethics has many hard copies of the 2018 ethics handbook available for city personnel or citizens who request them through lori.weiser@denvergov.org.

IV. Ethics Training

The Board of Ethics believes that excellent, consistent ethics training is critically important to the successful implementation of the citywide ethics program. All city employees, officers and officials should be trained to recognize ethical issues and to take appropriate steps to avoid unethical conduct.

In 2006, with support from the Board of Ethics, the Career Service Authority Board amended Career Service Rule 6 (now included in Rule 5) to require that new CSA employees, including Deputy Sheriffs, receive ethics training before they can pass their probationary period.

From 2002 through the end of November 2015, all new city employees and officers subject to the Code of Ethics received 3 hours of ethics training either in a classroom or one-on-one with the Board's Executive Director. In December 2015, most classroom ethics training was changed to online ethics training through the Ethics and Public Accountability course, developed by the Board of Ethics and the Training and Organizational Development Practice of the Office of Human Resources.

In 2019, online ethics training was given to 1829 new city employees. Additionally, approximately 150 new recruits in the Police and Fire Department Academies received classroom training from the Board's Executive Director. In 2019 the Executive Director also gave individual ethics training to new Mayoral appointees and other high-level new hires. In 2020 and future years, online training will be the primary method of ethics training for new Career Service Authority employees and the Board's Executive Director will continue to give in-person ethics training to new recruits in the Police and Fire and Department Academies.

With the support of the Mayor, the Office of Human Resources and the Board of Ethics successfully launched the mandatory online ethics refresher training course in 2019 for all employees to take at three-year intervals. In 2019, 9552 city employees completed this on-line ethics refresher course.

The Board continues to believe that in-person ethics training to new mayoral appointees and City Council members is vital.

V. Other Matters

Budget

The adopted 2019 budget for the Board of Ethics is \$152,790 as compared to \$148,143 for 2018.

Staff

After nineteen years of excellent service to the City of Denver as the Executive Director of the Board of Ethics, Michael Henry retired in late August 2019. Lori Weiser stepped into the role on September 3, 2019. The Executive Director is the sole employee of the Board. The Board encourages citizens and city employees, officers and officials to contact her at 720-865-8412 or lori.weiser@denvergov.org.

Recommendations for amending the code of ethics

The Board strongly believes that gifts by city agencies to employees, officers or officials, should be regulated by Section 2-60 of the Code of Ethics as these gifts are often made to seek special influence. Thus, the Board would support a change to Section 2-52(f) which would include any city agency in the term “donor.”

The Board would also support an amendment to the Code of Ethics that would allow for the acceptance and investigation of anonymous complaints concerning violations of the Code.

Nomination committee

As a result of one of the 2017 amendments to the Code of Ethics, a Board of Ethics Nomination Committee was appointed to screen applications to serve on the Board of Ethics. The committee consists of Brian Spano (appointed by the Mayor), Michael Lopez (appointed by City Council) and Michelle Stermer (appointed by the Presiding Judge of the County Court). In 2019, this committee continued to serve, by working diligently to assist with the selection of three new Board members.

VI. 2020 Goals for Board of Ethics

A. Continue to implement and improve ethics training

The Board of Ethics, in cooperation with the Office of Human Resources (OHR), oversees the delivery of ethics training for all Denver officers, officials and employees. The Board will in 2020 continue to pursue this goal by encouraging accuracy, consistency and high-quality ethics training with cooperation from OHR and city departments. The Board will monitor the evaluations from new city employees who have taken the online ethics training and make continuous improvements. The Board will emphasize the importance of, and need for ongoing, ethics training.

B. Continue to receive, review and promptly decide requests for advisory opinions, requests for waivers and complaints alleging misconduct

C. Improve public information about Code of Ethics

- a) Review, update, and improve the Board’s website.
- b) Provide information about Code/Board of Ethics to submit to city departmental newsletters and the city employee bulletins or newsletters.
- c) Organize and publicize at least one citywide and/or departmental informational lunchtime or after-work discussion of ethics issues per year. Seek public comments at the meetings and otherwise about ethics concerns of city employees and citizens. Work to implement recommendations stemming from the audit of the citywide ethics program

D. Improve communications about ethics issues with City Council, the Mayor’s Office and City departments

VII. Conclusion

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney’s Office, the Office of Human Resources and the great majority of managers and employees of the City and County of Denver, it has continued its progress in 2019 to establish ethics as a recognized core value and to cultivate public confidence in Denver city government.

Respectfully submitted on behalf of the Denver Board of Ethics,



Joseph G. Michaels

Chair

APPENDIX A

DENVER BOARD OF ETHICS **Board Members as of December 2019**

Joseph G. Michaels is a Senior Assistant Attorney General for the Colorado Attorney General, where his practice focuses on appellate and criminal law. He received his J.D. from the University of Iowa College of Law. After law school, he clerked for the Hon. Arthur P. Roy at the Colorado Court of Appeals. He also is an adjunct instructor for the Community College of Denver's paralegal program and a member of the Colorado Bar Association's Ethics Committee. He was appointed by City Council to a term that expires on June 19, 2023. He serves in an individual capacity, and his views do not reflect those of the Colorado Attorney General.

Dianne Criswell is General Counsel to the Colorado Special District Risk Pool, Firefighter Benefit Trust, and the Colorado Special District Association. She graduated from the University of Washington Law School and is licensed in Colorado and Washington State (inactive). Previously, she served as Revenue Counsel to the Washington State Senate and as Legislative Counsel at the Colorado Municipal League. Appointed by the Mayor, her term will expire May 1, 2023.

Sylvia S. Smith has been employed with the City and County of Denver in a variety of capacities - from Director of Policy and Research in the Auditor's Office to her current position as a Neighborhood Manager with the Denver Office of Economic Development where she oversees the Neighborhood team charged with program services and facility improvement project investments. She holds a B. A. in Political Science from the University of Colorado at Denver. She has been active in many organizations including the Colorado Black Women for Political Action, Single Mothers of Color, Inc., National Council of Negro Women, Inc., Denver Section and Colorado Common Cause. She currently serves as a Commissioner for the Denver Asian American Pacific Islander Commission. Appointed by the Mayor and City Council to 2 terms, ending June 24, 2021 She served as Vice-Chair of the Board in 2015 - 2017.

Andrew S. Armatas earned his B. A. at the University of Colorado at Boulder and his J. D. from the University of Denver. He served as a Denver Assistant City Attorney, a partner in a Denver law firm, City Attorney for Broomfield and a Denver County Court Judge, retiring in January 2013 after 23 years of service on the bench. During 7 of those years, he served as Presiding Judge of the Denver County Court. He was appointed by the Mayor to 2 terms, ending April 30, 2021.

Jane T. Feldman was the Executive Director of the Colorado Independent Ethics Commission for nearly six years. Prior to that, she was a First Assistant Attorney General in the Natural Resources Section of the Colorado Attorney General's Office, and an Assistant Attorney General in the Criminal Enforcement Section. She began her legal career in the New York County District Attorney's Office in New York City. She is a magna cum laude graduate of the Benjamin N. Cardozo School of Law. She served on the Steering Committee and as President of the Council on Government Ethics Laws (COGEL). She previously served on the Denver Board of Ethics in 2015, but resigned in December of 2015, because she moved to New York State to serve as the Executive Director of the Office of Ethics and Compliance for the New York State Assembly. She served for a year and a half in that position before returning to Colorado in 2017. She currently is the Principal of Rocky Mountain Ethics Consulting, which advises local governments on ethics issues, and has acted as pro bono counsel in several immigration cases. She was appointed by City Council to a term that will expire on April 20, 2021.

APPENDIX B

DENVER BOARD OF ETHICS DIGEST OF OPINIONS JANUARY 1– DECEMBER 31, 2019

PLEASE NOTE: This is a set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2019 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 18-27 (gifts)

A sergeant in the Police Department Traffic Operations Division requested an advisory opinion. He said in his request:

I assisted a citizen as she delivered a baby while she and her husband were en route to the hospital delivery room. The baby arrived earlier than expected and was delivered in the citizen's car at the curb line next to my traffic assignment with the assistance of myself and the baby's father. I was working a traffic assignment during a Colorado Rockies game at the time. Today I received a letter of thanks from this citizen with a picture of the baby and also enclosed was a gift card to a local restaurant for what appears to be \$125. My question is, am I allowed to accept this?

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

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by donors 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; ...

(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:

4 (a). The value of any meals, tickets, or free or reduced-price admissions accepted from the same donor in any calendar year shall not exceed three hundred dollars (\$300) and shall be subject to the reporting requirements set forth in Article V of this Chapter 2;

(d) Attendance must be reasonably related to the official or ceremonial duties of the officer, official, or employee; ...

(5) Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of twenty-five dollars (\$25.00) or less, such as inexpensive tee shirts, pens, calendars, books, flowers, or other similar items and does not mean cash or gift cards; ... (emphasis added)

The Board concluded that, given the specific facts of this case, it would not be a violation of Section 2-60 of the Code of Ethics for the sergeant to accept and use the \$125 gift card. Although Denver police officers enforce state and local laws and are therefore in a position to take direct official action, the Board understands he is not in a position to take direct official action regarding the donors of the gift card as to any pending or contemplated matter. The Board concluded that because the gift card was modest in value, was unsolicited and was given as a token of appreciation for his service to grateful citizens, there is no basis to believe it was given as an effort to gain favor or to take action in the future.

Case 18-28 (conflict of interest)

An aide to a City Council member requested an advisory opinion. She had previously worked for a few years as Director of Land Use and Transportation at a local non-profit organization. She advised the Board of Ethics that at the nonprofit:

I was project manager for a park project... This project is a joint effort between the nonprofit and the City of Denver involving multiple offices including that of my Council member. The organization is a 501c3 non-profit organization based in Denver. Denver is purchasing the land with city funds, and the nonprofit is fundraising for a significant portion of the design and construction and will likely maintain the park for a period of time, with the remainder of funding coming from Denver and Urban Drainage and Flood Control. The contract between the nonprofit and Denver is still being negotiated.

The aide wished to know if there would be an impermissible conflict of interest or other violation of the Denver Code of Ethics if she continued to “remain involved” with the park project.

City Council aides do not have any “direct official action” power in terms of policy making or contract negotiation.

The Board of Ethics concluded that the aide will not violate any section of the Denver Code of Ethics so long as she abides by the following statement in her request for an advisory opinion:

Ideally, I would like to continue to be a resource to the City-nonprofit team in the following ways:

- Sharing historical context or facts as needed
- Give feedback on the design of the project
- Attend meetings regarding design of the project
- Provide input on the public outreach process for the project
- Relay project information to the resident steering committee as needed

I would not participate in any discussions about the negotiation of the contract or positions of the parties. If any conflict were to arise between the nonprofit and the city, I would recuse myself.

Case 18-29 (outside employment)

A Fiscal Administrator in a city department who lives in a Denver suburb requested an advisory opinion. He had recently learned of a vacancy in the part-time position of Treasurer in the suburb where he lives. He asked whether he could apply for the position and, if selected, serve in that part-time position as well as his full-time Denver position. He said he would combine flextime and time off for his work for the other city.

Outside employment is regulated by Section 2-63 of the Denver Code of Ethics:

Sec. 2-63 Outside employment or business activity.

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. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person...
- (d) City resources may not be used for any outside employment or outside business activity.

The Board of Ethics determined that he would not violate Section 2-63 of the Code of Ethics if he complied with the following conditions:

- Must obtain his appointing authority's written permission before beginning to work in the outside job.
- Must not use any Denver city resources, such as paper, computers or time in the outside job if he is selected for the position.

The Board also recommended that he should keep detailed accurate records to indicate how much time he is spending on the other city's business for his own benefit and that of his Denver department and the other city.

Case 18-30 (gifts, travel expenses)

An employee in the Purchasing Division of the General Service Department, which assists Denver departments and agencies to purchase products that they need, requested an advisory opinion. He had been invited to attend a national conference/trade show by a very large manufacturer sponsoring the conference. The conference will also have exhibits from 3900 independent vendors and will have many seminars and trade show talks. The conference sponsor had offered to pay lodging, some meals and registration costs for two employees of the Purchasing Division at the conference.

Acceptance of travel expenses is regulated by the following sections of the Denver Code of Ethics:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by donors 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; ...

(6) Travel expenses and lodging;

“Direct official action” is defined as follows:

Sec. 2-52. Definitions.

(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, business loan 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; ...

(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 of Ethics concluded that it would violate Section 2-60 for either or both of the employees to accept payment for the expenses offered to them because both of their influence over the purchasing decisions regarding the manufacturer amounts to “direct official action.”

However, the Board decided to grant waivers to both employees, pursuant to Section 2-54(f) of the Code of Ethics to allow them both to accept the lodging, food and registration expenses from the manufacturer because it would be in the city's best interests to attend the conference for the following reasons:

- Purchasing will have alignment with both safety and risk management issues when it comes to purchasing the correct products to mitigate risk issues and costs to the city;
- They will have the opportunity to attend industry-specific seminars and accredited professional enrichment classes and seminars;
- They will have the ability to meet with key suppliers, trade experts and peers.

Both employees agreed to provide a written summary to the Board of Ethics of the benefits they believe that the city received as a result of attending the conference, classes and seminars to assist the Board to evaluate whether to grant future waivers in similar circumstances.

Case 19 – 1(outside employment)

A civilian employee in the Denver Fire Department requested an advisory opinion concerning her intention to be a candidate for a Denver City Council seat. If elected, she would resign from the Fire Department.

The Board of Ethics advised her that the Denver Code of Ethics does not prohibit any city employee from being a candidate for the Denver City Council. However, she must not use any DFD resources, including city time, paper, computers, etc., on any campaign activities.

Case 19 – 2 (outside employment)

An employee at the Denver Vehicle Impound Facility requested an advisory opinion. He has an unpaid hobby in which he races cars that he owns at a local race track. A vehicle-towing company sponsors one of his race cars. In return for allowing decals of the company name and phone number to be placed on the sides of his vehicle, the company pays him "cash donations which help pay for parts and maintenance on the vehicle." He advised the Board of Ethics that "this is simply a hobby for me and not related to any outside employment."

He also told the Board that vehicle impound clerks are not allowed to recommend any outbound towing companies. In addition, he told the Board that the race car is never at the impound lot and, therefore, could not be perceived as advertising the company to any persons who come to the Impound Facility.

The Board of Ethics advised him that this sponsorship arrangement does not violate any section of the Denver Code of Ethics, based on his representation that he does not and will not 1) recommend the towing company in his city job to anyone and 2) bring his company-sponsored race car to the Impound Facility.

Case 19-3 (gifts)

A city employee who is a non-voting member of the Board of the Convention Center Hotel Authority requested an advisory opinion. The Authority's board is responsible for owning, acquiring, constructing, equipping, operating and financing the 1100-room Convention Center Headquarters Hotel on behalf of the city and its residents.

The employee advised the Board of Ethics that the hotel operator has given her and all of the other board members "a certificate for a night's stay to check out the hotel to better inform our work." The average cost per room, from various hotel-search websites, was calculated to be about \$200 per night. She requested advice from the Board of Ethics as to whether she may accept and use the certificate

Unless granted a waiver, a city person must refuse a gift if the city person is in a position to take direct official action regarding the donor and if the city is doing or wanting to do business with the donor pursuant to Section 2-60(a) of the Code of Ethics.

"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, business loan 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 Authority's board has the responsibility to select the operator of the hotel, which, the Board of Ethics concluded, amounts to "direct official action." Although the employee is a non-voting member of the board, she has the responsibility to discuss important hotel issues, and, therefore, influence the voting board members. The Board concluded that she would violate Section 2-61 by accepting the gift certificate.

However, the Board of Ethics has the power, pursuant to Section 2-54(f) of the Denver Code of Ethics, to grant a waiver if it would serve the city's best interests. Since the Authority has the responsibility to "operate" the hotel, all of the board members should be familiar with how the hotel is being operated by the operating company.

The Board of Ethics granted the board member a waiver to accept and use the gift certificate because it is in the city's best interest for her to be familiar with how the Convention Center Hotel is being operated.

Case 19-4 (no jurisdiction)

An employee of a towing company filed a complaint alleging that a Denver police officer "routinely pulled over our tow trucks for no reason at all. We have had many of our trucks wasting valuable time having to deal with these stops." He called this a "focused vendetta" by the officer against towing companies.

The Board of Ethics concluded that there is nothing in this complaint that would violate any section of the Denver Code of Ethics. The Board has no jurisdiction to deal with traffic tickets or to explain the rules correctly to the officer

Case 19 – 5 (no jurisdiction)

The office manager of a dance academy filed a complaint concerning a member of the Denver Fire Department. One of the students at the academy was a daughter of the firefighter, who was apparently going through a divorce with child custody/visitation issues.

On one occasion, the daughter did not show up for dance class. On the following day, the firefighter (off-duty) brought his daughter to class and explained that she had not appeared the day before because of a family issue. The office manager complained that, in the ensuing discussion, the firefighter acted in such a way that she “felt physically threatened, that he acted aggressively and that he “was making a scene and making myself and parents at the studio...uncomfortable with his actions and anger...and got very upset and was reluctant to leave.” Ultimately, he left the building after he was told that the police would be called.

The Board of Ethics concluded that nothing in the complaint would violate any section of the Denver Code of Ethics. The Board has no jurisdiction to deal with alleged rudeness or aggression.

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

Case 19-6 (subsequent employment)

A former high-level employee of Denver International Airport (DEN) requested an advisory opinion. He had worked for a private firm for several years, then went to work for DEN in 2010. He then resigned in early 2019 and then began to work as a vice-president of the same company he had worked for before he began to work at the airport. The company provides civil engineering, architectural, land development and construction management services.

He advised the Board of Ethics that “My new employer is a subconsultant on several contracts at the Airport.” He requested “clarification and/or the opinion of the Board on the ability for me to work under any of these contracts.”

Subsequent employment is regulated in the Denver Code of Ethics by:

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 the former employee did not have any direct official action/decision-making power over any of the sub-consultants when worked for DEN except for one project and program management consultant.

The Board of Ethics advised the former employee that he will not violate Section 2-60(a) if he begins to work immediately as a sub-consultant under the contracts with DEN, except for the one consultant. However, the Board concluded that he would violate Section 2-60(a) if he would work immediately with the identified consultant and that he should wait at least 6 months following his retirement date before he could work as a sub-consultant for this consultant.

Case 19-7 (gifts)

A lieutenant in the Police Department asked for an advisory opinion. The Police Department received a request from a contractor with the National Institute for Occupational Safety and Health (NIOSH) to allow some of its officers to participate in a study to provide recommendations on designs for officer gear, equipment and patrol vehicles. The contractor would like to conduct the study with a minimum of 100 police officer participants and give every officer a \$50.00 incentive for participating or donate \$50.00 for each participant to a non-profit such as the Denver Police Officers Foundation. Participation in the study by officers would be entirely voluntary.

The Board of Ethics concluded that none of the Denver police officers participating in the study would have “direct official action” power over NIOSH or the NIOSH contractor conducting the study; therefore, they would not violate the gift provisions of the Denver Code of Ethics in Section 2-60 by accepting payments from the contractor either for on-duty or off-duty participation in the study.

However, the Board recommended that police officers should not accept incentive payments for on-duty participation in the study, because that will have an appearance of impropriety (“double-dipping”). The Board also indicated that, if the NIOSH contractor donates the incentive payments or if the individual officers re-direct the payments to the Police Foundation, that is specifically allowed by Section 2-60(c) of the Code of Ethics.

Case 19 – 8 (no jurisdiction)

A homeowner filed a complaint concerning a city inspector who gave him a citation imposing a \$150 fine for failing to shovel snow from his sidewalk. The homeowner disagreed with the citation for several reasons detailed in the complaint. He also disagreed with the process for appealing the citation, which requires the payment of a \$100 nonrefundable appeal fee for a hearing before an administrative hearing officer, as contrasted with other more informal, less-costly city appeals processes.

The Board of Ethics determined that the complaint did not allege anything related to the Denver Code of Ethics. Even if the citation and/or the appeal procedure are questionable, the Board of Ethics cannot serve as an appeals board for administrative citations.

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

Case 19-9 (no jurisdiction)

A Denver citizen filed a complaint about an employee in the Parking Magistrate’s Office of the Denver County Court. She alleged that she telephoned the Parking Magistrate’s Office to discuss a parking ticket and a late charge. She complained that the employee “spent most of the call mocking the way I speak and making fun of the way I said certain words. He should be removed from his role and demoted to a non-customer-facing position until he is put through more significant training...”

The Board of Ethics determined that, although the employee’s alleged conduct, if true, was very inappropriate and disappointing, there is nothing in the Denver Code of Ethics that requires city employees to be customer-friendly, although such training is given to many city employees. In addition, the Board of Ethics has no ability to intervene in the city’s process for handling parking tickets.

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

Case 19-10 (gifts, travel expenses)

A sergeant in the Denver Police Department requested an advisory opinion. She heads an 8-person DPD team, some of whom provide off-duty security for a Denver non-denominational church, which has offered to make a \$2000 donation to the officers for the purpose of assisting them with lodging arrangements to attend the National Police Week event held in Washington, D.C. The team members would pay their way for the trip, with no help from the Police Department.

The sergeant stated:

Police Week is a nationally attended event in which thousands of law enforcement officers from around the world converge on Washington D.C. to participate in several events to honor those in our profession who have paid the ultimate sacrifice....

There were three Colorado Heroes that fell in 2018 and their names will be added to the wall. It's important that the families not only hear our support but also see it as well.

Receipt of gifts by city personnel is regulated by Section 2-60 of the Denver Code of Ethics:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by donors 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; ...

(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 in an official capacity reasonably related to the recipient's employment by the city;**

Part of the definition of “direct official action” in Section 2-52(b) of the Code is “enforcing laws.”

The Board of Ethics advised the sergeant that she and her colleagues, even if off-duty, are obliged to “enforce laws” at the church and, since the church is located inside the city of Denver, the city has a “regulatory relationship” with the church. Therefore, they would violate Section 2-60(a) if they accept a donation for travel or lodging expenses. However, they all will be allowed to accept funds from the church (a non-profit organization) as travel expenses to attend National Police Week, because they will be representing the city in an official capacity reasonably related to their employment with the city, which is an exception allowed by Section 2-60(b)(7). In addition, the Board indicated that it will be in the city’s best interest if they could attend the events at National Police Week.

Case 19 – 11 (subsequent employment)

A former Senior Planner with the Denver Community Planning and Development Department (CPD) requested an advisory opinion. He worked on citywide and small-area long-range planning and was a case manager for rezoning applications.

One week after he left the Denver city government, he began to work for a large national consulting firm. The consulting firm had recently responded to a Request for Proposals to be the Professional Consultant on the Neighborhood Planning Initiative – West project.

He wished to know if he would violate the subsequent employment section of the Denver Code of Ethics if he is a team member of the consultant team if the consultant which employs him succeeds in getting the contract.

He advised the Board of Ethics that he never took any direct official action or had any direct contact with the firm when he worked for CPD. His only acquaintanceship with the firm’s employees was through informal networking.

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.

The Board of Ethics advised the former employee that, since he took no direct official action regarding the consulting firm when he worked for the City and County of Denver, he would not violate Section 2-64(a) by participating on the consulting team if the firm is selected for the contract and he would not need to wait for six months.

Case 19 – 12 (conflict of interest)

A Project Manager in the Public Works Department assigned to the Facilities Infrastructure Division requested an advisory opinion. Public Works had issued a Request for Qualifications for On-call Americans with Disabilities Act architectural and technical design services. The Project Manager is a member of the selection committee. One of the responding companies listed a company as a sub-consultant for Mechanical, Electric and Plumbing matters.

The Project Manager advised the Board of Ethics that his wife works for that potential sub-consultant in its Water & Environment sector. Her responsibilities include financial and operations reporting for the Water & Environment sector. The Water & Environment sector is separate from the Building Systems sector which performs MEP design. Ann does not have any ownership in WSP USA. WSP USA is a large, global organization with office locations through the US and the world. My wife would not receive any benefit from WSP USA if HDR were to be selected for this project.

The Project Manager asked for the Board's advice about the following:

Does an ethical conflict exist because I am a member of the selection committee and my wife works for a sub-consultant included on one of the responding teams? Additionally, I would anticipate that the company would be included in future RFQ responses that I may be involved with. Would I need to seek an official opinion for each similar occurrence, or would this opinion include future occurrences assuming the conditions are similar?

Conflicts of interest are regulated by Section 2-61 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;
- 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 a board member or 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.

- 7) He or she or a member of his or her immediate family participated personally in providing legal representation, lobbying or other professional services for another party in the matter or owns five (5) percent or more of a law firm, lobbying firm or other professional services firm representing another party in the matter...
- (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...

Since you are on the selection committee for this RFQ, you do have “direct official action” power regarding the companies responding to the RFQ, including HDR. You and the rest of the selection committee would not have any role, however, regarding HDR’s proposed sub-consultants, including your wife’s employer. There is an additional degree of separation because your wife does not work for the Mechanical, Electric and Plumbing Division of WSP USA. In addition, your wife has no ownership share of WSP USA, which is a large global organization.

The Board advises you that you would not violate the conflict of interest section of the Code of Ethics if you continue to serve on the selection committee for this RFQ because you do not have a substantial employment, contractual or financial interest in the matter as defined by Section 2-61.

In addition, the Board advised him that, if the company is a sub-consultant on another Request for Qualifications or Request for Proposals in which he will be on the selection committee, a conflict of interest would not exist, assuming the conditions are the same as the present ones.

The Board further advised him that he should not share any confidential information about this project or any upcoming project with his wife or anyone else at her company.

Case 19 – 13 (supervision of family member)

A Facility Superintendent in the Denver General Services Department requested an advisory opinion. He had a vacant supervisory role under him on a team which consists of 10 team members, and he intended to hire a new supervisor. One of the candidates for the position was a current employee on the team, (henceforth “Employee A”), who is the half-brother of another employee on the team, (henceforth “Employee B”). He wished to know whether promoting Employee A to supervise Employee B, would result in a violation of the Denver Code of Ethics. He said that “They (Employees A and B) have the same mother -half-sister, half-brother.”

Supervision of family members is regulated by Section 2-59(b) 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...

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

(c) When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers. Examples of circumstances which might result in a waiver include, but are not limited to:

(1) The family member who is proposed to be hired was certified through a competitive process conducted pursuant to law and the officer, official, or employee who would make the appointment did not influence or affect the certification.

(2) The officer, official, or employee who would officially make the appointment is acting ministerially and did not select the family member or attempt to influence the person who did.

- (3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.
- (d) The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor.

The definition of "immediate family" in Section 2-52(c) of the Code of Ethics is:

Immediate family means husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, father or mother-in-law, son or daughter in-law, brother or sister in-law, aunt, uncle, nephew, niece, grandmother, grandfather, grandchildren, brother, sister, domestic partner, any person with whom he or she is cohabiting and any person to whom he or she is engaged to be married. The term includes any minor children for whom the person or his or her domestic partner provides day-to-day care and financial support. A "domestic partner" is an unmarried adult, unrelated by blood, with whom an unmarried officer, official, or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

The Code definition of immediate family does not mention "half-brother" or "half-sister."

The Board advised the superintendent that if Employee A is promoted to be the team supervisor, he would not violate Section 2-59(b) of the Code of Ethics because the definition of immediate family does not include half-brother or half-sister. However, in order to avoid the appearance of improper favoritism, in the instance Employee A becomes the supervisor for the team, the Board recommends that he designate someone else other than Employee A in the Facilities Management Division to directly take any and all personnel actions regarding Employee B.

Case 19 – 14 (subsequent employment)

A former Denver International Airport (DEN) Concession Director asked for an advisory opinion. He primarily oversaw retail locations and was responsible for administration, operations and space planning for retail locations at the airport.

He was recently hired as a vice president of a new company, which he described as an "airport commerce platform."

He advised the Board of Ethics that “I did not work on any parts of a potential deal with the company while at DEN, nor had any communication directly with the company or any DEN Concessions about the company.”

He wished to know if Section 2-64(a) of the Denver Code of Ethics would prohibit him from working to develop partnerships for the company with DEN and/or any concessionaires at DEN for the next 6 months. He has not yet had any such discussions.

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)

The definition of “direct official action” in Section 2-52(b) of the Code of Ethics is:

Sec. 2-52. Definitions.

(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, business loan 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.

From his account, it does not appear that he took any “direct official action” regarding the company while he was with DEN.

For that reason, by a vote of four in favor and one abstention, the Board advised the former employee that he will not violate Section 2-64(a) if he begins now to develop partnerships with DEN and/or concessions at DEN on behalf of the company without waiting 6 months. However, the Board notes that it would have been better practice for him to consult with the Board before accepting a job with a potentially conflicted employer.

Case 19 – 15 (subsequent employment)

A Contract Administrator at Denver International Airport (DEN) requested an advisory opinion. He advised the Board that his “role is in procurement, which is bringing new projects through the process.” He wishes to advance his career and has been looking for other positions. He learned that a national project management company is advertising to hire a Senior Project Manager, a Project Manager and an Assistant Project Manager at DEN and he is considering applying for one or more of those jobs.

He described in detail in his request for an advisory opinion his role as a contract administrator in the procurement process. He acknowledged that he served as a “contract administrator” in the procurement process which resulted in a contract with the company for On-Call Project Management and Support Services at DEN. That procurement process was started 5 months before he began to work for DEN. He advised the Board that “I haven’t done anything related to their contract after the procurement was completed.”

Subsequent employment is regulated in the Denver Code of Ethics by:

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 in the Code as:

Sec. 2-52. Definitions.

(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, business loan 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. (emphasis added)
- (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 concluded that it does not believe that the meaning intended for the term "administering a contract" in the definition of "direct official action" is the same as what the Contract Administrator did in his "contract administration" of the Request for Proposal which resulted in DEN's contract with the company. He had no direct contact with the company at any time during the procurement process; he had no role in deciding that DEN should contract with the company and he had nothing to do with administering the contract with the company after it was executed.

The Board therefore advised him that he would not violate Section 2-64(a) if he were to be employed by the company without waiting for 6 months because he did not take any "direct official action," as meant by the Code, regarding the company.

Case 19 – 16 (subsequent employment)

An Asset Manager for the Denver Public Works Department asked for an advisory opinion. He managed “fixed assets” in the Right-of-Way Division, including street signs, street signals and pavement markings. Before he was hired, the Public Works Department already had a contract for a specific computerized software asset management system. He had nothing to do with the selection process.

The employee has decided to leave Denver for personal reasons. He has accepted a job offer from the same company which developed the asset management software, whose only business is assisting governments with asset management.

He advised the Board of Ethics that:

I have secured a position with the company as the Customer Success Manager (CSM) for the Northeastern United States and Colorado. This role will include the City and County of Denver. In this new role I will help the city continue the implementation of asset management, providing technical assistance, training and best practices.

In my position as Asset Manager with the City my role was strictly implementation, project management, training, database management and subject matter expert. In my role I took no direct official action. My direct supervisor was responsible for the RFP and contract negotiations, plus he was responsible for the budget and paying invoices.

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)

Although it would have been better practice to consult the Board before accepting a position with a potentially conflicted employer, the Board concluded that the former employee did not take any “direct official action” during his time with the city regarding the company and, therefore, he will not violate Section 2-64(a) if he works with the company, including as a Customer Service Manager for the Denver Public Works Department, without waiting 6 months.

Cases 19-17& 19-18 (no jurisdiction)

An Eligibility Specialist Technician at the Department of Human Services (DHS) had recently been in disciplinary meetings with her supervisor and others at DHS. She believed that the proceedings were unfair and that they amount to racial profiling.

The Board of Ethics determined that the complaint did not allege any conduct by her supervisor or others that would violate any section of the Denver Code of Ethics. They were entirely personnel matters, over which the Board has no jurisdiction.

The Board dismissed the complaints pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics because the alleged violations, if true, would not constitute a violation of the Code.

Case 19-19 (outside employment or business activity)

A Lieutenant in the Denver Police Department requested an advisory opinion with respect to whether she could engage in outside employment by acting in a partner in a personal development company with the primary purpose of assisting people with internal and external interviewing and Assessment Center preparation by having them “deep dive into their own personal knowledge, skills, and abilities to first develop a personal professional profile that they can use in interviewing situations.”

Outside employment and outside business activity are regulated by Section 2-63 of the Code of Ethics:

Sec. 2-63. Outside employment or business activity.

- (a) All officers other than elective officers and all employees shall report existing or proposed outside employment 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.

Conflicts of interest are regulated by Section 2-61:

Sec. 2-61. Conflict of interest while employed.

- (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...

The Board of Ethics determined that the Lieutenant's outside employment with the personal development company would not violate the Code of Ethics so long as the Lieutenant:

- Obtains written approval from her appointing authority and such approval is renewed annually.

In addition, the Board also strongly recommended that, in order to avoid any appearance of impropriety, the Lieutenant should:

- Not do any outside work on city time
- Not use city equipment or supplies for outside work
- Not engage other city employees (particularly subordinate employees) in the outside employment
- Not sit on any panel considering the employment or advancement of any person who has been a client of the development company

Case 19-20 (no jurisdiction)

An inmate at the Boulder County Detention Facility filed a complaint against a Denver County Magistrate, alleging that the Magistrate was prejudiced against men and that the Magistrate did not act as a neutral party when deciding his domestic violence, harassment and child abuse case.

The Board found that the complaint was, on its face, frivolous, groundless or brought for the purposes of harassment. The Board also noted that under the Colorado Constitution, county court judges are part of the judicial branch of government, and under the Denver City Charter, county court judges are subject to the recommendations of the Judicial Performance Commission with respect to their conduct. Therefore, the Board dismissed the complaint pursuant to Sections 2-54(6)(a) and (d) of the Denver Code of Ethics

Case 19-21 (conflict of interest)

The Program Administrator of the Environmental Management System (EMS) in the Denver Department of Public Health and Environment (DDPHE) wished to apply to the Governor’s Office for an appointment to the 9-member Solid and Hazardous Waste Commission as a “Public at Large” commissioner. The Commission meets four times per year. The members are not paid for their service, but they are reimbursed for any expenses.

Initially, the Board determined that since a Solid and Hazardous Waste Commissioner is not paid for his or her service, it would not be required by Section 2-63 of the Code of Ethics for this employee to obtain written approval from her appointing authority for outside employment.

Conflicts of interest are regulated in the Denver Code of Ethics by:

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 a board member or 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
- (8) 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.
- (9) He or she or a member of his or her immediate family participated personally in providing legal representation, lobbying or other professional services for another party in the matter or owns five (5) percent or more of a law firm, lobbying firm or other professional services firm representing another party in the matter.

(b) For purposes of this section, business associate means a person or entity with whom an officer, official or employee or a member of his or her immediate family is a partner or a co-owner of a business in which the business associate and the officer, official or employee or a member of his or her immediate family each own at least one percent of the business...

(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.

(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 Board determined that the employee’s job duties with DDPHE and her responsibilities as a Solid and Hazardous Waste Commissioner would likely constitute a “substantial conflict of interest” as defined in Sections 2-61(a)(1) and (3), but that, under the particular circumstances of this case, her membership would be permissible. The Board, however, counseled the employee to use significant diligence to recuse herself from any participation in or voting on specific matters if the interests of DDPHE are in conflict with the interests of the Colorado Solid and Hazardous Waste Commission or can be perceived to be so and, if that is the case, to follow the specific steps set forth in Section 2-61(f) of the Denver Code of Ethics.

In addition, the Board cautioned that since, if appointed, she would be a Public-at-Large member, as opposed to a government person, she should not use any city time or other resources, such as computers, paper, etc., for her work on the Commission.

Case 19-22 (gifts, travel expenses)

The Supply Chain Enterprise Manager in the City of Denver’s Purchasing Division requested an advisory opinion with respect to whether it would be a violation of the Denver Code of Ethics for he and a co-worker to attend an upcoming Workday Rising Annual User Conference in Orlando, Florida. He indicated that this conference will have a “host of sessions that are delivered to customers to assist in increasing workday knowledge, gain insight into future improvements planned, and network with other Workday customers in the government sector.”

With respect to Workday, his responsibilities involved managing daily Workday Procurement operations, making Workday process improvements, administering Workday’s semi-annual release, as well as training and enforcing policy compliance. Importantly, he provided that Division funds were budgeted for the entire cost of the conference, including the conference fees, lodging and travel expenses and that the Acting Executive Director of General Services reviewed and approved this request for out of state travel.

One of the most frequently asked questions to the Denver Board of Ethics by city elected officials, employees and supervisors is whether a city person may accept travel expenses to a sales conference, or any other type of meeting or event **paid by someone other than a city department or the employee.**

Travel expenses are discussed in the following parts of the Gift Section (Section 2-60) 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 donors 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; ...

(6) Travel expenses and lodging; ...

The Board determined that in this case, there would be no violation of the Denver Code of Ethics as the travel expenses were being paid in full by the city department so the possibility of influence by a donor that this section seeks to avoid is not at issue.

Cases 19 – 23 & 19 - 24 (no jurisdiction)

A passionate mother and grandmother were very unhappy about the way she believed she'd been treated by a caseworker and a supervisor at the Department of Human Services and filed complaints against each. She stated that the caseworker failed to do her job because ultimately, one of her sons died, and the other was facing a lengthy criminal sentence. She alleged that the supervisor failed to protect her granddaughter by not opening a child-protection case after her granddaughter was reportedly fed bleach, and after it had been reported that the granddaughter was being cared for by a sexual predator.

While the Board of Ethics was very concerned about the underlying child abuse allegations, it determined that her complaints did not allege any conduct by either the caseworker or the supervisor that would violate any section of the Denver Code of Ethics.

After referring her to the Colorado Child Protection Ombudsman and passing the allegations along to the District Attorney, the Board dismissed the complaints pursuant to 2-56(6)(a) and (b) of the Denver Code of Ethics because the Board has no jurisdiction over matters such as these and the alleged violations, if true, would not constitute a violation of the Code.

Case 19 – 26 (employment and supervision of family members)

The Chief of Staff for a Denver City Councilperson requested an advisory opinion and waiver if necessary, from the Board of Ethics concerning the hiring or supervision of the Councilperson's partner. The Councilperson and the partner are not married but do reside together and reportedly began doing so in part to provide safety measures for the Councilperson in the face of threats of violence.

When the Chief of Staff initially approached the Board, the Chief of Staff was considering the possibility of hiring the Councilperson's partner, however, the request was later modified to determine whether allowing the partner to volunteer in the Councilperson's office would violate the Denver Code of Ethics.

Employment and supervision of family members is governed by Section 2-59 of the Denver 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.

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

The definition of "immediate family" as set forth in Section 2-52 (c) of the Denver Code of Ethics includes the following relationships:

husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, father or mother-in-law, son or daughter in-law, brother or sister in-law, aunt, uncle, nephew, niece, grandmother, grandfather, grandchildren, brother, sister, domestic partner, any person with whom he or she is cohabiting and any person to whom he or she is engaged to be married. The term includes any minor children for whom the person or his or her domestic partner provides day-to-day care and financial support. A "domestic partner" is an unmarried adult, unrelated by blood, with whom an unmarried officer, official, or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

Under this definition, the Councilperson's partner is considered "immediate family" to the Councilperson.

With respect to the partner's status as an unpaid volunteer, in Section 2-52 (a), the Denver Code of Ethics provides: "[e]mployee means any person in the employ of the city or of any of its agencies or departments *and any person employed without compensation.*" (Emphasis added.) Therefore, the Board determined that without a waiver from the Board, it would be a violation of the Code for the partner to continue to volunteer in the office of the City Councilperson.

In Section 2-59 (c), the Code of Ethics provides the following direction. "When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers."

The Code further delineates several examples of circumstances which might result in a waiver. These include situations where:

- a competitive process was conducted and the officer, official, or employee making the selection did not influence the decision;
- the officer, official or employee who would officially appoint the family member acted only ministerially and did not make the selection or attempt to influence the process; and
- the family member who would fall within the line of supervision was already working for the organization before the officer, official or employee came into the line of supervision and the officer, official or employee will not participate in any personnel actions.

The Board recognized that the office did engage in a competitive process to attempt to employ someone who could assume the role of community liaison and that it is the Chief of Staff, and not the Councilperson, that makes hiring decisions for the office. The Board also noted that the partner was integral in supporting the campaign efforts for over a year prior to the Councilperson being sworn into office in July of 2019. Finally, because the Code provides that the phrase ‘direct line of supervision’ “shall mean the supervisor of an employee and the supervisor of an employee’s supervisor,” the Board accepted that there were two levels of supervision in place between the Councilperson and the partner, such that a strict reading of the Code would indicate that there is no violation of Section 2-59(b).

The Board stated that the requirement that there be two levels of supervision between family members suggests that family members should be distanced in the workplace. The Board further stated that it is the intent of this section that any separation be meaningful. The Board recognized that this raises a significant challenge unique to a small office with few employees. When the Board has been asked in the past to grant waivers and consider supervisory structures, the circumstances involved larger agencies where it was easier to envision and enforce the degree of separation. However, the Chief of Staff represented to the Board that procedures already exist to ensure the dual levels of supervision continue, and that the Office is dedicated to honoring those procedures. Thus, under these circumstances, the Board believed that procedures could be put in place to define the steps the office will take to ensure that the Councilperson’s partner is not being supervised in any way by the Councilperson.

Based upon the specific facts presented, the Board believed it was appropriate to grant a waiver to allow the partner to continue as an uncompensated volunteer with the City Councilperson’s office subject to the following conditions:

- 1) The Councilperson is to abstain from any supervision of the partner or direction of the partner’s activities;
- 2) Written procedures shall be developed by the office to provide meaningful separation between the Councilperson and the partner;
- 3) These procedures must articulate a minimum of two levels of supervision between, and not merely two supervisors of, the partner and the Councilperson;
- 4) The partner is to be careful to avoid conflicts of interest and not use any city resources for private promotion; and
- 5) The Board shall review the circumstances in six months, by June 2020.

The Board also noted that, although the Code includes in its definition of “employee” an uncompensated volunteer such as the partner, there is a distinction here between the two. As an uncompensated volunteer, the partner is not receiving taxpayer funds as compensation, particularly in a situation where other applicants could have earned compensation in the role. In this respect, concerns of favoritism and nepotism cautioned against in sections 2-51 and 2-59 are diminished. It is also relevant when considering the appearance of impropriety, *see* section 2-51, and important to the Board’s decision to grant this waiver.

Case 19-29 (outside employment, conflict of interest)

A Manager of Workforce Development in the Office of Economic Development (DEDO), approached the Board of Ethics for an opinion as to whether her proposed outside employment posed a conflict of interest with her current job responsibilities. She previously sought approval from her appointing authority to have outside employment with the Hispanic Contractors of Colorado (HCC), however, this request was denied. She was told that the denial was because such employment was deemed to be a conflict of interest. Thus, she had been volunteering twenty hours of her time each week to HCC since January of 2019. She provided administrative support. Specifically, she prepared the newsletter and flyers advertising HCC, collected payments and helped organize events. HCC wished to hire her and pay her for her work, and she wanted to re-visit the question of outside employment with the advice of the Denver Board of Ethics.

HCC is a 501(c)(6) organization and it promotes itself as an association that provides members with networking opportunities, education and other services to assist in the success of construction businesses. DEDO, Denver International Airport (DEN), Denver Water, Denver Public Schools are among the members of HCC. Several prominent City officials are also courtesy members of HCC. Members pay dues and enjoy monthly activities such as dinners and other events. There are approximately 70-80 people who attend these activities each month.

DEDO’s goals include enhancing the value of being certified as a small, minority and women-owned business with the City and County of Denver; improving access for small, minority and women-owned businesses to work on city contracts and procurements; and expanding the capacity of small, minority and women-owned businesses through internal and external partnerships by creating environments where small businesses can access large, prime contractors/consultants and build working relationships.

The Denver Code of Ethics provides, in part:

Sec. 2-63 Outside employment or business activity.

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.

Conflicts of interest are regulated in the Denver Code of Ethics by:

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 a board member or 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.
 - (7) He or she or a member of his or her immediate family participated personally in providing legal representation, lobbying or other professional services for another party in the matter or owns five (5) percent or more of a law firm, lobbying firm or other professional services firm representing another party in the matter.
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- (b) For purposes of this section, business associate means a person or entity with whom an officer, official or employee or a member of his or her immediate family is a partner or a co-owner of a business in which the business associate and the officer, official or employee or a member of his or her immediate family each own at least one percent of the business.
 - (c) An officer, official, or employee may represent himself or herself before a city board or commission in accord with such board's procedures, provided that the officer, official, or employee does not also participate in the board's decision in his or her official capacity.
 - (d) An officer, official, or employee may acquire an interest in bonds or other evidences of indebtedness issued by the city or the board of water commissioners so long as they are acquired on the same terms available to the general public.
 - (e) It shall not be a violation of this code of ethics for an officer, official, or employee to take direct official action on the following matters even if the person or a relative employed by a city agency would benefit:
 - (1) The city's annual budget or an amendment to the annual budget;or

(2) Establishing the pay or fringe benefit plans of city officers, officials, or employees

(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.

(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 Board considered the circumstances and did not believe that any substantial conflict of interest existed prohibiting the Manager from continuing her work with HCC while employed by DEDO. The Board found that the stated purpose of HCC appears to be consistent with the goals set forth by DEDO. However, the Board was clear that whether or not to allow for outside employment is ultimately the decision of the appointing authority and the Board in no way wished to impact their discretion by issuing this opinion.

Case 19-30 (no jurisdiction)

A concerned citizen became aware of activity by a member of a city commission on social media following what appeared to be a romantic breakup. The citizen filed a complaint alleging that the member of the commission had not acted in a manner that was representative of a persons in positions of public service.

While the Board of Ethics concluded that the circumstances highlighted the need to be cognizant of how public comments and behavior will be viewed through social media, the Board determined that the complaint did not allege any conduct by the commission member that would violate any sections of the Denver Code of Ethics. Therefore, the complaint was dismissed pursuant to Sections 2-56(6)(a) and (b) of the Code because the Board has no jurisdiction over matters such as this and because the alleged conduct, if true, would not constitute a violation of the Denver Code of Ethics.

Case 19 – 31_ (no jurisdiction)

A concerned citizen who lived and worked near the intersection of 32nd and Shoshone in Denver, Colorado, filed a complaint against an Engineering Supervisor with the Transportation Design Team in the City of Denver’s Department of Public Works alleging that this Supervisor unethically presented false information regarding potential options for infrastructure modifications to the intersection.

The Board of Ethics concluded that nothing in the complaint would violate any section of the Denver Code of Ethics. The Board dismissed this complaint pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics because (a) the Board has no jurisdiction over allegations of this nature and (b) the alleged violations, if true, would not constitute violations of the Code of Ethics.

Case 19-33 (subsequent employment)

A former high-level employee of Denver International Airport (DEN) requested an advisory opinion. He left DEN and started working for a well-known airline that interfaced with airports in the Rocky Mountain Region, including DEN. He indicated that it was in the best interests of the City of Denver that he be allowed to immediately work with DEN in his new position because of his knowledge and ability to facilitate conversations to address challenges that might be in front of both expansion teams.

Subsequent employment is regulated in the Denver Code of Ethics by:

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.

- (b) 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 the former employee did not have any direct official action/decision-making power during his time at DEN such that he would violate section 2-64(a) if he immediately began working on joint projects between DEN and his new employer. To avoid the disclosure of any confidential information, the former employee agreed to the execution of a non-disclosure agreement.