



CITY AND COUNTY OF DENVER

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LORI MACK – VICE CHAIR
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DENVER BOARD OF ETHICS

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DENVER BOARD OF ETHICS

2011 ANNUAL REPORT

Submitted: February 16, 2012

INTRODUCTION

The Denver Board of Ethics hereby submits its eleventh 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.

Appendix A below gives brief biographies of the five members of the Denver Board of Ethics.

The Board expresses its appreciation to all city elected officials, employees and board and commission members who requested ethical advice or help in 2011 and for the advice and representation given to the Board by Assistant City Attorney Helen Berkman.

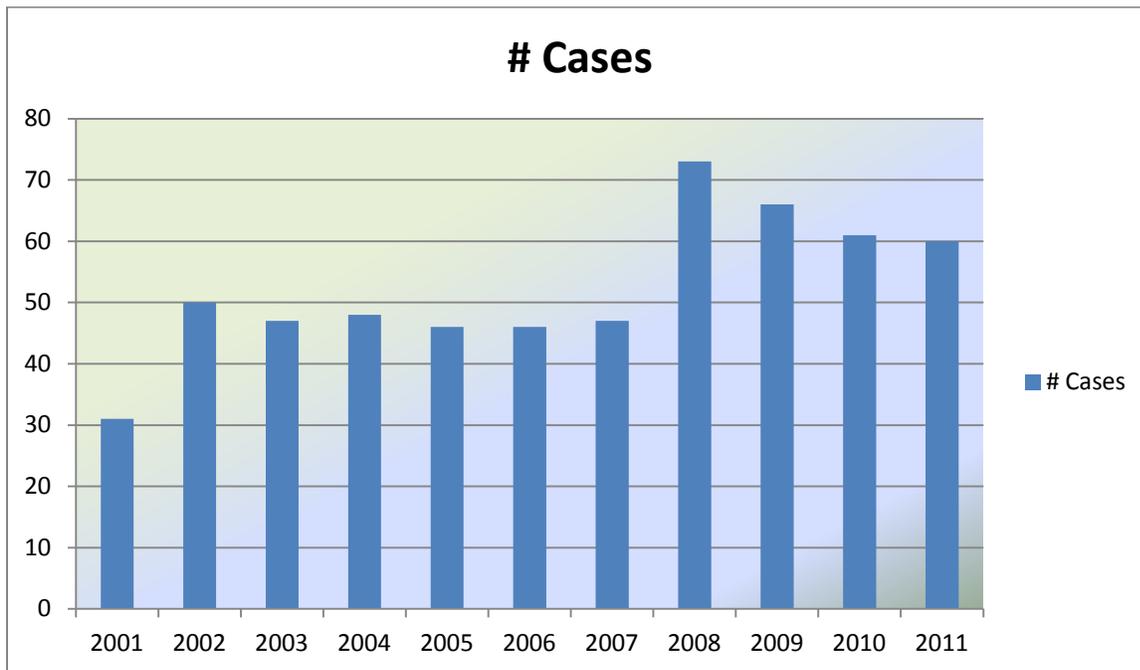
The Board also thanks and appreciates Syl Morgan-Smith for her insight and service on the Board through June 2011 and welcomes Roy V. Wood to the Board.

The Board held twelve monthly meetings and two special meetings during 2011. This report is a summary of the work accomplished by the Board during that time.

ADVISORY OPINIONS, WAIVERS, COMPLAINTS

In 2011 the Board received and handled a total of 60 written formal cases - as compared with:

- 61 cases in 2010
- 66 cases 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.



Thirty-two of the 2011 formal cases were requests for advisory opinions and/or waivers, while twenty-eight were complaints.

A digest of the Board's 2011 opinions is printed below as **Appendix B** and is posted on the Board of Ethics website at www.denvergov.org/ethics. The Board dismissed all but 2 of the complaints that it considered in 2011 after preliminary screening, primarily due to lack of jurisdiction over the subject matter. After conducting pre-hearing conferences concerning the complaints in Cases 11- 27 and 11-29, the Board issued decisions described in detail in Appendix B.

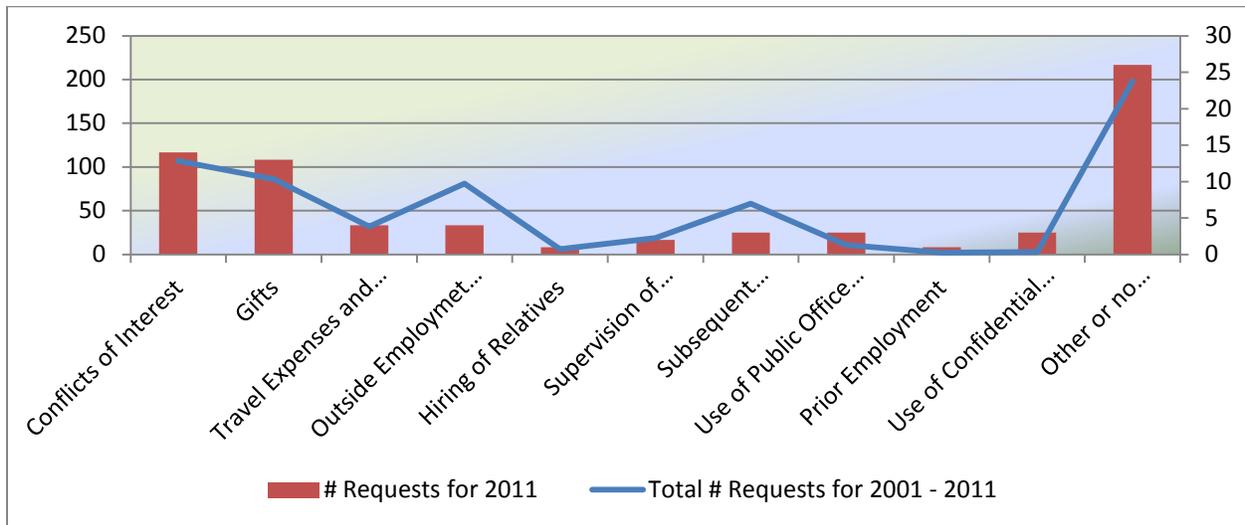
Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2011, the Board of Ethics has received a total of 574 written formal cases, consisting of 320 requests for advisory

opinions and/or waivers and 254 complaints about possible violations of the Code of Ethics. Most of the complaints received have been dismissed because the allegations relate to subjects and/or persons not covered by the Denver Code of Ethics. Examples of such dismissed complaints contain allegations that police officers made improper arrests or searches or that deputy sheriffs used excessive force. In such cases, the Board of Ethics encourages the complaining parties to submit their complaints to the Internal Affairs Bureaus of the Police or Sheriff Departments.

The subjects of the requests for formal advisory opinions or waivers during this entire 2001-2011 period break down as follows, with the 2011 cases enumerated in parentheses:

- conflicts of interest – 107 (14)
- gifts – 86 (13)
- travel expenses and lodging – 32 (4)
- outside employment or outside business activity– 81 (4)
- hiring of relatives – 6 (1)
- supervision of relatives – 19 (2)
- subsequent employment – 58 (3)
- use of public office for private gain – 11 (3)
- prior employment – 2 (1)
- use of confidential information or records 3 (3)
- other or no jurisdiction – 198 (26)

(Some requests involved more than one subject.)



In addition to the written formal complaints and requests for advisory opinions and waivers, the Board's staff director in 2011 received approximately 309 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:

- 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

For a total of 2514 since January 2001.

ETHICS HANDBOOK

In 2009 the 2008 edition of the Ethics Handbook was distributed to all city officers and employees and, for the first time, to all on-call city employees. In 2010 and 2011, the Ethics Handbook was distributed to all new city employees. The Board of Ethics will seek budget funding for 2013 to print an updated handbook, which will include new significant Board of Ethics decisions and amendments to the Code of Ethics made by City Council since 2008.

ETHICS TRAINING

The Board of Ethics continues to believe 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.

From 2002 through the end of 2011, 99% of all city employees and officers subject to the Code of Ethics have received at least 3 hours of ethics training. The Board's Staff Director gave ethics training in 2011 to several new Mayoral appointees and new elected officials and several Fire Department recruits and also gave refresher ethics training to staff at several departments and agencies. The Career Service Authority continued to give three-hour ethics training once a month to new city CSA employees. In 2006, with support from the Board of Ethics, the Career Service Authority Board amended CSA Rule 6 to require that new CSA employees must receive ethics training before they can pass their probationary period, which has significantly increased compliance with the ethics training requirement.

The Board expresses its continued appreciation to the Training and Organizational Development Division of the Career Service Authority and agency heads who have made this ethics training effort successful.

OTHER MATTERS

BUDGET

The adopted 2012 budget for the Board of Ethics is \$105,600, compared to:

- \$104,100 for 2011
- \$102,500 for 2010
- \$105,800 for 2009
- \$94,600 for 2008
- \$97,600 for 2007
- \$86,700 for 2006
- \$86,000 for 2005
- \$82,600 for 2004
- \$96,000 for 2003
- \$87,300 for 2002.

STAFF

Michael Henry, the Staff Director of the Board of Ethics, is the sole employee of the Board. The Board encourages citizens and city employees, officers and officials to contact him at 720-865-8412 or michael.henry@denvergov.org.

OTHER 2011 ACCOMPLISHMENTS

In 2011, the Board devoted significant effort to discussing several proposed amendments to the Code of Ethics and the Whistleblower Protection Ordinance, several of which were in response to a performance audit of the citywide ethics program performed by the Auditor's Office in November 2010.

2012 GOALS FOR BOARD OF ETHICS

A. Continue to implement and improve ethics training

The Board of Ethics, in cooperation with Career Service Authority, has overseen the delivery of ethics training for all Denver officers, officials and employees. The Board should in 2012

continue to pursue this goal by working with all city ethics trainers to encourage accuracy and consistency and high quality of the ethics training with cooperation from CSA and city departments. The Board should encourage city departments and agencies to devote time at staff meetings for refresher ethics discussions and should provide ethics training to new Mayoral appointees.

- B. Continue to receive, review and decide expeditiously requests for advisory opinions, requests for waivers and complaints regarding alleged misconduct
- C. Improve public information about Code of Ethics
 - a) Develop regular articles about Code/Board of Ethics to submit to City departmental newsletters and the city employee newsletter, Insight.
 - b) Organize and publicize city-wide and/or departmental informational lunchtime or after - work discussions of ethics issues – twice per year. Seek public comments at the meetings and otherwise about ethics concerns of citizens.
 - c) Continue to publish digests of recent opinions of the Board of Ethics twice per year.
- D. Improve implementation of Executive Order 134 regarding gifts to the city
 - a) Work with City Clerk’s and Mayor’s Offices to ensure that gifts to the city over \$2500 are posted on a website by the City Clerk pursuant to Executive Order 134.
 - b) Work with City Clerk’s and Mayor’s offices to develop a uniform reporting form for Executive Order 134.
- E. Analyze ethics-related responses to 2011 Denver Employee Survey and work with Career Service Authority Training Division to assist departments and agencies if survey indicates need for improvement of ethical culture
- F. Study Code of Ethics in light of the Board’s experience and research Codes of Ethics from other jurisdictions and recommend any improvements to City Council for approval. Continue to encourage City Council to amend Code of Ethics to allow the Board of Ethics to consider anonymous complaints, including tracking anonymous official and unofficial complaints.
- G. Work with City Council, the Auditor and the Mayor’s Office to implement recommendations of the 2010 performance audit of city-wide ethics program, including budgeting for, establishing and implementing a city-wide reporting hotline.

HOW THE BOARD OF ETHICS COMPLIES WITH THE CITY'S GOALS

The Mayor's Vision:

- We will deliver a world-class City where everyone matters. The Board of Ethics works to develop an ethical culture at all levels of Denver government.

The Hancock Administration City Goals are:

- Driving private-sector economic growth and job creation.
- Improving education and opportunities for *all* kids.
- Strengthening our safety net and public confidence in the police department. A primary goal of the Board of Ethics is to establish public confidence in all Denver city departments and agencies.

The Administration's two underlining core values to achieve these goals are:

- Improving sustainability. The Board of Ethics minimizes its dependence on paper by using electronic communications.
- Improving customer service. The Board of Ethics responds promptly to all questions and complaints from the public and city personnel.

CONCLUSION

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney's Office, Career Service Authority, the ethics trainers in city agencies and the great majority of managers and employees of the City and County of Denver, it made continued progress in 2011 to establish ethics as a recognized core value and cultivate public confidence in city government.

Respectfully submitted on behalf of the Denver Board of Ethics,



LESLIE M. LAWSON
Chair

APPENDIX A

DENVER BOARD OF ETHICS

Board Members (as of January 2012)

Leslie M. Lawson earned a B.A and J.D. from the University of Wyoming. She has served as an attorney for the Equal Employment Opportunity Commission, as an in-house attorney for a major oil corporation, as an attorney in a small law firm, as a Denver district judge and as a member of the Judicial Arbiter Group. She is a past president of the Colorado Women's Bar Association. Currently she is a mediator and arbitrator and a partner in Dispute Management, Inc. Re-appointed by City Council. Term expires 4-20-2013. She served as Chair of the Board of Ethics from May 2005 through May 2006 and as Vice-Chair from May 2007 to May 2008. She was re-elected as Chair in May 2010 and 2011. Due to her experience as a judge, she serves as presiding officer at hearings on complaints conducted by the Board.

Lori Mack earned a B.A. in Communication from the University of Colorado. She is currently the Economic Development Administrator for the City and County of Denver's Office of Economic Development – Youth Programs. She was a fellow for the Denver Fellowship in Urban Government in the Denver Office of Accountability and Reform in 2004. During her 23 years with the City and County of Denver, she worked at Art, Culture and Film; Aviation; Excise & Licenses, and Career Service Authority. She was appointed to serve on the Denver Public Schools Bond and Mill Levy Committee and continues to serve on various private and public committees. Reappointed by the Mayor and City Council, her term expires 4-30-2013. In May 2006 she was elected Vice-Chair of the Board of Ethics and in May 2007 was elected Chair and served for one year. In May 2011, she was elected again as Vice-Chair.

Ann A. Terry earned a B.A. in Sociology from the University of Iowa and a J.D. from Drake University Law School. She was a prosecutor in Iowa and then worked in Colorado with the Jefferson County District Attorney's Office and the Colorado District Attorneys' Council and served as a legislative liaison and public policy analyst for the Colorado Department of Public Safety. She has served on a number of non-profit boards and committees and has taught several law school courses. She developed an ethics curriculum for prosecutors, law enforcement and victims' advocates. She is currently the executive director of the Special District Association for Colorado. Reappointed by the Mayor. Term expires 4-30-2013. In May 2006 she was elected Chair of the Board of Ethics and served through May 2007. She served as Vice-Chair, from May 2009 to May 2011.

Edgar L. Neel earned a B.A. from Amherst College and a J.D. from Cornell University Law School. He has practiced law in Denver for over thirty years. His focus is on commercial and construction matters, representing contractors, insurers and surety companies in complex claims and litigation. He is a director and currently the president of the Denver law firm of Pendleton, Friedberg, Wilson and Hennessey, P.C. He was the District Director for Congresswoman Diana DeGette in 1997. Reappointed by City Council. Term expires 4-20-2015. He was elected Chair of the Board of Ethics in May 2008 and served for two years.

Roy V. Wood earned his B.A, M.A. and Ph.D. from the University of Denver. He was a Professor and Dean of the School of Communications at Northwestern University from 1972 to 1988. In 1989 he became the first Provost of the University of Denver. In 2006 he chaired a blue-ribbon panel on ethics for the Colorado House of Representatives. The Speaker of the Colorado House of Representatives appointed him as a member of the first Colorado Independent Ethics Commission and he completed that term in June 2011. He teaches classes and seminars at D.U. in communications ethics and dialogue and directs dissertations, most of which center around ethics in organizations and public service. Appointed by the Mayor. Term expires 4-30-2015.

APPENDIX B

DENVER BOARD OF ETHICS DIGEST OF SELECTED OPINIONS January 1– December 31, 2011

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2011 in response to fact-specific requests for advisory opinions or complaints. **They should not be used as conclusive guidance for situations where the facts may differ.** Please contact the Board of Ethics to discuss any specific issues you may have.

Cases 10-54 through 10-58 (no jurisdiction)

A city employee filed these complaints which indicated that she had received a written reprimand for allegedly threatening a co-worker, but that she had not been allowed to give her side of the story before the reprimand was issued. The Board of Ethics dismissed these complaints and concluded that it does not have jurisdiction over the issues in this case, which are personnel issues. On several occasions, the Board of Ethics has decided that it cannot serve as an appeals board for personnel issues.

The Board did express, however, that, although it does not know the circumstances of how the investigation of the alleged threat of violence occurred, as a general principle of fairness, the Board believes that, unless unusual circumstances exist, an employee should have the opportunity to respond to any accusations before discipline is imposed.

Case 11 - 1 (outside employment, conflict of interest)

A physician employed by Denver Health who is a Career Service Authority employee filed a request for an advisory opinion. Such CSA employees of Denver Health are subject to the Denver Code of Ethics. In mid-December 2010, she was selected by a vacancy committee of the Democratic Party to serve as a State Senator.

The first issue in this case is that she must obtain her appointing authority's written approval of her Senate position, as required of all city employees for paid outside employment, pursuant to Section 2-63 of the Denver Code of Ethics.

The second issue relates to potential conflicts of interest or incompatibility between her Senate position and her Denver Health job, which would be prohibited by Section 2-61 of the Code of Ethics. The Board

of Ethics was not able to discern any conflict of interest between the two jobs from the point of view of her city position. The Denver Code of Ethics cannot control her votes as a State Senator; however, she will need to abide by state statutes and the rules of the Senate regarding conflicts of interest. Likewise, the Board of Ethics was not able to find any “incompatibility” between her city job and her Senate position or that her Senate position “would adversely affect the interests of the city,” which would prevent her from being a Senator, pursuant to Section 2-61(g) of the Code of Ethics and Section 1.2.8(A) of the Denver Charter (Holding Other Office or Employment). To the contrary, her service in the Senate will likely enhance the interests of the city.

The third issue is whether she can take Leave Without Pay with the city for six months each year while devoting her time to the State Senate. The Board of Ethics does not have the authority or expertise to interpret the regulations of the Career Service Authority regarding pay practices or the regulations of the Denver Employee Retirement Plan regarding calculation of retirement benefits and recommended that she consult with those agencies.

Case 11 - 2 (gifts - travel expenses)

The Manager of Denver International Airport requested an advisory opinion. In 2008 DIA responded to a proposal by a for-profit company which organizes annual international airport conferences. DIA was the successful proposer for the 2012 conference and negotiated a contract during late 2008 and early 2009 with the company regarding the 2012 conference. The contract, which provided for approximately \$370,000 to be paid to the company by the City and County of Denver, was signed in April-May, 2009.

The Manager agreed in 2008 to an invitation by the company to speak at the annual conference in Athens, Greece in May 2009. The travel expenses would have been paid by DIA and were approved by the Mayor’s Office. However, the Manager decided to cancel her attendance in early 2009 because revenue from air traffic at DIA was down as a result of the poor economy. The company responded by offering to pay for her airfare and hotel, as it felt it was important for her to attend. She accepted that offer and attended and spoke at the Athens conference. The company paid approximately \$5700 for her travel expenses. DIA paid for two other DIA executives, to attend the conference, who spoke on different panels.

The Manager advised the Board of Ethics that this was the first time during her tenure at DIA that a third party paid for her travel expenses and indicated that she believed that her speaking at the Athens conference was in the best interests of the City and County of Denver because it would help to “stoke the economic engine of Denver” by spotlighting DIA at the international conference.

DIA recently reimbursed the company for the travel expenses that it paid for the Manager in 2009.

The Board of Ethics concluded that the Manager violated Section 2-60 of the Denver Code of Ethics, which provides in part (emphasis added):

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

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

- (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:
 - (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...

The Board concluded that:

1. The Manager was in a position to take direct official action concerning the contract with the company and did approve and sign the contract. The definition of “direct official action” in Section 2-52(b) of the Code of Ethics includes “negotiating, approving, disapproving, administering, or recommending for or against a contract, purchase order, lease, concession, franchise, grant or other similar instrument in which the city is a party...”
2. The company had an existing or pending contract with the city.
3. The Manager accepted travel expenses from the company.
4. The company is a for-profit corporation and, therefore, the exception in Section 2-60(b)(7) does not apply.

The Board of Ethics indicated that it is authorized by Section 2-54(f) of the Code of Ethics to grant a waiver if it finds that a waiver will serve the best interests of the city and that the Board is always glad to consider a request for a waiver if it is timely made.

The Board indicated that the reason for Section 2-60 regarding gifts is so that the public and those doing or wishing to do business with the City and County of Denver should not have any reason to believe that those who give gifts to city officers, employees or officials will have any special influence or consideration in negotiations of any kind with the city.

Case 11 – 3 (no jurisdiction)

A citizen filed a complaint concerning a claims adjuster in the City Attorney’s office alleging that the claims adjuster and the City in general had failed to communicate promptly and to offer a reasonable settlement for more than six months after a traffic accident in which a city worker driving a city truck

had totaled her vehicle. The Board of Ethics dismissed the complaint, saying, “although it is unfortunate that you did not receive more timely communications...and that the City’s delay in providing reimbursement for an accident that you had no responsibility for has caused you financial hardship, those are not matters over which the Board of Ethics has jurisdiction.”

Case 11 - 4 (conflict of interest)

A candidate for the office of Clerk and Recorder requested an advisory opinion. His wife is an employee of an international company is a registered Denver and Colorado lobbyist. The company has a number of contracts with the City and County of Denver. He asked whether he would have a conflict of interest if he was elected to be Clerk and Recorder.

Two of the several essential duties of the Clerk and Recorder are:

1. To attest the Mayor’ signature on all city contracts and, through the City Clerk division, maintain all contracts to which Denver is a party and
2. To handle the registration and disclosures of lobbyists of city government

Conflicts of interest are regulated by Section 2-61 of the Denver Code of Ethics, the pertinent provisions of which are (emphasis added):

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...
 - (6) He or she or a member of his or her immediate family participated personally in providing legal representation or lobbying for another party in the matter or owns five (5) percent or more of a law firm or lobbying firm representing another party...
- (f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

The definition of “direct official action” in Section 2-52(b) includes “enforcing laws or regulations or issuing, enforcing or regulating permits, licenses, benefits or payments. Section 2-52(b) also provides:

Direct official action does not include acts that are purely ministerial (that is, acts which do not affect the disposition or decision with respect to the matter). With regard to the approval of contracts, direct official action does not include the signing by the mayor, the auditor, the manager of finance or the clerk, as required by Charter, unless the mayor, auditor, manager of finance or clerk initiated the contract or is involved in selecting the contractor or negotiating or administering the contract. A person who abstains from a vote is not exercising direct official action.

Because the candidate’s wife is a registered lobbyist for the company, it seems likely that she would “participate personally...in lobbying” for the company on all contracts and leases between the City and County of Denver and the company.

The Clerk and Recorder is required to “attest” all city contracts and leases. However, the signing of most documents by the Clerk and Recorder is “purely ministerial” and is not “direct official action.” Therefore, if elected to be Clerk and Recorder, the candidate would not violate Section 2-61 if he attested documents even if his wife had been involved in lobbying on the contracts.

Another one of the responsibilities of Clerk and Recorder is handling the registration and disclosures of lobbyists, including the granting and revoking of lobbyist registration. Section 2-309 of the Denver Revised Municipal Code provides that “the City Clerk shall investigate the activities of any person who is or who...may be in violation of any provision” of the Regulation of Lobbyists Ordinance and may revoke or suspend a lobbyist’s certificate of registration.

Although it is very unlikely that the candidate’s wife’s registration as a lobbyist would need to be investigated by the Clerk and Recorder’s office, the Board of Ethics concluded that, if elected, he would violate Section 2-61 of the Code of Ethics if he were personally involved in processing or reviewing his wife’s registration as a lobbyist or her lobbyist disclosure statements or in investigating any issues which might possibly lead to termination or suspension of her lobbyist registration. Therefore, the Board strongly recommended, in order to avoid the appearance of impropriety, that, if elected as Clerk and Recorder, he should allow the appropriate personnel in the City Clerk division to process and review his wife’s registration and disclosure statements and do any necessary investigations. He should not under any circumstances attempt, directly or indirectly, to influence any employees within the Clerk and Recorder’s office with respect to any actions or decisions that would specifically affect his wife’s registration as a lobbyist. If elected, the Board recommended that he communicate to the relevant staff that he expects his wife to be given exactly the same treatment as any other lobbyist.

Case 11 – 5 (no jurisdiction)

An attorney, on behalf of the elected coroner in a nearby county, filed a complaint concerning an employee of the Denver Medical Examiner’s Office. The attorney alleged that the employee had improperly used his city title and letterhead to send letters to a national professional accrediting organization which challenged the professional credentials of the elected coroner. The attorney said that the letters were not based on the employee’s first-hand knowledge, but were political attacks.

The Board of Ethics stated that the Board of Ethics has neither the jurisdiction nor the competence to settle a dispute about coroner credentials. The Denver Code of Ethics, however, has two sections that may possibly relate to the employee's actions. The first is **Section 2- 63(e)**: "City resources may not be used for any outside employment or outside business activity."

The second is **Sec. 2-67. Use of public office for private gain**:

No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment.

In his written response, the employee said that he and others in the Denver Office of Medical Examiner had professional reasons to be concerned about the perceived dilution of the significance of professional credentials issued by the professional accreditation organization. No evidence was shown that the employee's purpose in writing his letters about the coroner was to help in any "outside employment or outside business activity" and/or "in order to obtain private gain..."

The Board of Ethics determined that it does not believe that, if the Board of Ethics were to conduct a public hearing on this complaint, a violation of Section 2-63(e), 2-67 or any other section of the Code of Ethics could be proven by clear and convincing evidence, which is the standard of proof required by Section 2-56(13) of the Code of Ethics. Therefore, the Board dismissed this complaint, pursuant to Sections 2-56(6)(a) and (b) because the Board has no jurisdiction over this type of issue and because this allegation, if true, would not constitute a violation of the Denver Code of Ethics.

Case 11 - 6 (no jurisdiction)

A citizen/property-owner filed a complaint concerning an inspector for Neighborhood Inspection Services who issued him a notice of violation for a number of zoning violations. Apparently, the property-owner did not comply with that order and the inspector visited the property again and, according to the property-owner's allegation, engaged in "threats and harassment" against him.

The Board of Ethics dismissed the complaint because the Board does not have any jurisdiction regarding these types of allegations, even though the allegations, if proven to be true, would show inappropriate and unprofessional behavior. In addition, the Board reminded the property-owner that filing a complaint with the Board of Ethics does not affect the zoning issues and does not stay any filing deadlines for an appeal of the zoning issues.

Cases 11 - 7 and 11 - 8 (no jurisdiction)

Two members of the Police Department filed separate complaints concerning a Division Chief in the Police Department, who was appointed to that rank approximately 8 years ago by the Police Chief. At

the time that he was appointed as a Division Chief, he had been a lieutenant. Section 9.6.3 of the Denver Charter permits the Chief of Police to appoint up to 5 lieutenants or captains to serve as Division Chiefs, for so long a time as his or her services are satisfactory to the Chief. Division Chiefs can return to their former rank whenever a new Chief of Police is named.

Both complaints alleged that it was unfair and unethical for the Division Chief to take the captains' promotional examination, administered by the Civil Service Commission in February 2011 because the Division Chief had participated in one or more "assessment centers" for promotional exams in other cities, including one in Charlotte-Mecklenburg, North Carolina in December 2010.

Many large cities, including Denver, have developed, as their means for police and firefighters' promotional exams, what are known as "assessment centers. Cities, including Denver and Charlotte-Mecklenburg, hire national consulting companies to administer the assessment centers and the exams, including selecting, importing and training police personnel from other cities to evaluate the candidates for promotion, including through exercises and interviews. This is to remove any local friendship, favoritism, bias, etc. from the promotional process as much as possible. Most police and fire departments are willing to allow their personnel to travel to other cities to take part in assessment centers.

The consulting company that administered the promotional exam process in Charlotte-Mecklenburg is a different company than the one hired by Denver to administer the police captains' exam.

The Board of Ethics determined that there is no section of the Denver Code of Ethics that would prohibit either the conduct of the Division Chief in taking the 2011 captains' exam and/or participating in an assessment center for other cities or the conduct of the Police Chief in allowing this. It is customary and appropriate for police or fire departments or officers to assist other jurisdictions to have fair and unbiased promotion processes. The Board of Ethics dismissed these complaints pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

Case 11 - 9 (prior employment)

The recently-hired Managing Director of Asset Development at Denver International Airport (Director) and his supervisor filed a request for an advisory opinion and/or waiver. The Director was hired through a public process and began to work at DIA on December 13, 2010. Prior to that, he had worked for 8 years until December 10, 2010 for Continental Airlines in Houston, Texas as a Senior Manager of Airport Affairs, dealing with 45 separate airports. The Director will be expected to engage in matters related to the negotiation and administration of all of the airlines' use and lease agreements at DIA. The common lease agreement for all airlines at DIA, except for United Airlines, is set to be renegotiated and/or renewed during 2011. The Director informed the Board that, because of Federal Aviation Administration requirements, all airlines at an airport must have equal terms in a lease.

One of the conditions of the Director's employment at DIA is that he must recuse himself from any involvement during the first 6 months of his employment with the city regarding Continental Airlines or United Airlines (which is currently in a merger process with Continental Airlines). The purpose of this restriction is to comply with section 2-62 of the Code of Ethics, which provides:

Sec. 2-62. Prior employment.

The purpose of this section is to indicate that persons are not disqualified from a city job because of prior employment, to avoid special advantage being given to former employers of city officers, employees or officials and to avoid special advantage being given to a city officer, employee or official by a former employer.

...Officers, officials, and employees shall not take any direct official action with respect to their former employers for a period of six (6) months from the date of termination of the prior employment (emphasis added).

The definition of “direct official action” in Section 2-52(b) of the Code of Ethics includes “negotiating...administering, enforcing or recommending” a contract or lease.

The Board of Ethics determined that it would be possible for the Director to recuse himself from any involvement in administering or enforcing the existing lease agreements with Continental Airlines and/or United Airlines by delegating any such matters to the DIA Property Manager, who reports directly to the Director’s supervisor. The Board found that, so long as the Director does recuse himself from any issues relating to administering or enforcing the current lease with Continental and/or United during the first 6 months of his employment with the City and County of Denver, he will not violate Section 2-62. The Board advised the Director that Section 2-61(f) of the Code of Ethics requires that the Director “shall refrain from attempting to influence the decisions of others in acting or voting on the matter.”

However, after listening to the Director’s descriptions of the 2011 “global” lease negotiations for all of the airlines except United, the Board did not believe that it would be possible or appropriate for the Director to recuse himself from any part of those discussions (which will involve “negotiating” and “recommending”) that might relate to Continental because of their necessary comprehensive and global nature. The Board determined that any participation by the Director in any of the global negotiations or discussions will violate Section 2-62. The Board, however, decided that such participation by the Director, due to his extensive background and expertise in such matters, will be in the city’s best interests. The Board also recognized that his prior employment by Continental is well known by all of the participants in the negotiations. The Board, therefore, decided to grant the Director a waiver to allow him to participate in such global negotiations and discussions of the common airline lease agreement.

Case 11 – 10 (hiring and supervision of relatives)

The Director of a 24-hour-per-day program at the Department of Human Services requested an advisory opinion. The Director’s son was recently hired and began to work in the same program. The Director advised the Board of Ethics that:

- He did not participate in the “rating of supplemental questions, screening of applications, conduct of interviews, discussions about candidates and the final decision to offer a position...” to his son.
- He assigned those decisions to the Deputy Director and other members of the program’s leadership team.

- There are two levels of employees between the Director and his son.
- He will abstain from any involvement in personnel actions regarding his son, which will be handled by the Director's supervisor.
- Out of a 40-hour work week, the Director's and his son's working hours overlap only 9.5 hours per week.

Hiring and supervision of immediate family members (including a son) are regulated by Section 2-59 of the Code of Ethics:

Sec. 2-59. Employment and supervision of family members.

The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members.

- (a) Unless he or she obtains a waiver pursuant to section 2-54, no officer, official, or employee shall appoint or hire a member of his or her immediate family for any type of employment, including, but not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.
- (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...
- (d) **The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor. (emphasis added)**

The Board of Ethics determined that neither the Director nor his son will violate Section 2-59 of the Code of Ethics due to his hiring, because there are 2 levels of supervision between the Director and his son and because the Director did not hire his son. The Board also advised the Director that he will be required by Section 2-59 to abstain from participating in any personnel action involving his son.

As a message to other city employees in the future, however, the Board also indicated that, even though this situation is permitted by the Code of Ethics, it gives the appearance to the public of favoritism by a city employee to an immediate family member, especially when it is in a relatively small work group. The Board, therefore, does not encourage such situations in the future.

Case 11 - 11 (gifts)

The Executive Director and a Program Administrator of the Office of Employee Assistance (OEA) requested an advisory opinion. One of the functions of OEA is the administration of the Denver Employees Emergency Program (DEEP), which is a 501(c)(3) tax-exempt charitable organization, the mission of which is to obtain donations and to give assistance to city employees who are in economic distress for essential living expenses in these hard financial times.

A retired city employee who was a DEEP board member and is now a licensed real estate agent has offered to use her real estate knowledge to help DEEP and city employees. She proposes 1) providing information on her website, which would be linked to DEEP's website, about various foreclosure counseling and prevention services that could assist city employees and 2) contributing to DEEP 10% of any commissions to her that might result from any transaction that might occur with DEEP clients.

The Executive Director, the Program Administrator and the retired city employee requested an advisory opinion as to whether this arrangement would comply with the Denver Code of Ethics.

This proposal is somewhat similar to the city sponsorship issue that was considered by the Board of Ethics in Case 10-18. The Board analyzed that case as to gifts and conflicts of interest. In the current case, neither OEA nor DEEP has any contractual or regulatory relationship with the retired city employee. Therefore, OEA, DEEP, and their staff are not in a position to take direct official action regarding the retired city employee or the real estate firm that she works for. Therefore, receiving a share of any commissions that the retired employee might earn would not be prohibited by Section 2-60(a) of the Code of Ethics. In addition, Section 2-60(c) specifically permits city employees to "solicit or redirect donations for charitable purposes to a 501(c) or other charitable organization... :

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

Neither DEEP nor OEA nor the OEA staff has a substantial conflict of interest as defined in Section 2-61 of the Code of Ethics that would prohibit them from providing a link on the DEEP website for the retired city employee's services, in return for the agreement by the retired city employee to pay 10% of any resulting commissions to DEEP.

The Board determined that the arrangement proposed by OEA and the retired city employee would not violate the Code of Ethics. However, the Board recommended that, in order to avoid the appearance of impropriety or unfairness to other real estate companies by allowing a link to a real estate agent to be placed on a city web-page, DEEP should consider following the guidelines from Case 10 - 18, in particular:

1. requiring that all agreements between DEEP and the retired city employee should be in writing and available to the public;
2. having all such agreements be for a limited term;

3. clarifying that the only consideration to the retired city employee or her real estate firm from the agreement is what is stated in the written agreement and that no other favor or advantage will be given by the city or any city agency, employee, officer or official;
4. clarifying that all city contracts and purchase orders are issued based only upon the specific criteria which must be considered for that contract or purchase order and are not influenced by a party's involvement or non-involvement in any city sponsorship or similar arrangement;
5. approaching more than one possible real estate agent or company for each opportunity and having objective criteria for the selection, if more than one express interest;
6. making sure that the decision regarding a sponsorship may not be made by any city person who has any city or personal relationship with a possible sponsor.

In addition, the Board recommended that OEA investigate whether the Technology Services Office has any rules or regulations regarding whether information about private businesses may be posted on a city agency's website.

Case 11 - 12 (outside employment)

An employee at Denver International Airport requested an advisory opinion. He wished to work with others (retired DIA employees and consultants in the airline industry) to respond to a Request for Proposals (RFP) issued by the Transportation Research Board (TRB) of the National Academies. The project related to research gathering and reporting.

The employee indicated that the report resulting from the project will benefit the entire aviation industry, rather than certain airports at the expense of others and that the resulting report will be available to all.

Since the employee will be paid if he is selected for this project, the issues are regulated by Section 2-63 of the Code of Ethics, which requires written approval from his appointing authority for paid outside employment or business activity.

In addition, the Board of Ethics determined that:

- The Board does not find any conflict of interest or incompatibility between his city job and work on the TRB project
- He must not use any city resources on responding to the RFP or on the project, such as city time, city supplies, city equipment or city software.

Case 11 - 13 (gifts, travel expenses)

The Manager of Community Planning and Development requested an advisory opinion. He had been offered a "scholarship" to pay for travel expenses to an event in Philadelphia, Pennsylvania called Urban Exploration. The travel expenses would be paid for by the Downtown Denver Partnership (DDP), which

is a non-profit organization. DDP described this Urban Exploration trip as “a working trip focusing on strategically selected Center City Philadelphia initiatives that correlate to emerging initiatives in Downtown Denver as identified in the 2007 Downtown Area Plan.” One of DDP’s subsidiary organizations, Denver Civic Ventures, has a contract with the City and County of Denver for consulting in a planning process for the northeast downtown area. The Manager and CPD negotiated and approved that contract.

The Board of Ethics determined that the Manager was in a position to take direct official action regarding the donor of the expenses by negotiating, approving and administering the contract between the city and DDP’s subsidiary. Therefore, he would violate Section 2-60(a) of the Code of Ethics if he accepted a gift of travel expenses. However, such a gift is specifically permitted by the following exception in Section 2-60(b)(7):

2-60(b)(7) Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city; (emphasis added)...

Therefore, the Board of Ethics decided that the Manager would not violate the Code of Ethics if he accepted the gift of travel expenses from DDP because the acceptance is permitted by Section 2-60(b)(7).

Case 11 – 14 (conflict of interest)

An employee of the Public Works Department requested an advisory opinion. He serves as the liaison between the City of Denver and the Regional Transportation District regarding the FasTracks light-rail project. RTD is building the FasTracks project; however many aspects need to be coordinated with Denver, such as construction on Denver streets or other property.

The City and County of Denver will soon issue a Request for Proposals (RFP) for consulting services for an environmental impact statement regarding a bridge related to the light-rail East Corridor line to DIA. The employee advised the Board of Ethics that he will not have any part in preparing the RFP.

His wife works for a major consulting firm which may respond to the RFP. The employee said that the firm might be interested in having his wife on their proposed team, due to her prior experience in roadway projects and projects that involve tight time frames for construction.

The employee wished to know whether the Denver Code of Ethics would prohibit the consulting firm from assigning his wife to the consulting team.

The Denver Code of Ethics does not regulate consulting firms or employees of consultants and only regulates employees, officers and officials of the city. As applied to the employee, Section 2-61 of the Code, pertaining to conflicts of interest, prohibits him from taking any direct official action if (subsection (a)(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.” However, the employee pledged that he will neither help to prepare the RFP nor be part of the process to select the winning consultant.

The Board of Ethics determined that, under the described facts, the employee will not violate the Denver Code of Ethics. However, this is conditioned upon his representations that:

1. He will take no direct official action regarding the selection of the consultant;
2. He will not share any information about the project with his wife or anyone else at the consulting firm; and
3. He will not be the project manager or supervisor for the project.

Case 11 - 15 (gifts)

A supervisor in the Forestry Division of the Parks and Recreation Department requested an advisory opinion. A citizen-homeowner mailed a \$500 check in late 2010 to the Forestry Operations office, which she intended to be allocated as a gratuity among the 5 crew members who assisted her by removing a very large tree on city property which had been growing into her fence and subsequently damaging it throughout the years. The supervisor telephoned the citizen and indicated that city employees could not receive gifts over \$25 and then mailed the check back to her. The citizen then sent another check, payable to the supervisor for \$125, to be divided 5 ways among the crew members. He then asked for an advisory opinion from the Board of Ethics as to whether he may cash the check and distribute it to the crew members.

The Board of Ethics indicated that it is sympathetic to the citizen and to the crew members in this situation for a number of reasons:

- the crew members are not in a position to take direct official action concerning the citizen;
- The citizen's motive in offering the check was gratitude for work already performed and not an effort to influence the city employees;
- The amount of \$25 per crew member is modest in size.

However, upon careful reflection and analysis of Section 1.2.12 of the City Charter, the Board decided that it could not approve the acceptance of this gift or grant a waiver in this situation. That section provides:

No official or employee shall solicit or receive any pay, commission, money or anything of value, or derive any benefit, profit or advantage, directly or indirectly for the performance of official duties except lawful compensation or salary as such officer or employee...

In addition, Section 2-60 of the Code of Ethics does not authorize any city personnel to receive cash gifts.

Case 11 – 16 (no jurisdiction)

A citizen who had been the prime sponsor of a city ballot initiative in 2010 filed a complaint concerning the Director of the Budget and Management Office, alleging that the Director had given inaccurate information concerning potential costs to the city to implement the initiative, if passed, which misinformation was a major cause of the defeat of the initiative. The Board of Ethics dismissed the complaint for lack of jurisdiction because the complaint did not deal with any issues that are covered by the Denver Code of Ethics.

Case 11 – 17 (no jurisdiction)

A former on-call employee with the Denver Police Department filed a complaint concerning the Director of the unit where she had worked. She claimed that she had been “fired by e-mail” and that the Director did not give her the “professional courtesy” of a personal or telephone discussion of the matter soon after the decision. She also alleged that:

- The Director disclosed the termination of the position to others and “discussed the details of my separation...should not have disclosed this information for it is confidential information.” On the other hand, the Director said that he did not discuss any details or information regarding her position;
- The Director also contacted someone “with respect to...some issue with a (2009 pre-employment) polygraph test...Again this is confidential information that should not have been shared with anyone.” The Director denied that.

The Board concluded that the complaint could indicate a violation of Section 2-68 of the Denver Code of Ethics:

Sec. 2-68. Use of confidential records

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties, except in the performance of official duties or as required by law or court order.

The Board of Ethics concluded that this appears to be primarily a combination of personnel management issues in which the Board of Ethics does not have jurisdiction and should not be involved. The Director had a right to terminate the on-call city position, although his manner of doing so could have been more sensitive.

In addition, the complaint was not clear about when the alleged discussion of the polygraph matter took place. Section 2-56(3) of the Code of Ethics provides that the Board cannot consider any “actions that took place more than two years prior to the date of filing” of the complaint.

The Board of Ethics dismissed this complaint because it is primarily a personnel matter.

Case 11 – 18 (gifts, travel expenses)

The Manager of the Department of Human Services (DHS) requested advice as to whether she or other DHS personnel may accept travel expenses from non-profit entities to attend or participate in seminars or trainings in various states. In many of those situations, DHS has a contractual relationship with the donor, such as an agreement as to how DHS will administer a grant from a foundation.

Pursuant to Section 2-60(a) of the Code of Ethics, a city official, employee or officer is prohibited from accepting a gift (including, specifically, travel expenses) if the city person is “in a position to take direct official action” regarding the donor and if the city is in a contract, business or regulatory relationship with the donor. However, Section 2-60(b)(7) grants an exception to that rule for:

- (7) Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city; (emphasis added)

Most DHS personnel who would be invited to participate in such a “convention, fact-finding mission or trip or other meeting” would likely be in a position to take direct official action regarding the donor if the donor of the travel expenses has made a grant to DHS or has a contract with DHS. “Direct official action” is defined in Section 2-52(b) of the Code of Ethics, in part, as “negotiating, approving, disapproving, administering, enforcing or recommending for or against a contract...grant or other similar instrument in which the city is a party.” Most of the DHS personnel would likely be involved in negotiating and/or administering grants or contracts.

The Board of Ethics advised the Manager and DHS that:

- Any city person who is in a position to take direct official action regarding a person or entity may not accept any gift, including travel expenses, from that person or entity if the person or entity is in a contract, business or regulatory relationship with the city.
- However, expenses paid by a non-profit organization or other government are permitted as an exception (among several other exceptions) to the rule above. The Board believes that “non-profit organizations” should be interpreted to mean formally-organized non-profit organizations.
- Such travel expenses must be “reasonable.”
- Travel expenses paid by the City or by a non-profit organization or another government must be disclosed on the employee’s annual financial disclosure.
- Any city person with a question about a specific situation is encouraged to contact the Board of Ethics and ask for an advisory opinion and/or a waiver.

Cases 11-19, 11-20, 11-31 and 11-32 (no jurisdiction)

The Staff Director of the Board of Ethics dismissed these complaints because they all related to persons who were not officers, officials or employees of the City and County of Denver. They related to a judge and a public defender in Jefferson County, a state public defender and a state probation officer.

Case 11 - 21 (supervision of family member)

An employee at Denver International Airport requested an advisory opinion. She was engaged to marry a fellow employee at DIA. She and her fiancé have identical job titles and have similar or identical job duties. However, they work on different shifts. Her human resources representative suggested that she seek an opinion from the Board of Ethics as to whether there would be any violation of Section 2-59 (which regulates hiring and supervision of immediate family members) of the Denver Code of Ethics after they get married.

The Board concluded that, since the employees have identical job titles and their shifts do not overlap at all, there would not be any violation of Section 2-59 after they are married. The Board also advised the employee:

You correctly commented that one of you might need to be supervised by the other if a disaster occurred and your shifts might need to be combined; however, the Board does not believe that it is necessary to consider a waiver for such a rare and short-termed possibility. However, if one of you is promoted to a supervisory position over the other, that could well result in a violation of Section 2-59 and you should contact the Board of Ethics if that occurs.

Case 11 - 22 (use of public office for private gain)

A citizen filed a complaint concerning a tax collector in the Treasury Division. She alleged that the tax collector was rude and unprofessional, used a racial slur and insisted on cash payments. The Board reviewed written responses from the tax collector and her supervisor, who denied all of the allegations. The only item in the complaint that related to the Denver Code of Ethics is whether the employee might have violated Section 2-67 – use of public office for private gain - by insisting on cash payments, with the unstated implication that the payments were not turned in to the Treasury.

The Denver Treasurer advised the Board of Ethics that cash payments are sometimes requested if there has been a past history of bounced checks or repeated delinquency of tax payments. The tax collector and her supervisor stated that the collector never accepted a cash payment of overdue taxes from this taxpayer (although such a request is customary in certain delinquency cases). They also indicated that the taxes were repeatedly delinquent.

The Board advised the complaining party:

The Board of Ethics dismissed your complaint because you have not provided any evidence that could prove a violation of the Code of Ethics by clear and convincing evidence, which is the standard of proof required by Section 2-56(13) of the Code of Ethics. In particular, you did not provide any dates, documents or names of witnesses that would substantiate your allegations.

Case 11 - 23 (gifts)

A sergeant in the Police Department assigned to the DUI Unit requested an advisory opinion. He told the Board of Ethics that a Denver personal-injury law firm had offered to donate food and beverages for a DUI Checkpoint for an 8-hour period during the Memorial Day holiday for officers, police cadets and volunteers.

The Board concluded that it would not violate the Denver Code of Ethics for the department or the officers or other city employees to accept this gift of food and beverages from the law firm for these reasons;

- Gifts are only prohibited by Section 2-60(a) of the Denver Code of Ethics if 1) the city personnel are “in a position to take direct official action” regarding the donor and 2) the donor has a business or contract or regulatory relationship with the City and County of Denver. The law firm does not have such a relationship with the City and County of Denver and the police officers or sheriff’s deputies are not in a position to take direct official action with respect to the law firm, as defined by Section 2-52(b) of the Code of Ethics.
- Even if Section 2-60(a) would prohibit the gift/sponsorship, Section 2-60(b) gives an exception for up to 4 meals per calendar year from the same donor if attendance is reasonably related to the city employee’s duties.
- Operating the checkpoint is a valid and admirable public-service project.

Case 11 - 24 (gifts)

An engineering supervisor in the Public Works Department requested an advisory opinion. He and several other Denver employees periodically participate in training seminars or other programs sponsored by the Urban Watersheds Research Institute (UWRI), a 501(c)(3) tax-exempt non-profit organization, one of the functions of which is to provide training seminars. Such seminars, usually two-days each, cost approximately \$600 per attendee. UWRI sponsors approximately one seminar per month in the Denver area.

UWRI proposed to offer 2 free seats per seminar to unspecified Denver city employees in return for the free use of a meeting room, such as in the Webb Building or other city buildings with adequate training facilities such as audio-visual equipment. In the past, the city has paid the registration fees for all of its

employees for these seminars. UWRI does not have any contractual, business or regulatory relationship with the City.

The employee wished to know whether acceptance by city employees of free admissions to UWRI seminars would violate the gift section of the Code of Ethics, the pertinent parts of which are as follows:

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

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

- (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:
 - (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;

The Board of Ethics determined that acceptance by city employees of the free UWRI seminar admissions will not violate the Denver Code of Ethics for these reasons:

- The offer by UWRI of 2 free registrations per seminar is not a gift to any specific city officer, official or employee and, therefore, acceptance would not violate the Code.
- The free registrations are in return or compensation for the use of city meeting facilities and, therefore, would not be defined as gifts.
- Since UWRI does not have any contractual, business or regulatory relationship with the city, the acceptance of free registration by any city personnel would not violate the Code of Ethics.

The Board also advised the employee that the receipt of the free registrations should be disclosed on each employee's Financial Disclosure form, as specified in the Financial Disclosure Ordinance.

Case 11 - 25 (conflict of interest)

The Deputy Director of Denver's Greenprint Denver office requested an advisory opinion concerning a member of the Greenprint Advisory Council. Before the Council member was appointed to the Council, he provided approximately 10 hours per month of volunteer website services to the Greenprint office. The Greenprint staff identified additional web development needs significantly beyond what could be achieved through the existing volunteer arrangement and would like to engage the company owned by the Council member to handle the project for a fee of approximately \$15,000.

The Greenprint Advisory Council does not take any direct official action regarding contracting, hiring or any other matters. It is strictly advisory to the staff of the Greenprint office and the Mayor regarding environmental or sustainability issues, and not contracts, bids or technology matters.

Standard city purchasing rules allow a sole-source contract or a “bid exemption” in appropriate circumstances. In general, sole-source contracts are allowable and customary for “professional services.”

Conflicts of interest are regulated by Section 2-61 of the Denver Code of Ethics, which provides:

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

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

- (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter....

Although a sole-source contract would appear to be lawful in this situation, with appropriate justifications, the Purchasing Division and the City Attorney’s Office (not the Board of Ethics) are the experts in procurement and contracting rules.

The Board of Ethics determined that the proposed contract with the Council member’s company would not violate Section 2-61 because the members of the Greenprint Advisory Council have no “direct official action” role in approving, negotiating or administering contracts. However, the Board recommended that:

1. Greenprint should consult with the Purchasing Division and/or the City Attorney’s Office regarding the type of contract to be used and
2. In order to avoid the appearance of impropriety, Greenprint might wish to use a Request for Qualifications process to allow others to be aware of this opportunity.

Case 11-27 (conflict of interest)

A citizen who owns property within a local maintenance district filed a complaint concerning a member of the board of the local maintenance district.

The complaining party claims that the board member had a conflict of interest because he serves on the board of the local maintenance district and he also owns property, a portion of which has been leased by the private contractor that provides maintenance and management services to the district. The space is used primarily for storage of maintenance equipment and supplies. The district board member was also a board member of the maintenance contractor in the 1990s until 2006.

The board member, as landlord, signed a lease with the maintenance contractor in January 2007 and a lease extension in January 2009, with an expiration date of December 31, 2011. The district contracted

with the maintenance contractor, which then contracted with the board member's real estate entity. The district did not contract directly with the board member's real estate entity.

The board member indicated that the lease between his real estate entity and the maintenance company is fair and comparable for other properties in the vicinity and that he always told other board members that he was the maintenance contractor's landlord.

When the complaint was filed, the district board was in the process of preparing a request for proposals (RFP) to help it decide whether to contract again with the current maintenance contractor or with another maintenance company.

Board members of local maintenance districts (defined as "officials" in the Denver Code of Ethics) must comply with the conflict of interest section of the 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...
- (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. (emphasis added).

In addition all board members of local maintenance districts must comply with:

Sec. 2-67. Use of public office for private gain.

No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment. (emphasis added).

It should be noted that a local maintenance district is not the "the city." Local maintenance districts are not required to comply with all of the contracting and purchasing rules, personnel policies, etc. that the city must follow. However, as noted above, board members must comply with the Denver Code of Ethics.

The Board of Ethics determined that the board member did not violate the Code of Ethics because:

- The board of the local maintenance district did not contract directly with the board member's real estate company and
- The local maintenance district is not "the city."

Even if the board member had violated the Code of Ethics, the Board of Ethics cannot recommend discipline for "actions that took place more than two years prior to the date of filing" (Section 2-56(3)). However, the Board of Ethics strongly recommended that the board member should avoid the appearance of impropriety in the future by:

- Not participating any further in the development of the current RFP or any future RFP for a maintenance and management contractor, because his real estate company will likely profit from a continuance of the lease if the same maintenance contractor is selected again;
- Abstaining from voting on the selection of the maintenance contractor, because his real estate company will likely profit from a continuance of the lease if the same maintenance contractor is selected again.

The Board of Ethics stated that it recognizes that all members of local maintenance district boards serve as unpaid volunteers for the benefit of their districts, that such work is often difficult and thankless and that no evidence has been presented that the board member unfairly profited or concealed information regarding his status as a landlord for the maintenance contractor. However, all board members of local maintenance districts must recognize that their primary obligation is to serve the interest of all of the property owners and users of the districts and not their own private interests and that it is important to maintain the public trust by avoiding the appearance of impropriety.

Case 11 - 28 (gifts)

Through an attorney for his transition committee, the Mayor-Elect requested an advisory opinion. The Mayor-Elect is currently a City Council member who, on June 7, 2011, was elected to serve as Mayor of Denver. He will be sworn in on July 18, 2011. The Mayor-Elect wants to be sure that the plans to solicit and use funds for the transition committee for the Mayor-Elect do not violate the Denver Code of Ethics. A non-profit 501(c)(4) tax-exempt organization has been formed to be known as DenverForward to solicit and expend funds for transition purposes. The attorney indicated that the contribution maximum to the transition committee will be \$25,000.

For many years, both Denver Mayors-Elect and Colorado Governors-Elect have raised private funds and in-kind donations from various sources to rent office space, hire temporary staff, pay for equipment, supplies, etc., for the purpose of reviewing and selecting appointees, preparing policies and agendas, etc., during the transition period before they are sworn into office. There are no budgeted funds for the 2011 Denver mayoral transition.

There are no Denver ordinances or charter provisions or state laws that regulate "transition committees" or how they can be funded. In addition, the Denver Board of Ethics has not issued any previous opinions on this subject.

Section 2-60 of the Code of Ethics applies in part to this situation:

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

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

- (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:
 - (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation...
 - (4) Any loan of money that is not available to the general public at the same interest rate and the same conditions...
 - (7) Any reduction in price or any discount that is not similarly available to all city officers, officials, and employees on the same terms...

This prohibition shall also apply to gifts from a lobbyist or representative of a client if (1) the officer, official, or employee is in a position to take direct official action with regard to the client and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the client.

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

The Mayor-Elect is currently a city officer, as a City Councilmember; therefore the Denver Code of Ethics applies to him. As a current Councilmember and as a future Mayor, he is or will be "in a position

to take direct official action” regarding numerous persons or entities, through such actions as hiring or appointing employees or appointees or negotiating or approving contracts.

However, the Board of Ethics concluded that donations to DenverForward are not “gifts” to the Mayor-Elect, as they are not for his personal use or benefit. In addition, they are not gifts to the city, because DenverForward is a private entity and because the Mayor-Elect will not be inaugurated until July 18, 2011. In addition, soliciting by Denver employees to DenverForward are not covered by Section 2-60(c), because donations to a transition committee are not “donations for charitable purposes to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs.” Such donations clearly do benefit the city (although they are not to the city) because they allow the new Mayor and his administration to be ready to administer the city on July 18.

Although Colorado Constitutional Amendment 41, adopted by the voters in 2006 (also known as Article XXIX of the Constitution), does not apply to Denver, because Denver is a home-rule city and Denver has its own Code of Ethics, Opinion 10 -18 from the Colorado Independent Ethics Commission (IEC), issued November 5, 2010, provides some useful guidance which will align with the stated purpose of Section 2-60 of the Denver Code of Ethics, which is “to avoid special influence by those who give gifts to city officers, employees or officials.”

The IEC determined that it would not be a violation of Amendment 41 for private individuals to form a non-profit organization to solicit and accept private donations for the 2010 gubernatorial transition under the circumstances described in the request for an opinion, which included:

- All contributions and expenditures will be made public including timely disclosure on the entity’s website;
- No current government employees will be allowed to solicit donations
- The transition committee will not pay any current government employees
- The transition committee “will require contributors to affirm that they are not a registered lobbyist and have no business, proposals or transactions pending before the state upon which the incoming administration is likely to have any involvement.”

The IEC made the following statements:

- The transition committee is cautioned to avoid conflicts of interest by adhering to strict and timely disclosure and transparency practices
- The contributions would inure to the benefit of the transition committee
- No government employees or officials will receive personal benefit from the contributions; therefore the contributions to the transition committee do not constitute a gift to a government employee or official
- “Ideally, this would be a public process, sustained by public resources and subject to the open meetings and open records requirements of state law and public accountability on the raising and expenditures of funds.”
- “Full transparency and disclosure of contributions on a regular basis will aid in creating public confidence that the transition process is not funded by anonymous contributions from interests

seeking to curry favor with the incoming administration...The Commission is satisfied that these safeguards will prevent real or perceived conflicts of interest.”

The Denver Board of Ethics determined that the funds solicited and used by the committee for the mayoral transition are not “gifts” to individual Denver officers, employees or officials and, therefore, are not prohibited by the gift section of the Code of Ethics, so long as it is made clear that no officer, employee or official or members of their immediate family may use any of the funds for their personal benefit. The Board also recommends, in order to avoid the appearance of impropriety, that:

- The transition committee should avoid conflicts of interest by adhering to strict and timely disclosure and transparency practices.
- No current Denver government officers or employees should be allowed to solicit donations for the transition committee.
- No current Denver government officers or employees should be officers or directors of the transition committee.
- The transition committee should not pay any current Denver government employees.
- The transition committee should require contributors to affirm that they are not a Denver registered lobbyist and have no business, proposals or transactions pending before the City and County of Denver upon which the incoming administration is likely to have any involvement.
- The transition committee should keep records of who solicits which potential donors.

In summary, the Board of Ethics determined that

- None of the plans proposed for DenverForward violate the Denver Code of Ethics.
- All of those plans are appropriate.

The Board will consider recommending to City Council that future mayoral transitions should be publicly funded.

The Board prefers not to recommend a blanket policy for future situations because the relevant facts may differ with each situation; however, the Board believes that the recommendations in this opinion may serve as guidance for the most appropriate way to raise funds for the Mayor-Elect’s inauguration expenses.

The Board acknowledges the Mayor-Elect for being thoughtful and fore-sighted in the request for an advisory opinion and for his desire to avoid any violation of the Code of Ethics or the appearance of impropriety.

Case 11 – 29 (use of public office for private gain)

A city employee filed a complaint concerning another city employee in her department. The two employees stipulated that the subject of the complaint borrowed or attempted to borrow funds on numerous occasions from 15 department employees from 2007 through early 2011, including the employee who filed the complaint. Five of those employees were supervised by the subject of the

complaint. Some of those loans were repaid and some were not. Some of the loans paid or requested were large amounts and some were small amounts.

The Board of Ethics concluded, as it previously found in Case 09 – 35, that borrowing funds from subordinate employees is a use of public office for private gain, in violation of Section 2-67 of the Denver Code of Ethics, which is exacerbated in those instances when the loans are not repaid. Section 2-67 provides:

Sec. 2-67. Use of public office for private gain.

No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment.

The Board also said that it strongly believes, as it stated in case 04-42, that:

It is a poor employment practice for a supervisor to solicit or to accept loans of any amount from an employee under her or his supervision. Such loans may lead to the appearance of impropriety, even if no intimidation of the employee is intended by the supervisor. Few employees would feel comfortable in refusing a loan to or requesting repayment of a loan from a supervisor. A supervisor often has a position of authority over the employee, namely the power to reprimand, transfer to a less desirable assignment, suspend or terminate. Even if a supervisor is not the appointing authority with power to take such personnel actions, a supervisor has the power, at a minimum, to recommend such actions to the final decision-maker.

The Board also indicated, as it found in Case 09-35, that it is a violation of Section 2-67 to borrow from employees that are not direct-reporting subordinates, if the borrower may be asked to have input on the evaluation of subordinates who are not their direct reports.

The Board of Ethics sent its decision to the appointing authority in the department with the recommendation that discipline should be imposed which recognizes that the employee had engaged in a pattern of misconduct instead of a single isolated incident.

Case 11 – 30 (outside employment)

A sergeant in the Sheriff Department requested an advisory opinion about possible outside employment, which would consist of consulting with non-Denver correctional facilities regarding the design, construction and implementation of security electronic systems on behalf of a private security detention systems company. He had been a member of the “transition committee” responsible for planning and implementing the opening of the new Denver detention facility courthouse, including security systems provided by the company. The company continues to perform warranty work in the Denver facility and may secure a maintenance contract with Denver in the future.

The sergeant stated that:

I under no circumstances hold a position in the Denver Sheriff Department (or the City and County of Denver) to make any decisions related to budget or contracts and would have no input on any future contracts with this vendor.

The Board of Ethics did not find that there is any conflict of interest or incompatibility between the sergeant's city job and the outside employment in this proposal because:

1. He is not in a position to take any direct official action regarding the company, such as approving a contract or purchase order and
2. Helping other correctional facilities outside Denver to design and install security systems will not have any adverse effect on Denver or the security of its detention facilities.

The Board of Ethics advised the sergeant that his proposed outside employment with the company will not violate the Denver Code of Ethics so long as:

1. He obtains written approval from his appointing authority on an annual basis as required by Section 2-63 of the Code of Ethics;
2. He does not do any work for the company on city time;
3. He does not use any city resources for his work for the company;
4. He does not share any Denver proprietary information with the company or any of its prospective customers;
5. If he is transferred or promoted to a position in the Sheriff Department in which he could take any direct official action regarding the company, he must abstain from doing so;
6. He does not attempt to persuade anyone in the Sheriff Department to make any decision that would benefit the company;
7. He does not make any decisions regarding whether the company is or is not properly performing its required warranty work under the contract by which it installed the security system for the Denver detention center and courthouse.
8. He does not make any statements or testimonials that would imply that the Denver Sheriff Department and/or the City and County of Denver endorse the company.

Case 11-33 (conflict of interest)

A recent appointee to the Career Service Authority Board requested an advisory opinion. She had worked for the city for a number of years and then she was hired to work for one of the companies which currently provide health insurance to Denver city employees and retirees. She advised the Board of Ethics that she will abstain from voting on any issues related to health insurance on the CSA Board.

The conflict of interest section of the Denver Code of Ethics applies to "officials" – board and commission members - as well as to officers and employees:

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...
- (f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests...(emphasis added).

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

2-52(b) *Direct official action* means any action which involves:

- (1) Negotiating, approving, disapproving, administering, enforcing, or **recommending for or against a contract**, purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making...(emphasis added)

Section 18-181 of the Denver Charter establishes a separate-from-CSA Employee Health Insurance Committee and one of its duties is to “advise the career service board and the career service personnel director of the needs of persons in the employ of the City and County of Denver for medical, life, dental and long-term disability insurance financed, in whole or in part by the city and shall make recommendations for instituting, altering, implementing, financing or terminating such an insurance program” (emphasis added). The decision to approve a contract for health insurance for employees and others rests with the Mayor and City Council and not the CSA Board. However, the CSA Board may have a role in recommending such to the Career Service Personnel Director.

The Board of Ethics found that, if the CSA Board or a committee of the Board wishes to make any recommendations whatsoever regarding health insurance contracts to the CSA Personnel Director, the Mayor or City Council, the appointee will be required by Section 2-61 to abstain from voting, as she has already agreed to do, due to the conflict of interest with her employer. This includes development of requests for proposals or criteria relating to contracts for health insurance. She should also “refrain from attempting to influence the decisions of others in acting or voting on the matter,” as required by Section 2-61(f) and comply with the other provisions of 2-61(f).

The Board also strongly recommended that, if the CSA Board or a committee is discussing contracts for health insurance, she should disclose the potential conflict on the record and excuse herself from the room in order to avoid the appearance of impropriety. She may, however, participate in general discussions about health insurance issues which are not related to specific contracts or requests for proposals, particularly since she has expertise in implementation of federal healthcare reform.

Case 11-34 (gifts)

A Technician in the Denver Police Department requested an advisory opinion. He and his family were recently camping in the mountains, when they saw that a gentleman had fallen into a ravine and injured himself. He and his wife helped to carry him out of the ravine and administered medical assistance with their first-aid kit and used their blankets to keep him warm. The gentleman's son-in-law asked for the officer's business card. A few days later, the officer received from the gentleman and his son-in-law \$100 in cash and thank-you letters in the mail.

His question to the Board of Ethics was:

How should I handle this and what should I do so that I do not put myself into a position where I may be thought to be acting unethically?

The Board of Ethics determined that the officer was not prohibited by Section 2-60(a) of the Code of Ethics from accepting a gift from the gentleman and his son-in-law because he was not in a position to take any direct official action concerning them. In addition, their motivation was to express gratitude, after the fact, for his Good Samaritan actions.

The Board also determined that acceptance of the gift is not prohibited by Section 1.2.12 of the Denver City Charter, which provides:

No official or employee shall solicit or receive any pay, commission, money or anything of value, or derive any benefit, profit or advantage, directly or indirectly for the performance of official duties except lawful compensation or salary as such officer or employee...

because the Board determined that rescuing and assisting the gentleman was not part of his "official duties" and was also outside of the Denver city limits.

Case 11- 35 (conflict of interest, subsequent employment, use of public office for private gain)

A city employee filed a complaint concerning a former Career Service Authority board member. In 2009, the employee filed departmental complaints alleging age-discrimination and retaliation. The agency hired the former CSA board member as an outside investigator to review the complaints and also other complaints filed by another employee of the agency.

The employee alleged that the former CSA board member may have violated the Denver Code of Ethics:

- Through a conflict of interest because she was a former member of the CSA Board and/or
- Through violating the subsequent employment rule in the Code of Ethics by accepting a contract to investigate the complaints following her service on the CSA Board and/or
- Through use of her city public office as a CSA Board member for private gain.

The former board member served on the CSA Board from 2002 through April 2008. She issued her investigative report in October 2009 regarding the complaints. She found all of the complaints to be without merit.

She sent a bill for her investigation and was paid by the agency. The agency then denied the complaints. The employee appealed to the CSA Hearings Office, which conducted a hearing and dismissed the complaints. The employee also filed an age-discrimination complaint with the Equal Employment Opportunity Commission.

The employee believed that the former board member had a conflict of interest because the CSA Board approved the reorganization of certain agency jobs, which she then had to interpret as part of her investigation. Conflicts of interest for city board members, officers and employees (but not independent contractors) are regulated by Section 2-61 of the Code of Ethics. The Board of Ethics could not find any conflict of interest while the former board member was on the CSA Board that is described in Section 2-61.

Subsequent employment, which would include part-time investigative contracts, is regulated by Section 2-64 of the Code of Ethics:

Sec. 2-64. Subsequent employment.

The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.

- (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.
- (b) For one (1) year following termination of service with the city, no former officer, official, or employee shall engage in any action or litigation in which the city is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in the service of the city.

Since the former board member did not begin to work on any of her investigations for the city until more than a year had passed since the conclusion of her service as a CSA Board member, the Board of Ethics found that she did not violate either 2-64(a) or (b). She performed her investigation approximately 18 months after she left the CSA Board.

The employee also alleged that the former board member violated section 2-67, use of public office for private gain:

Sec. 2-67. Use of public office for private gain.

No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment.

The Board of Ethics concluded that it did not have any information or evidence that the former board member violated Section 2-67 or otherwise acted unfairly or unethically in order to obtain her contracts with the city departments more than a year after she left the CSA Board. In addition, the Board of Ethics concluded that the issues regarding age-discrimination and retaliation by the agency are personnel matters and the Board of Ethics is not able to serve as an appeal board to consider personnel matters. The Board of Ethics dismissed the complaint because the facts do not show that a violation of the Denver Code of Ethics can be proven.

Cases 11- 36, 11-37 and 11-38 (no jurisdiction)

A probationary employee filed three complaints concerning human-resources employees after his employment with the city had been terminated. The Board of Ethics dismissed the complaints because the issues alleged did not involve any sections of the Code of Ethics and the Board is not an appeals board for personnel issues.

Cases 11-39, 11-40, 11-45 and 11-46 (no jurisdiction)

A citizen filed these complaints against four city employees that the citizen stated had all failed to respond or communicate with his requests for information and documents. The Board of Ethics dismissed the complaints as being outside of its jurisdiction.

Cases 11 - 41 and 11 - 42 (no jurisdiction)

A city supervisor filed complaints against a department Manager and a human resource supervisor. The supervisor believed that two employees bullied an employee under his supervision and told the employee that she would not pass probation and that one of those employees deliberately entered errors in financial reporting figures to make the employee that he supervised look bad.

The supervisor complained that no serious discipline was recommended by the HR supervisor or imposed by the Manager for such an offense and stated that “this gives the wrong message to staff that they can do what they want and not be accountable for their actions.”

Citizens and fellow city personnel should be able to expect that personnel complaints about serious allegations should be fairly and effectively investigated and that, if proven, such allegations should result in appropriate discipline. However, the Board of Ethics did not independently investigate the underlying details of this case and does not have the jurisdiction to do so, since the issue does not relate to the Code of Ethics. (There was no implication that the employee(s) falsified records for personal

gain.) Neither does the Board of Ethics have jurisdiction to impose discipline on city employees or alter discipline already imposed. Therefore, the Board of Ethics dismissed these complaints.

Case 11-43 (conflict of interest)

The employee that requested an earlier advisory opinion in Case 11-14 asked the Board of Ethics to give him an updated opinion due to the fact that the consulting firm that employs his wife was awarded the contract to prepare the environmental impact statement (EIS) in question and the company selected the employee's wife to be part of its team. The employee requested that the Board give him "an opinion regarding my future role on this project, including any restrictions that the board might recommend to ensure that my role is appropriate."

The Board of Ethics concluded that the employee may continue to serve on the Executive Oversight Committee (EOC); however, pursuant to Section 2-61(a)(6) of the Denver Code of Ethics, he may not take direct official action regarding the EIS, because his wife has a substantial employment interest in the EIS. Direct official action is defined in Section 2-52(b) of the Code of Ethics as follows:

2-52(b) *Direct official action* means any action which involves:

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

In addition, the Board stated that there is a strong potential for the appearance of impropriety if the employee continues to serve as a member of the EOC. In order to minimize that possibility, the Board strongly recommended to the employee:

1. He should not be the project manager or supervisor for the EIS project. (This was part of the Board's earlier advisory opinion to him.)
2. He should not be involved in the day to day management of the project.
3. He should not be involved with paying invoices or negotiating change orders with the consultant team.

4. He should not be involved in any way in the negotiation, scope of work development, or contract administration of the contract with the consulting company, nor should anyone who reports to him be involved in these activities.

The Board cautioned the employee to be guided solely by the best interests of the city and encouraged him to seek the Board's advice again if his duties change or expand in ways not originally planned.

Case 11-44 (conflict of interest)

A recently-appointed Deputy Chief of Staff in the Mayor's Office requested an advisory opinion. Her father is the CEO of a consulting firm that specializes in working with mayors and city officials to build and finance hotel and convention centers and downtown economic projects and represents two clients that are directly or indirectly connected to ongoing business considerations with the City and County of Denver.

She advised the Board of Ethics that "it is my intent to refrain from participating in any work, associated discussions, or decisions that involve these entities." She also indicated that the Mayor's Chief of Staff has assigned matters related to the Denver Office of Economic Development to the other Deputy Chief of Staff and not to her. She requested an advisory opinion from the Board to address any real or perceived conflicts of interest.

Section 2-61 of the Denver Code of Ethics provides:

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

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

- (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:...
- (7) **He or she or a member of his or her immediate family participated personally in providing legal representation or lobbying for another party in the matter** or owns five (5) percent or more of a law firm or lobbying firm representing another party in the matter. (emphasis added)

Therefore, the Board concluded that she would be prohibited from taking any direct official action as Deputy Chief of Staff regarding any entity or person represented by her father or his consulting firm or attempting to influence the decisions of others in city government regarding such clients.

The definition of "direct official action" in Section 2-52(b) includes:

1. Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. With regard to "recommending," direct official action

occurs only if the person making the recommendation is in the formal line of decision making.

2. Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
3. Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;

In order to avoid the appearance of impropriety, the Board also recommended that 1) she request her father to inform her of any additional clients that her father is representing concerning any matters with the City and County of Denver; 2) she notify the Chief of Staff in the Mayor's Office that she will not be able to handle or deal in any way with matters in which her father has any connection and that any such matters need to be assigned to others in the Mayor's Office and 3) if any matters relating to her father's clients are being discussed by city government personnel, she should leave the location of the discussion and not participate in the discussion in any way.

Case 11-47 (gifts)

The Controller for the City and County of Denver requested an advisory opinion in connection with her effort to prepare a fiscal accountability rule for managers, supervisors and employees regarding gifts, prizes and awards. She advised the Board of Ethics that "our goal is to ensure that the city is adhering to both the IRS requirements and the ethics ordinance while still being able to reward employees."

The Board of Ethics is aware that many city departments and agencies are looking for ways to offer incentives, prizes, awards or bonuses to motivate or reward good performance and are confused about how the gift section of the Code of Ethics applies or does not apply. The Board has received a number of requests for official and unofficial advice on this subject in the last few years. The Board stated that it understands the purpose of the gift section (2-60) of the Code of Ethics is to apply to gifts to city personnel from non-city persons or entities, although this is not clearly stated.

In Case 11-15 the Board of Ethics decided that it would violate Section 1.2.12 of the Denver Charter for Forestry Division employees to accept \$25 checks from a grateful citizen for their work in removing a tree that had caused her problems. Section 1.2.12 of the Charter provides:

No official or employee shall solicit or receive any pay, commission, money or anything of value, or derive any benefit, profit or advantage, directly or indirectly for the performance of official duties except lawful compensation or salary as such officer or employee...

The Board stated that it believes that the incentives or awards that the Controller is concerned with are included in the term "lawful compensation." As the Board understands it, they are fringe benefits and will be paid for and given by the city and not by outside parties. The Board believes that such incentives, prizes, awards and bonuses are appropriate tools for a city agency or department to motivate or reward good performance by city employees and do not violate the Code of Ethics. The Board suggested that the Controller or a department or agency can also consult the City Attorney's Office regarding how an employee awards program can be developed consistent with the Charter, ordinances, and the IRS Code.

Case 11- 48 (gifts)

A supervisor in the Environmental Quality Division of the Department of Environmental Health (DEH) requested an advisory opinion as to whether it would violate the Code of Ethics for his division to offer \$25 gift cards to city employees in different departments as “a good motivator for line staff” to encourage various types of environmental-protection activities, such as, for example, safe storage of solvents. He stated that:

Experience has shown that employees respond to a variety of methods to encourage good behavior. While not the only approach used, gift cards tend to make staff pay attention to improving their behavior... gift cards can be a powerful motivator for people to do the right thing.

The Board of Ethics concluded that incentives of the type described are appropriate tools for a city agency or department to motivate or reward good performance by city employees and do not violate the Denver Code of Ethics.

The Board also reviewed Section 1.2.12 of the Denver Charter, which provides:

No official or employee shall solicit or receive any pay, commission, money or anything of value, or derive any benefit, profit or advantage, directly or indirectly for the performance of official duties except lawful compensation or salary as such officer or employee...

The Board of Ethics concluded that incentives such as the employee described are included in the term “lawful compensation,” since they are given by a city department or agency for a work-related purpose and are, therefore, not prohibited by Section 1.2.12 of the Charter.

The Board recommended that, in order to avoid the appearance of impropriety in such incentive programs:

1. Such incentives should be modest in value.
2. If such incentives are to be solicited as donations from third-parties, they should not be solicited from entities which the department regulates.
3. The method for selecting the recipients of the incentives should be transparent and the recipients should be disclosed.

Case 11 - 49 (gifts)

A representative of the Police Department requested an advisory opinion regarding whether it would violate the Denver Code of Ethics for police officers to accept free tickets for the Colorado Rockies game on September 11, 2011 as part of the Rockies’ effort to honor police, firefighters, other first responders and military on the 10th anniversary of the bombing of the World Trade Center. The Rockies also offered reduced-price tickets for family members. Some police officers work at Rockies games on-duty and others work off-duty.

Section 2-60(a) of the Code of Ethics prohibits acceptance of gifts, including tickets to sporting events 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.

Since the definition of “direct official action” includes “enforcing laws,” and since police officers are considered to be on duty 24 hours per day if emergencies arise, police officers are in a position to take direct official action regarding the Colorado Rockies. In addition, the Colorado Rockies, as a major business in Denver, have a regulatory relationship with the city. Therefore, acceptance of tickets would be prohibited by Section 2-60(a) for police officers. Firefighters, on the other hand, do not “enforce laws” (unless they are assigned as fire inspectors) concerning the Rockies and they would not be prohibited from accepting the tickets.

Section 2-60(b)(4), however, provides an exception which would allow police officers to accept tickets, even if they would violate 2-60(a). Section 2-60(b)(4) allows the acceptance of up to 4 free or reduced-price admissions per calendar year so long as “attendance must be reasonably related to the official or ceremonial duties of the officer, official or employee.” The Board of Ethics decided that recognition of police officers on the 10th anniversary of September 11, 2001 is a valid and appropriate recognition of their official or ceremonial duties and that acceptance of such tickets on this special event is not prohibited by the Code of Ethics. The Board also decided that Denver firefighters or other first responders are also able to accept these tickets.

Case 11-52 (gifts)

A Senior Engineer at a major department requested an advisory opinion. He is involved in energy management. He recently attended a facilities management conference in Denver and placed his name in a drawing conducted by a company that manufactures and markets energy-saving bulbs, lamps and other lighting equipment. The solicitation of names and the drawing was at the company’s booth. The employee did not observe the drawing. Shortly after the conference, the employee received an e-mail advising that his name had been drawn and that he had won a television set.

The employee advised the Board of Ethics that he is not directly able to approve or negotiate purchases of items from the company or other vendors; however, he acknowledged that “I have in the past and will surely in the future have significant input into purchasing decisions for lighting equipment.”

The gift section of the Denver Code of Ethics provides as follows:

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

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

- (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or

employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

- (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;...

The definition of “direct official action” in Section 2-52(b) is as follows:

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

- (1) Negotiating, approving, disapproving, administering, enforcing, or **recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making...**
- (2) Selecting or **recommending vendors, concessionaires, or other types of entities to do business with the city;**...(emphasis added)

The Board concluded that, although the employee does not have the authority to negotiate, approve or disapprove a contract or purchase order with the company, he does have the authority to “recommend for or against such a contract or purchase order” and may have the authority to “administer” such a contract or purchase order. Therefore, he is “in a position to take direct official action” regarding the company. In addition, the company has an “existing or pending business relationship” with the city. Therefore, the employee would be prohibited from accepting the television unless one of the exceptions in Section 2-60(b) would apply. The only possible exception would be:

- (12) Items which are similarly available to all employees of the city or the general public on the same terms and conditions.

In 2004, in Case 04-12 the Board of Ethics indicated that a City Council member could accept a free airline ticket donated by a company that he won in a random drawing at a dinner, even though City Council must approve contracts and/or leases with that company. That advisory opinion was requested by the then-chief staff person for City Council, who had also had a major role in drafting the Code of Ethics in 2000-2001, who stated in his request:

That the member won is a matter of chance; the airline ticket was not a gift to him, but rather a prize that anyone in attendance could have won...When we drafted the Code, we never intended to prohibit acceptance of anything when the item is the result of pure chance.

In that case, the Board of Ethics decided as follows:

The Board has determined that Section 2-60 was not intended and should not be interpreted to prohibit acceptance of prizes awarded by chance, so long as the prizes are not targeted to officials, officers or employees who are in a position to take direct official action with respect to the donor. In other words, the prizes must legitimately be awarded

on a random or chance basis. Assuming this to be true, in this case, acceptance...is not prohibited by the Code of Ethics.

However, in this case, from the circumstances described, the Board was not convinced that this was a truly random drawing and it could give the appearance that the company might have targeted those in a position to take direct official action concerning the company to be winners of the drawing. Therefore, the Board concluded that it would be a violation of Section 2-60(a) of the Code of Ethics for the employee to accept the television set for himself or to direct it to any other person or organization. The public and other vendors should have confidence that product selections and ordering are based on merit and performance and have nothing to do with prizes.

Case 11-53 (gifts -travel expenses)

A captain in the Fire Department requested an advisory opinion. He is responsible for providing clothing and equipment for the department, including the coats and pants used by firefighters at fires.

He had been invited to attend a seminar at a company's headquarters in Maryland entitled "Safety, Performance and Value in Protective Fire Fighting Fabrics." The company proposed to pay for the captain's lodging, travel and meal expenses. The captain advised the Board that there have been recent problems with the vapor barriers (one of 3 layers in the gear, which are manufactured by the company) in Denver's gear which have caused injuries to some Denver firefighters. The seminar would address how to deal with those problems.

The captain does not have the ability to negotiate or approve purchase orders for the Fire Department; however, he will most likely be able to recommend whether or not purchase orders should be approved. Therefore, he is "in a position to take direct official action."

Travel and lodging expenses are addressed in the Code of Ethics as follows:

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

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

- (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:
 - (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;...
 - (6) Travel expenses and lodging;...
- (b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:...

- (7) Reasonable expenses paid by **non-profit organizations** or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city; (emphasis added)

Since the company is a for-profit corporation and since both subsections of 2-60(a) apply to this situation, it would violate the Code for the captain to accept the travel expenses from the company, unless the Board grants him a waiver. Section 2-54(f) empowers the Board to grant a waiver “if it finds that the waiver will serve the best interests of the city.”

In 2002 in a series of similar cases presented by the Fire Department (Cases 2-24, 2-28 and 2-29), the Board of Ethics developed a policy that it did not wish to grant waivers regarding travel expenses unless “emergency, unusual or exigent circumstances” exist and stated that “the fact that a City department is not able to pay for travel and lodging expenses is not sufficient justification for a waiver.”

After careful consideration, the majority of the Board of Ethics concluded that it was in the best interests of the city to allow the captain to accept travel and lodging expenses from the company to enable him to learn how to improve the safety of firefighting apparel for firefighters. The Board, therefore, granted him a waiver to accept the expenses for this trip from the company. The Board of Ethics emphasized that this opinion is based on the serious safety issues raised by this specific request and that waivers will not be granted lightly in future cases.

Case 11-54 (outside employment)

An employee in the Auditor’s Office requested an advisory opinion regarding his desire to run for a seat on the Town Council in the municipality in which he lives in the April 2012 election. The Auditor indicated that he will approve the outside employment request; however, he would like to hear from the Board of Ethics.

If the employee were to be elected, he would be paid \$600 per month. The Council meets once a week and members also serve on at least one committee that meets weekly.

The Board of Ethics concluded that, because the position on the Town Council is paid, the employee must comply with Section 2-63 of the Code of Ethics:

Sec. 2-63. Contemporaneous or outside employment.

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

- (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
- (b) If the appointing authority or the officer, official or employee believes that there is a potential

conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.

- (c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.
- (d) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
- (e) City resources may not be used for any outside employment or outside business activity.

Therefore, the Board of Ethics concluded that the employee must obtain written permission from the Auditor before he could serve on the Town Council. He also must not use any Denver city resources (including time, computers or other equipment or supplies) for his work on the Town Council. State law also prohibits all governments from using government resources to benefit election campaigns (Colorado Revised Statutes 1-45-117).

The request should also be analyzed in light of Section 2-61 of the Code of Ethics regarding conflicts of interest:

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....
- (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 of Ethics determined that neither the Denver Auditor's Office nor the employee are in a position to take "direct official action" concerning the municipality. Therefore, the only applicable provision of Section 2-61 is 2-61(f). The Board of Ethics cannot foresee a situation of incompatibility between the interests of the City and County of Denver and the municipality. However, if such a situation arose, (such as a dispute over water rights or highway funding), the employee should abstain from voting in any situation "that adversely affects the interests of" the City and County of Denver.

In summary, the Board advised the employee that it will not violate the Denver Code of Ethics if he runs for a position on the Town Council and/or serves on the Town Council, so long as he:

- Obtains his appointing authority’s written approval for the outside employment on an annual basis;
- Does not use any Denver city resources for his campaign or his Town Council work;
- Abstains from voting on any Town Council issues that could “adversely affect” the interests of the City and County of Denver.

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

- If elected, he should devise a system to keep track of any Denver city time that he spends on work for the Town Council, so that he will not be paid his Denver salary for non-Denver work;
- He set time outside Denver work hours when he would be available to take telephone calls or other contacts by his constituents.
- He should not attempt to raise or accept campaign funds from any Auditor’s Office employees who report to him.

Case 11- 55 (conflict of interest)

A senior employee of the Denver Recycles Division requested an advisory opinion. The employee was asked to serve on the board of directors of a Political Action Committee (PAC) related to recycling interests. The employee advised the Board of Ethics that:

It is a PAC with statewide interests around recycling. The board’s primary job will be to identify candidates to receive campaign contributions from money raised from interested individuals around the state. Directors may also support events in their area by providing contacts & attending. Directors will also have input on any events and their orchestration. ...Directors need to be individual citizens and not representatives of public or private agencies.

The employee will not be paid anything for her services on the board.

The Board of Ethics determined that neither the Denver Code of Ethics nor other city law nor state law prevent government employees from being involved in a PAC or other political activity, so long as no government resources are used. In addition, a PAC that is supportive of recycling efforts is not adverse to or incompatible with the interests of the City and County of Denver, which is supportive of recycling efforts.

The Board also recommended, in order to avoid the appearance of impropriety, that:

- The employee not have any involvement in the fundraising tasks of the PAC (which could be seen as pressure to contribute if any organizations might have contracts with Denver Recycles);
- The employee not use her city title in connection with the PAC.

Case 11-56 (no jurisdiction)

A citizen filed a complaint concerning a tax collector who allegedly did not file accounting documents properly, resulting in improper tax bills. The Board of Ethics dismissed the complaint because it had no jurisdiction and informed the citizen how she could appeal to the County Board of Equalization.

Case 11-57 (conflict of interest, subsequent employment)

A former Director of the Office of Economic Development (OED) requested an advisory opinion. He had been Director of OED from July 2003 through March 2007. During that time, OED encouraged the redevelopment of a long-vacant historic building into a retail, restaurant and entertainment complex by a private developer. In 2004 OED agreed to make a number of loans in order for the developer to acquire the property.

In September 2007 (more than 6 months after the Director left OED) OED approved an agreement which subordinated the city's loans to permanent private financing for the project. In late August 2011, the former Director was asked by the developer if he could assist the developer in restructuring the financing of the project and additional real estate projects. The developer was able to obtain buyers for all but one of the six loans. The one remaining loan involved tax-increment financing. The former Director made an offer to purchase the senior tax-increment financing loan himself on August 30, 2011; however, he urged the developer to "shop" his offer to see if he could obtain better terms, which he did to at least six other potential purchasers. The former director, the developer and the bank closed on the purchase of the loan in October 2011.

The modification of the developer's loan had to be approved by City Council. During briefings by OED staff of members of City Council regarding the modification of the loan agreement, some members of Council wanted to know whether the former Director's involvement would violate the Denver Code of Ethics, due to his prior involvement with OED.

There are two sections of the Denver Code of Ethics that may relate to this transaction.

Section 2-61 pertains to conflicts of interest. However, when the former Director took direct official action by approving loans to the project in 2004 and 2006, he had no connection with the development company or the project. He did not discuss purchasing one of the loans with the developer until late August 2011.

Section 2-64(a) provides as follows:

Sec. 2-64. Subsequent employment.

- (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

However, the former Director was never "employed" by the developer. In addition, the transaction with the developer took place almost 4 ½ years after the former director left his job with the city. In addition,

his encouragement of the developer to try to find other buyers (without success) indicates that he was not acting on any inside information to benefit himself.

Therefore, the Board of Ethics concluded that the former Director's purchase of the loan did not violate any portion of the Denver Code of Ethics or the provisions of the Denver Charter relating to conflicts of interest.

Case 11-58 (conflict of interest)

A homeowner filed a complaint concerning an architect who is a member of the Landmark Preservation Commission (LPC). One of the functions of the LPC is to review and approve or disapprove plans for proposed additions to structures which are designated individual Denver landmarks or structures within a Denver historic district in order to ensure compatibility with the historic structure or landmark district.

A homeowner who lives next door to the complaining homeowner hired the LPC member's architectural firm (a 2-person firm with his wife) to prepare plans for a second-story addition to the house, which is within a historic district. The complaining homeowner opposed the plans because she said the addition to the next-door home would "block my view."

The LPC considered the proposed addition at one of its meetings. The complaining homeowner did not attend the meeting because she says she was not informed of when the meeting would occur. According to the director of the LPC staff, the architect-member said that he was recusing himself from the discussion and went to sit in the back of the room, while his wife/partner made the presentation to the LPC and answered questions from the members. The minutes of the meeting indicate that the architect-member was in attendance at the meeting and the vote to approve the addition in question was "unanimous in favor, motion carries." The minutes do not mention any recusal by the architect-member; however, an index of the recording of the meeting indicates that the architect-member "recused." The LPC staff had recommended approval of the addition.

The complaining homeowner says that she was "disheartened" by the outcome because "the Landmark Preservation Commission should be protecting all of us" and not just clients of Commission members. The architect-member advised the Board of Ethics that "I fully, completely recused myself from the project in question at the meeting where it was approved. Therefore I cast no vote for the project."

Section 2-61 of the Code of Ethics relating to conflicts of interest provides:

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

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

- (a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter...
- (f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board

or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests. (emphasis added)

The members of the LPC are in a position to take direct official action (which includes “enforcing laws or regulations or issuing, enforcing or regulating permits...”) concerning additions to buildings in historic districts. As one of the two members of the firm which designed the proposed addition for the home in question, the architect had a “substantial employment, contractual, or financial interest in that matter” and was, therefore, prohibited from taking direct official action. Although the meeting minutes reflect otherwise, the preponderance of the evidence indicates that the architect-member did not vote on the matter and, therefore, he did not take direct official action and, thus, did not violate Section 2-61 of the Code of Ethics.

The Board dismissed the complaint. However, the Board recommended that, in the future, in order to avoid the appearance of impropriety:

1. All Denver board and commission members should, whenever they abstain from any vote or discussion due to a conflict of interest, verbalize the abstention clearly and state for the record the reason for such abstention.
2. Whenever a board or commission member abstains from participation in a matter because of a conflict of interest, he or she should leave the meeting room for the entire time of the presentation, discussion and voting on the matter.
3. Such abstaining board or commission member should review the minutes from any meeting where he or she abstained due to a conflict of interest and verify that the minutes correctly reflect the abstention and the reason.
4. Staff members who keep minutes for boards and commission should be trained to record abstentions and reasons in their minutes and whether the member leaves the room so that the public can be aware that city board and commission members understand conflicts of interest and abstain when necessary.
5. Board and commission members or their firms who provide professional services for a livelihood, such as, but not limited to, lawyers, architects, real estate agents, engineers, consultants, and lobbyists should not personally or through their firms represent clients with matters before the board or commission on which they serve or, at least, limit such representation to rare occasions. This would alleviate the public impression that those who hire firms of board and commission members to represent their interests might get a special advantage or the public impression that board and commission members may be using their public office for private gain.

Case 11-59 (conflict of interest, subsequent employment)

Employees in the Office of Economic Development (OED) filed a request for an advisory opinion. OED issued a request for proposals (RFP) in October 2011 to 66 contacts from various organizations that provide workforce services to Denver youth. The RFP sought proposals to provide 6 months of

employment and training services to youth in northeast Denver. Only one organization submitted a proposal by the deadline date.

The contract administrators requested an advisory opinion as to whether there would be an impermissible conflict of interest if the contract were awarded to that organization due to the following facts stated in the request:

1. The organization's manager was the manager of OED's Contracts and Performance Management unit prior to her retirement in August 2010.
2. The organization's 7-person board of directors includes two current city employees, one of whom works for the Public Works Department and the other works for OED.
3. The organization's board also includes a former OED employee.

In addition, the executive director of the organization is the child of two of the persons mentioned above.

Section 2-61 of the Denver Code of Ethics, which regulates conflicts of interest, provides as follows:

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....
- (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.

Any direct official action regarding any city contract with the organization (negotiating, approving or administering the contract) will not be done by anyone connected with the organization, including the current OED employee on the organization's board, who has nothing to do with the contract or any funding decisions.

The former manager of OED's Contracts and Performance Management unit prior to her retirement in August 2010 would not violate Section 2-64(a) because more than 6 months have elapsed since her retirement from the city. That section provides:

Sec. 2-64. Subsequent employment.

The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.

- (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

The Board of Ethics determined that neither the former OED manager nor anyone currently at OED will violate the Code of Ethics if a contract is awarded to the organization. However, the Board of Ethics stated that the fact that

- 1) the organization has two current city employees (one of whom works for OED) and one former OED employee on its 7-person board;
- 2) its manager is the former manager of OED's Contracts and Performance Management unit and
- 3) its executive director is the former manager's daughter

may cause the appearance of impropriety, even if it does not violate the Code of Ethics. The public, including possible competitors for OED contracts, could perceive that the organization is so well-connected with OED that it would be futile for anyone else to submit a competing proposal. That perception could diminish public confidence that the selection and administration processes will be fair, unbiased, arm's-length and will not be influenced by friendships and former associations when considering who gets a contract and how performance is evaluated.

Since the city needs to enter into a contract quickly for workforce youth services in northeast Denver and there were no competing proposals, these reservations should not be understood to recommend that the city not contract with the organization for this proposal. The Board of Ethics, however, recommended that OED suggest to the organization that having so many current or former city or OED employees on its board or as employees can cause the appearance of impropriety.

Case 11-60 (conflict of interest)

The current Office of Economic Development employee who serves on the board of directors for the organization discussed in Case 11-59 above requested her own advisory opinion regarding a potential conflict of interest.

The employee is the Acting Economic Development Supervisor of the OED Workforce Development Assessment and Training Division. She agreed to join the board of a non-profit organization discussed above in Case 11-59 in October 2010. The organization has a contract to administer some Temporary Aid to Needy Families (TANF) program funds from OED and also was under consideration to be given a contract by OED to provide workforce employment and training services to youth in northeast Denver. The employee advised the Board of Ethics that she did not have any direct official action role (defined in Section 2-52(b) of the Denver Code of Ethics as "negotiating, approving...administering or

recommending for or against...a contract, grant or similar instrument...”) in either the TANF contract or the workforce employment and training contract.

Section 2-61 of the Denver Code of Ethics, which regulates conflicts of interest, provides as follows:

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...
- (f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests (emphasis added).

The Board of Ethics concluded that, since the employee did not have any “direct official action” power regarding TANF funding or the potential workforce employment and training contract, she would not be prohibited by the Code of Ethics from serving on the organization’s board. However, the Board recommended that she should abstain from any discussions or decisions or votes at OED that would benefit the organization and also from any discussions or decisions or votes at the organization relating to any contract or grant from OED, in order to avoid the appearance of a conflict of interest.