



Denver Board Of Ethics
Webb Municipal Building
201 West Colfax, 2nd Floor - (2.H-13)
Department 703 (for U.S. Mail)
Denver, CO 80202-5330
p: 720.865.8412
f: 720.865.8419
Email: michael.henry@denvergov.org
www.denvergov.org/ethics

DENVER BOARD OF ETHICS

2013 ANNUAL REPORT

Submitted: February 14, 2014

I. INTRODUCTION

The Denver Board of Ethics hereby submits its thirteenth 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 current members of the Denver Board of Ethics.

The Board expresses appreciation to all city elected officials, employees, board and commission members and citizens who requested ethical advice or help in 2013 and for the fine advice and representation given to the Board by Assistant City Attorney Helen Berkman, who will be retiring from city service in March 2014.

The Board also expresses great appreciation and thanks to Board of Ethics members Leslie Lawson, Lori Mack and Ann Terry, each of whom served on the Board for 8 years and whose terms expired in mid-2013 and welcomes Andrew S. Armatas, Brian J. Spano and Sylvia S. Smith, who were appointed to succeed them.

The Board held twelve monthly meetings in 2013, plus one retreat in February 2013. This report is a summary of the work accomplished by the Board during that time.

II. ADVISORY OPINIONS, WAIVERS, COMPLAINTS

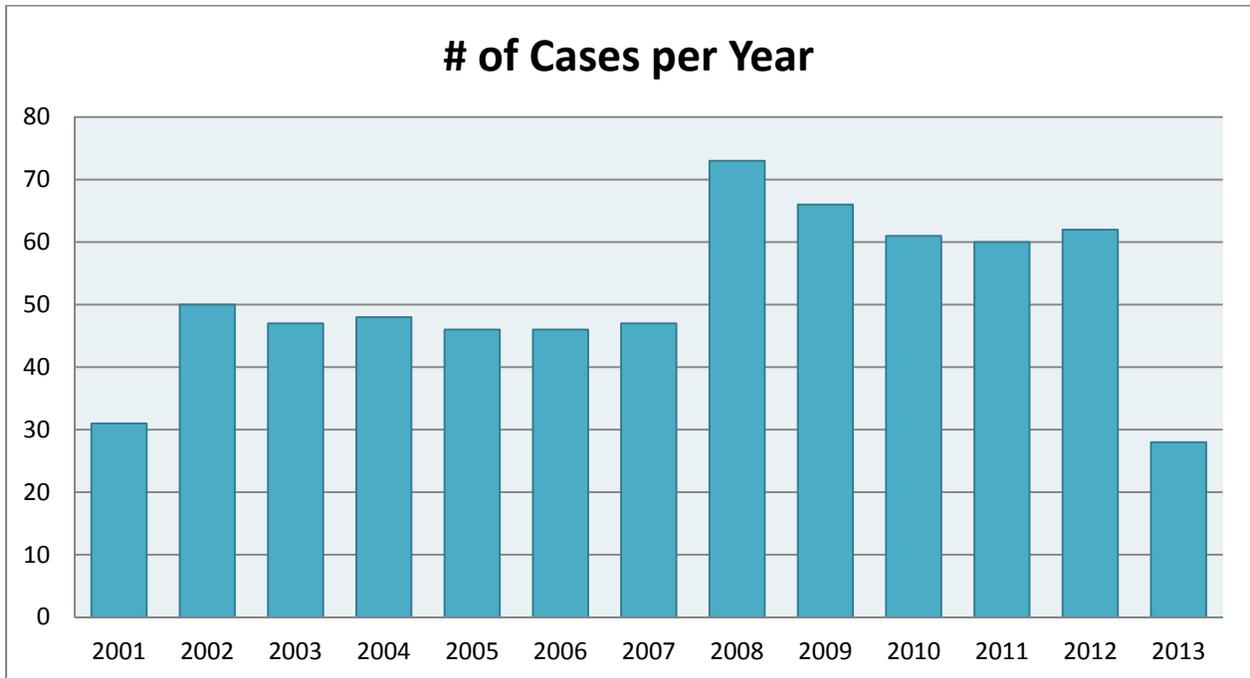
In 2013 the Board received and handled a total of 28 written formal cases - as compared with:

- 62 cases in 2012
- 60 in 2011
- 61 in 2010
- 66 in 2009

Staff Director
L. Michael Henry

Board Members
Edgar L. Neel - Chair
Brian J. Spano - Vice Chair
Roy V. Wood
Andrew S. Armatas
Sylvia Smith

- 73 in 2008
- 47 in 2007
- 46 in 2006
- 46 in 2005
- 48 in 2004
- 47 in 2003
- 50 in 2002
- 31 in 2001.



Twenty-three of the 2013 formal cases were requests for advisory opinions and/or waivers, while five were complaints.

A digest of the Board’s 2013 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 of the complaints that it considered in 2013 after preliminary screening, due to lack of jurisdiction over the subject matters and/or lack of evidence of any violations of the Code of Ethics.

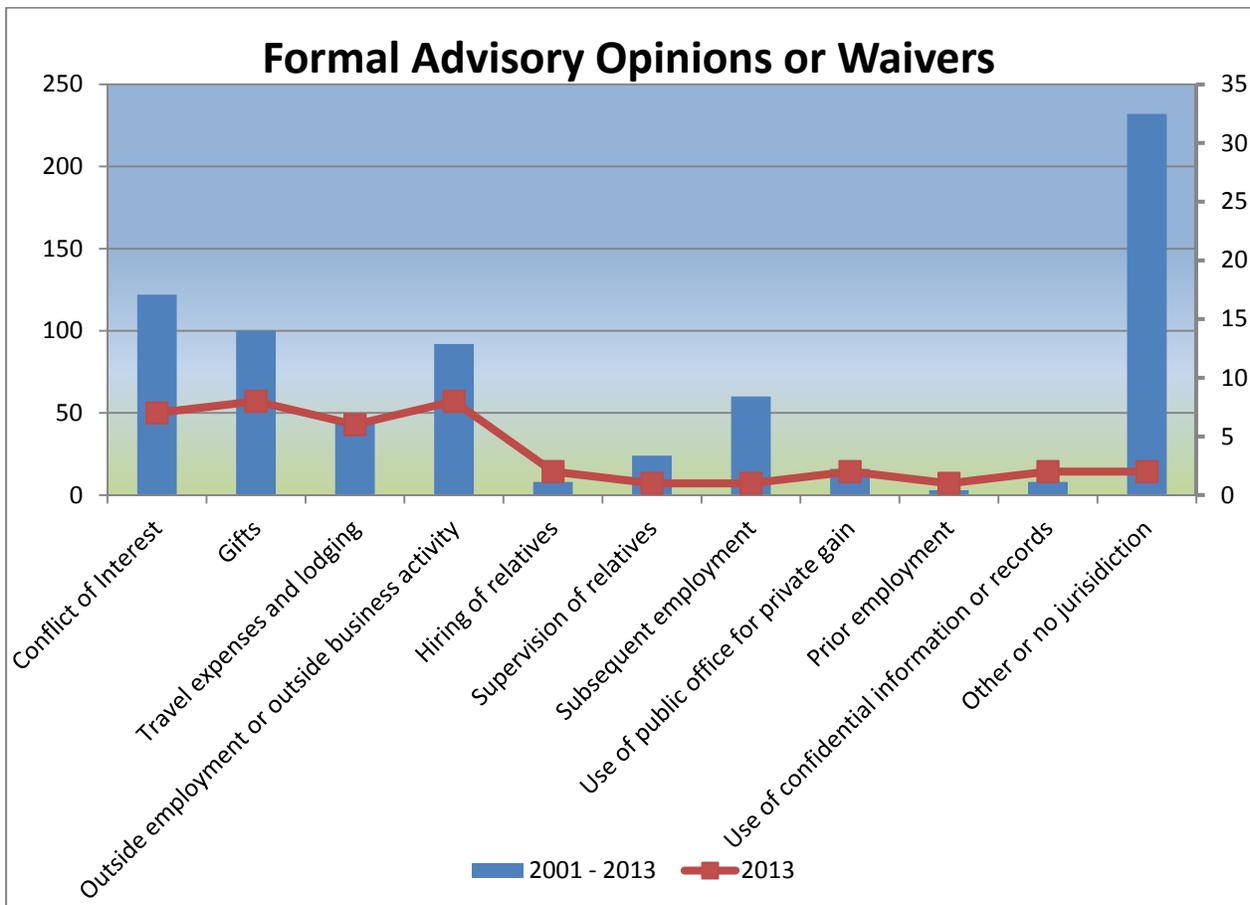
Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2013, the Board of Ethics has received a total of 666 written formal cases, consisting of 370 requests for advisory opinions and/or waivers and 296 complaints about possible violations of the Code of Ethics. Most of the complaints were dismissed because the allegations related to subjects and/or persons not covered by the Code of Ethics. Examples of such dismissed complaints alleged that police officers made improper arrests or searches or that deputy sheriffs used excessive force. In such cases, the Board encourages the complaining parties to submit their complaints to the Internal Affairs Bureaus of the Police or Sheriff Departments. Other dismissed complaints complain about non-city personnel or rude behavior by city

personnel (not covered by the Denver Code of Ethics). Other dismissed complaints did not present sufficient evidence of unethical conduct.

The subjects of the requests for formal advisory opinions or waivers during the entire 2001-2013 period break down as follows, with the 2013 cases in parentheses:

- conflicts of interest – 122 (7)
- gifts – 100 (8)
- travel expenses and lodging – 45 (6)
- outside employment or outside business activity– 92 (8)
- hiring of relatives – 8 (2)
- supervision of relatives – 24 (1)
- subsequent employment – 60 (1)
- use of public office for private gain – 16 (2)
- prior employment – 3 (1)
- use of confidential information or records - 8 (2)
- other or no jurisdiction – 232 (2)

(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 2013 received approximately 223 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:

- 275 in 2012
- 309 in 2011
- 249 in 2010
- 260 in 2009
- 277 in 2008
- 277 in 2007
- 254 in 2006
- 266 in 2005
- 249 in 2004
- 192 in 2003
- 130 in 2002
- 50 in 2001

For a total of 3,012 since January 2001.

The Board and its Staff Director take pride in responding to all requests or complaints as promptly as possible, usually within one day for unofficial requests and within one month for official requests or complaints.

III. ETHICS HANDBOOK

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, 2011 and 2012, the Ethics Handbook was distributed to all new city employees. In 2013 budget funding was obtained to print an updated handbook for new employees, which includes new significant Board of Ethics decisions and amendments to the Code of Ethics made by City Council since 2008. The handbook can be found at www.denvergov.org/ethics. Permanent funding is now available for 2014 and subsequent years to print updated ethics handbooks for all new city employees.

IV. 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 2013, 99% of all city employees and officers subject to the Code of Ethics have received at least 3 hours of ethics training. 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 of section 2-65 of the Code of Ethics. In addition, new recruits in the Fire Department and the Police Department receive ethics training.

The Board's Staff Director gave ethics training in 2013 to several new Mayoral appointees and several Fire Department and Police Department recruits and also gave refresher ethics training to staff at several departments, agencies and boards. The Office of Human Resources continued to manage three-hour ethics training for new CSA employees. In 2012 this was changed from once to twice per month due to the increasing number of new hires. In 2013, ethics training was given to approximately 800 new city employees.

The Board expresses great appreciation to Janice Cornell of the Community Planning and Development Department, who has been the primary instructor for most of the CSA/OHR ethics training classes for new employees for the last several years. In addition, the Board expresses its continued appreciation to the Training and Organizational Development Division of the Office of Human Resources and agency heads who have made this ethics training effort successful.

V. OTHER MATTERS

BUDGET

The adopted 2013 budget for the Board of Ethics is \$120,900, as compared to:

- \$111,700 for 2013
- \$105,600 for 2012
- \$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 2013 ACTIVITIES

In 2013 the Board also:

- Researched the possibility of a third-party hotline to allow city personnel to report official misconduct. Given the concerns of some stakeholders, the Board will defer evaluating the

potential for an anonymous complaint hotline so that a financial fraud hotline (scheduled to be implemented by the Controller's Office in early 2014) can provide additional information and data for later review in consultation with City Council, the Controller's Office and other stakeholders.

- Solicited public comment and amended its Rules of Procedure to allow requests for advisory opinions to be deliberated upon in public to increase the transparency of the Board's deliberations.

VI. 2014 GOALS FOR BOARD OF ETHICS

A. Continue to implement and improve ethics training

The Board of Ethics, in cooperation with the Office of Human Resources, oversees the delivery of ethics training for all Denver officers, officials and employees. The Board should in 2014 continue to pursue this goal by working with city ethics trainers to encourage accuracy, consistency and high quality of the ethics training with cooperation from OHR and city departments. The Board will continue to encourage city departments and agencies to devote time at staff meetings for refresher ethics discussions and to provide ethics training to new Mayoral appointees.

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

C. Improve public information about Code of Ethics

- a) Develop 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) Study improved public information through social media (Facebook, Twitter, etc.) and through other ethics-related organizations.
- e) Make online digests of Board of Ethics opinions searchable by users.

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 2013 Denver Employee Survey and work with Office of Human Resources to assist departments and agencies if survey indicates need to improve ethical culture

F. Study Code of Ethics in light of the Board's experience and research Codes of Ethics from other jurisdictions

G. Develop communications about ethics issues with City Council, the Mayor's Office and City departments

VII. HOW THE BOARD OF ETHICS HELPS TO ACCOMPLISH 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 for the benefit of everyone.

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.

The goal of the Board of Ethics is to establish public confidence in all city departments and agencies.

The Administration's two 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 and its Staff Director respond promptly to all questions and complaints from the public and city personnel.

VIII. CONCLUSION

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney's Office, the Office of Human Resources, ethics trainers and the great majority of managers and employees of the City and County of Denver, it made continued progress in 2013 to establish ethics as a recognized core value and to cultivate public confidence in city government.

Respectfully submitted on behalf of the Denver Board of Ethics,



Edgar L. Neel, Chair

APPENDIX A

DENVER BOARD OF ETHICS

Board Members (as of December 2013)

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 past president and current director of the Denver law firm of Pendleton, Wilson, Hennessey and Crow, 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 and was elected again as Chair in 2013.

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 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. He served as Vice-Chair of the Board of Ethics in 2012-13.

Brian J. Spano earned his B.A. from the University of Michigan and his J.D. from the University of Illinois College of Law. Since 1987 he has been with the law firm of Rothgerber, Johnson and Lyons (merged in 2013 to become Lewis Roca Rothgerber) since 1987 and is currently a partner and specializes in insurance and commercial litigation matters. He also serves as counsel to the American Academy of Forensic Sciences and advises the Academy on matters related to ethics complaints against Academy members. He was appointed by City Council to a term ending April 20, 2017. He was elected Vice-Chair of the Board of Ethics in May 2013.

Andrew S. Armatas earned his B. A. at the University of Colorado at Boulder and his J. D. from the University of Denver. He has served as a Denver Assistant City Attorney, a partner in a Denver law firm, City Attorney for Broomfield and a Denver County Court Judge, retiring in January 2013 after 23 years of service on the bench. During 7 of those years, he served as Presiding Judge of the Denver County Court. He was appointed by the Mayor to a term ending April 30, 2017.

Sylvia S. Smith has been employed with the City and County of Denver in a variety of capacities - from Director of Policy and Research in the Auditor's Office to her current position as a Program Specialist for the Denver Office of Economic Development where she manages neighborhood service and facility improvement contracts. She holds a B. A. in Political Science from the University of Colorado at Denver. She has been active in many organizations including the Colorado Black Women for Political Action, Single Mothers of Color, Inc., National Council of Negro Women, Inc., Denver Section and Colorado Common Cause. She was appointed by the Mayor and City Council to a term ending June 24, 2017.

APPENDIX B

DENVER BOARD OF ETHICS DIGEST OF SELECTED OPINIONS January 1– December 31, 2013

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2013 in response to fact-specific requests for advisory opinions or complaints.

These opinions should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss any specific issues you may have.

Cases 12 – 63 and 12 – 64 (conflicts of interest)

Two complaints were filed by a citizen who was an opponent of an agenda item at a meeting of the Denver Parks & Recreation Advisory Board regarding the proposed de-designation of a park open space natural area. The complainant alleged that during the meeting one of the Advisory Board members, violated the Denver Code of Ethics (conflict of interest) by attempting to influence other Board members who would be voting on the matter and that the Manager of the Parks and Recreation Department “aided and abetted” the alleged violation.

The factual background of the complaints is as follows:

- The Board member, an employee of Denver Public Schools (“DPS”), is and has been for three years the DPS-appointed Board member of the Advisory Board under §2.4.3 of the Denver Charter.
- On November 8, 2012, at the regular meeting of the Advisory Board, there was a presentation by DPS and by City officials and a public hearing on the question of whether to recommend to the Manager that 9 acres of an open space natural area be de-designated. The effect of a de-designation of the property would be that it would become available to be exchanged with DPS for other property the City wishes to purchase for a proposed new domestic violence center so that DPS could construct a new school.
- Before the November meeting began, there was a short sidebar discussion among the Advisory Board President, the Manager and the Board member, which led to a decision that the Board member would disclose his interest and abstain from voting but would be allowed to stay and answer questions in his role as Director of Construction for DPS. DPS had asked him to speak and the Manager thought he was entitled to stay solely because of his role as the appointed DPS representative and DPS had a right to have its representative present.

- At the November meeting, after the presentations, public hearing, and comments, a motion was made, and passed, to postpone the de-designation vote until the December meeting. The Board Member stated at the beginning of this meeting that he would abstain from voting on the matter and did in fact abstain from voting on the motion to postpone.
- At the December meeting, the Advisory Board, per the agenda, had planned a one-hour meeting with comments from the Mayor and 2 pro and 2 con comments from the public. However, after the Mayor spoke the Board decided to reopen the public hearing. The Board Member stated again at the beginning of this meeting that he would abstain, and did not participate until approximately two hours into the meeting. During the first two hours the Board heard from the Mayor, and then held the reopened public hearing, allowing 30 speakers to speak.
- The President of the Board confirmed that during a Board discussion two hours into the meeting, The Board member answered questions from Board members on two or three issues: whether the proposed school would be a “green” school, whether DPS was actually going to build a school there or not, and whether the parking for the school could be underground parking. There were a few other occasions where he attempted or volunteered to answer a question but did not answer the question. During the questions from Board members about the “green” design or whether DPS was actually going to build a school or not, the Board member mentioned “the need for a school” at this location. The Board secretary at this point said to the President that she thought the Board member was going beyond the scope of the questions, and the President then asked him to stop commenting further.
- After being asked to stop commenting, the Board member no longer spoke during the meeting, and did not comment on the motion. After almost 2 ½ hours of public comments and Board member comments, a new motion was made that the Advisory Board reaffirm the Natural Area designation and recommend to the Manager not to de-designate the area. The motion passed by an 11-6 roll call vote, with the DPS Board member abstaining.

Section 2-61 of the Code of Ethics relating to conflicts of interest reads as follows (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 in the matter;
- (2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the

matter;...

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

(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...

It is undisputed, and the Board of Ethics concluded, that the Board member complied with the primary requirements of Section 2-61(f) by disclosing his interest and by abstaining from acting or voting thereon (see Section 2-52(b): “A person who abstains from a vote is not exercising direct official action”). Therefore the only remaining question is whether he attempted to influence the decisions of others under Section 2-61(f) by answering questions of Advisory Board members during the meeting. This third aspect of Section 2-61(f) is less clear and particularly difficult to apply in this case, where the Advisory Board member is the appointed representative of a third-party, DPS, under the Charter.

Although he did not expressly comment on or give an opinion on the de-designation or speak on the motion to affirm the designation, the Board of Ethics concluded that his comments about the design of the school and the need for the school were reasonably viewed by some Board members and by some opponents of the de-designation as crossing the line and became an indirect attempt to support the de-designation. Once he was allowed to answer questions, it was not possible to keep the school design issues separate from the de-designation and land swap questions. At the December meeting the Board member became the implied spokesperson for the DPS positions on the de-designation since the other DPS representatives who spoke at the November meeting were not present.

The Board of Ethics concluded that his responses to Board questions and his attempts to answer other questions were implied attempts to influence his fellow Board members in violation of Section 2-61(f) of the Code of Ethics, and resulted in an appearance of impropriety. However, the Board of Ethics decided that there is no reason for a public hearing and to dismiss the complaints. There was a violation but it was on balance a minor violation under Section 2-56(6)(c) of the Code. The reasons include, but are not limited to, the following:

- In relation to this Advisory Board, the Member has an interest in DPS matters only by virtue of his role as the appointed representative of DPS. He did not negotiate or propose the land exchange deal or the de-designation and did not have a personal financial interest in the land exchange. There were many presentations and written submissions by DPS spokespersons other than the Board member.
- His answers to questions of Board members did not appear to have any actual impact on the Board’s vote, which was overwhelmingly against de-designation of the natural area.

- The complainant alleged that the Board member’s “mere presence in the room” was an unfair attempt to influence other Board members; however, there is nothing in the Code of Ethics requiring a Board member with a conflict to leave the room entirely.
- The complaint implies that a Board member should never be allowed to give a presentation to a Board of which he or she is a member; however, Section 2-61(a) (5) of the Code assumes that such situations will arise.
- The primary mission of the Parks Advisory Board is to represent diverse viewpoints and opinions of the community, and this Board member’s position is unique, in that he is expressly appointed to represent the viewpoint of DPS. The ruling of the Board of Ethics in this case is thus not a precedent for any other boards.

With respect to the complaint concerning the Manager, the Board of Ethics concluded that the same analysis applies to this complaint, for the same reasons. Allowing the member to answer questions on behalf of DPS, although apparently attempted by the Manager as a “compromise”, regrettably did not play out well, but this was not clearly predictable in advance. The Board stated that the infraction does not appear to have been malicious but was more a function of the heat of the meeting. The Board of Ethics recommended to the Manager and the Advisory Board that this type of “compromise” position, allowing the DPS Board member to abstain yet sit with the Board and answer questions for DPS, should not be attempted again in the future in similar situations.

Case 13 - 1 (gifts)

A Fleet Management employee asked if he can accept a gift card for an I-Pad with an estimated value of \$350 that he won as a prize in a drawing following a workshop on Truck Technology and Compressed Natural Gas (CNG). One of the co-sponsors was a provider of CNG fuel station equipment, a representative of which contacted the employee “a few weeks after the event” and advised him that he had won the drawing. About 150 persons attended the workshop. The employee advised the Board of Ethics that he will not be involved in any way in designing or selecting any CNG equipment or fuel stations.

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

- (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...

The Board of Ethics concluded that, since the employee will not have any “direct official action” power regarding the company, he is not prohibited from accepting the I-Pad gift. If he had direct official action power, according to the Board’s decisions in Cases 04-12 and 11-52, the question would then be whether the drawing of his name for the gift was “truly random.” In this situation, it is not clear if the drawing was truly random, since he did not learn that he had won until a few weeks after the workshop; however, since he does not have direct official action power regarding the company, that question does not need to be reached. The Board cautioned the employee that, if he accepts the gift, he should not be involved in any decision-making that could impact the company.

Case 13-2 (gifts; travel expenses)

The Director of the Denver Office of Emergency Management and Homeland Security (OEM) requested an advisory opinion and/or waiver regarding travel expenses. OEM has a contract with a vendor for a software system. The current contract runs through September 2013. The vendor has offered to pay travel and lodging expenses for the Director to attend a worldwide conference of emergency professionals in Augusta, Georgia.

The Board of Ethics concluded that, since the Director is the head of the small OEM office, he will have direct official action power regarding the administration of the contract with the vendor and the decision whether to renew the contract or not. Therefore, he is prohibited by Section 2-60(a) of the Code of Ethics from accepting travel expenses and lodging from a for-profit vendor.

That section provides:

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

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

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

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

The next question is whether the Board wished to grant a waiver to allow him to accept travel and lodging expenses from the vendor. Pursuant to Section 2-54(f) of the Code of Ethics, the Board may grant a waiver if the Board finds that “the waiver will serve the best interests of the city.” In this case, however, the Board determined that, although the learning experience for the Director and the City will be valuable at the conference, there was not sufficient reason to grant a waiver and that the appearance of special influence is too great, in most situations, when city personnel accept travel expenses from vendors which they can decide whether to contract with or not.

Case 13-4 (gifts; travel expenses)

The Director of the Department of Excise and Licenses, which, among many other things, licenses and regulates fire and security alarm systems, requested an advisory opinion and/or waiver as to whether the sole in-house employee administering the alarm program may accept travel and lodging expenses from an outside contractor so that he can fully understand how the contractor is operating the alarm program. The travel would be for a 1 or 2-day visit to the contractor’s headquarters in Irving, Texas. The contract obligates the contractor “to manage and implement the City’s alarm systems ordinance...as a single point of customer contact, issuing and renewing permits, generating reports, working to reduce false

alarms in the City, working with the City in assessing fees and assisting in appeals and working with City interfaces from its location in Irving, Texas.”

The Board of Ethics concluded that, since the employee will be the overseer of the Alarm Systems Program, he will be in a position to take direct official action by administering and recommending renewal or non-renewal of the contract with the contractor, which will expire in December 2014. Therefore, he would violate Section 2-60(a) of the Code of Ethics by accepting travel expenses from a for-profit vendor doing business with the city if the travel expenses were to be considered a gift.

That section provides:

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

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

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

- (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...

However, the contract between the City and the contractor states in the Scope of Work: “Contractor shall provide training for City employees...as requested by the City.” The Board concluded that this clause obligates the contractor to pay for the training and, if appropriate, transportation to and from the location where the training can be done best and, therefore, the payment of travel expenses by the contractor will not be a gift. The travel expenses are not a “thing of value that is given to a person without adequate and lawful compensation.” As a result, acceptance of the travel expenses by the employee will not violate the Code of Ethics.

The Board also discussed whether, if the travel expenses were to be considered a gift, it would grant a waiver to allow the employee to accept travel and lodging expenses from the contractor. Pursuant to Section 2-54(f), the Board may grant a waiver if the Board finds that “the waiver will serve the best interests of the city.” The Board decided that, if the travel expenses were to be considered a gift, it would grant a waiver, because it is in the best interests of the city to have a knowledgeable and functional relationship between the Department of Excise and Licenses and its contractor in administering the City’s alarm program. The Board strongly recommended that, in order to avoid the appearance of impropriety, that the employee should only accept travel or lodging expenses that are reasonable and not extravagant.

Case 13-5 (conflict of interest)

The Manager and the Deputy Manager of a department requested an advisory opinion. The Deputy Manager’s spouse is the president of a Denver engineering firm and owns approximately 8% of the firm. The firm made a proposal to the department in response to a Request for Proposals (RFP) for work that

will cost approximately \$400,000. The Deputy Manager did not prepare the RFP. The 7-person Selection Committee contains one person who reports directly to the Deputy Manager and two others who report directly to that person.

The requesters wanted to know whether any possible conflict of interest violations of the Code of Ethics will be removed if the Deputy Manager were to be recused from dealing with the selection process and subsequent project administration should the firm be selected. The Deputy Manager's duties for the selection process and project administration would be reassigned within the department either to another Deputy Manager or to the Manager, if the firm were selected.

Conflicts of interest are regulated by section 2-61 of the Denver Code of Ethics:

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

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

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

(1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;

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

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

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

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

(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 Deputy Manager's spouse has a "substantial interest" in the firm (being the president and owning approximately 8% of the company) and, therefore, the Deputy Manager cannot take any direct official action regarding any potential contract or contract with the firm. The definition of "direct official action" in Section 2-52(b) of the Code of Ethics is:

- 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 (emphasis added)

The Board of Ethics decided that, technically, it would not be a violation of the Code of Ethics if the Deputy Manager has completely complied and would continue to comply with Section 2-61(f) regarding every aspect of the RFP and, if the spouse's company is selected, would have no involvement whatsoever with the administration of the contract.

However, the Board was unanimously of the opinion that, in order to avoid the appearance of favoritism to the spouse's company, the firm should not be allowed to compete for this project or future contracts, so long as the Deputy Manager is in a position of influence over so many of the department personnel involved in the drafting of the RFPs, the selection committee and the administration of this and similar projects. The Board finds that, even if the Deputy Manager is "recused" from any direct official action regarding the firm, the Deputy Manager's strong position of influence over many department staff who report directly or indirectly to the Deputy Manager will give the strong appearance to the public and to competing firms of "influence on the official actions of city officers, employees or officials by their private or family interests."

Cases 13-6 and 13-7 (use of public office for private gain and improper use of confidential information)

A citizen filed complaints concerning a city employee and her supervisor, alleging 1) that the city employee came to the citizen's office in her city vehicle in her city uniform on city time to do personal business and was rude, harassing and intimidating and 2) that the supervisor improperly revealed to the citizen's work supervisor a complaint that the citizen had filed about the city employee with Denver 311, which the citizen believed should have been confidential.

The Board of Ethics considered whether the city supervisor's sharing of the citizen's 311 complaint could be a violation of Section 2-68 of the 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 anyone who files a complaint with Denver 311 presumably wants something to be done to resolve the complaint and therefore a complaining person should not expect her identity or other information to be kept confidential unless specifically requested.

The citizen's main complaints about the city employee were that she was "rude, intimidating...bullying and demanding...condescending...stalking" and that she was doing "personal business" during her city work time in her city uniform and using her city vehicle. The Code of Ethics does not prohibit rudeness or "stalking." However, the Code does provide as follows:

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 the events at the citizen's workplace had no connection with the city employee's city work responsibilities. In other words, she was not using her public office or position to obtain private gain for herself. In addition, the city supervisor reviewed the conduct and determined that no discipline was warranted.

The Board dismissed both of these complaints pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violations, if true, would not constitute violations of the Code of Ethics.

The Board, however, concluded that the city employee's use of city time and resources for her personal business gave an appearance of impropriety and strongly recommended that she should not conduct personal business using her city vehicle on city time in her city uniform.

Case 13- 9 (outside employment, conflict of interest)

A police officer requested an advisory opinion. He had worked off-duty for several years as security for a restaurant with a liquor license and a dance cabaret license owned by his father. He did not have any ownership interest in the establishment. He was not aware of any licensing problems that the restaurant has had.

A Deputy Chief of Police recently disapproved this off-duty work in the belief that there is a conflict of interest because the officer's father owns the restaurant. His immediate supervisor suggested that he request an opinion from the Board of Ethics.

Section 2-63 of the Code of Ethics requires annual written approval of outside employment for all city employees by the employee's appointing authority:

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.

Conflicts of interest are regulated by Section 2-61 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) ...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....

The definition of "direct official action" in Section 2-52(b)(2) of the Code of Ethics includes "enforcing laws."

The Board of Ethics advised the officer that:

- Pursuant to Section 2-63 of the Code of Ethics, a city employee's appointing authority has the authority to approve or disapprove outside employment on an annual basis. In other words, the decision is up to the Police Department and not the Board of Ethics.
- The Board of Ethics, however, believes that there is a potential conflict of interest in the work for the officer's father's liquor-licensed establishment. On the one hand, since he would be performing Secondary Employment Police Work, he is required by Section 114.01 of the Denver Police Department Operations Manual to "enforce the ordinances and laws of the City, State and United States...officers may act to prevent a breach of the peace or to enforce the law." On the other hand, if he were to observe violations of the law at his father's establishment, he might feel a divided loyalty or, even if he did not feel such a divided loyalty, the public might perceive that he would have a conflict of interest.

Case13- 10 (conflict of interest)

The Manager of the Department of Parks and Recreation requested an advisory opinion. There are 19 members of a volunteer Denver Parks and Recreation Advisory Board (DPRAB) that advises the Department. The Department of Parks and Recreation (DPR) and the Office of Children's Affairs anticipate jointly contracting for professional services with a DPRAB member "to develop and execute a project plan that increases upon the initial phases of the My Denver card program...a single card that allows children ages K-12 access to city programs, services, cultural venues and public transportation for all Denver school-aged students."

On occasion, the topic of the My Denver card may be discussed at the DPRAB; however, DPRAB has no authority to direct activities around the My Denver card nor approve contracts related to the program. The board member is not a city employee. The Manager wished to know if there is anything in the Denver Code of Ethics that would prohibit "concurrent service to the DPRAB and the contracted work."

Section 2-61(a)(1) of the Code of Ethics prohibits any city officer, employee or official (board or commission member) from taking direct official action if he or she "is the other party in the matter." However, this contract will not be negotiated, approved or administered by the DPRAB. Therefore, there is no prohibited conflict of interest if the board member were to have a contract with DPR and the Office of Children's Affairs.

Nor would such a contract violate Section 1.2.9(B) of the Charter:

No officer or employee shall have a direct interest in a contract or similar instrument with the City if he or she participated in approving or establishing the contact or instrument or its terms or conditions...

In summary, the Board of Ethics determined that it would not violate any section of the Code of Ethics for the DPRAB member to enter into a contract relating to the My Denver card program, so long as the member had no direct official action regarding that contract.

Case 13- 11 (gifts)

The Director of the Department of Excise and Licenses requested an advisory opinion about whether it would violate the Code of Ethics if the department would accept donations of a frozen yogurt machine and/or supplies to produce frozen yogurt for citizens/customers who come to the department office in order to provide greater customer service to those who deal with the department, particularly those who must wait in long lines at the department's counter due to heavy caseloads and staff cuts. Employees could also partake. Denver law firms and consultants who represent clients doing business with the department, including liquor license applicants, have offered to make donations toward the frozen yogurt equipment and/or supplies.

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

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

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

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

Section 2-60(a) clearly prohibits the Director or other decision-makers in the department from accepting personal gifts from anyone wanting to obtain one or more licenses from the department, unless permitted by one of the exceptions in Section 2-60(b). However, 2-60(c) specifically allows donations to the city:

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

The Board of Ethics advised the Director that Section 2-60(c) allows him and the department to solicit and/or accept donations to the city and/or the department of a yogurt machine and supplies for the benefit of citizens and customers of the department. The Board also advised that:

- “Solicitation and financial records” must be maintained;
- The Director and other department employees should not consume the yogurt.
- The donated machine and supplies, if accepted, would belong to the city and/or the department;
- He should consult with the Controller and/or the City Attorney’s Office about how to inventory and account for the donations.

However, the Board strongly discouraged the Director from entering into such a venture, due to the strong appearance of impropriety that would result from allowing law firms or others who represent applicants for licenses from the department to give donations to the department. Even assuming that it would not be the actual case, citizens, other license applicants and other law firms or consultants might assume that the donating firms might have special preference at the department due to the donations. The Board suggested that there would be no problem if donations could be obtained from entities that do not obtain licenses or otherwise do business with the department.

Case 13-12 (no jurisdiction)

A police officer filed an inquiry asking:

1. Can the Denver Police Department use its facilities, equipment, employees, and uniformed officers to publicly support and promote the executive and legislative agenda of one political party over the other?

2. Can the Denver Police Department encourage uniformed police officers to lend support to one side of a political position while simultaneously denying uniformed police officers from participating in a lawful event that lends support to the opposing side of the same political position?

The inquiry described a visit to Denver by President Barack Obama to promote gun control legislation and the involvement of the Chief of Police and others in the Police Department in that visit. However, the officer did not cite any specific provisions of the Denver Code of Ethics which would be implicated by the inquiry or which the officer believed were violated by the Chief or any other city official.

The Board dismissed the inquiry pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because:

- The Board has no jurisdiction over the issues described in the inquiry. “Political activity,” while it is mentioned in other laws and policies of the city, is not mentioned in the Denver Code of Ethics;
- The alleged violation, if true, would not constitute a violation of the Code of Ethics;
- Participation at the event for all police personnel was voluntary and not required, except for those whose presence was required for the purpose of protecting the safety of the President of the United States.

Case 13-13 (hiring or supervision of immediate family)

An administrator in the Division of Recreation requested an advisory opinion. Her son was hired as a recreation coordinator for the My Denver Initiative. The My Denver card is a single card that allows children ages K-12 access to city programs, services, cultural venues, recreational opportunities and public transportation for all Denver school-aged students.

Her son went through the regular city application process and was selected by another administrator to be one of approximately 18 candidates to be interviewed for the position. The mother had nothing to do with the screening. She was selected to be on the interview panel; however, she left the building and did not participate in any way in her son’s interview.

Her son will be primarily supervised by a different administrator in the Recreation Division. However, she indicated that she and the other administrator “share responsibilities for the My Denver program – his focus is on budget and mine is on outcomes of the program.”

Section 2-59 of the Code of Ethics regulates hiring and supervision of family members (the definition of which includes sons):

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.

Because the administrator was not involved in the screening, interviewing or hiring decision for her son and because her son was hired through a competitive process, the Board of Ethics concluded that she did not violate Section 2-59(a) of the Code of Ethics regarding hiring of immediate family members.

However, although the other administrator will have primary supervisory authority regarding her son, the Board concluded that the mother will have some supervisory responsibility for her son, because she and the other administrator share responsibilities for the My Denver program. Therefore, the Board concluded that the mother will violate Section 2-59(b) of the Code of Ethics since she will "supervise or be in a direct line of supervision over a member of her immediate family," even if it is only partial supervision. The Board, however, granted her a waiver to allow this partial supervision. The Board recommended, however, that she should abstain from participating in any personnel action involving her son, in order to avoid the appearance of impropriety.

Case 13-14 (gifts, travel expenses)

The Executive Director of the Denver Agency for Human Rights and Community Partnerships (HRCP) requested an advisory opinion. He had been asked to mentor or chaperone 10 Montbello High School seniors who are members of the school's Drumline on the inaugural United Airlines nonstop flight to and from Denver International Airport and Tokyo. (The flight was also discussed in Board of Ethics case 12-53.) The students travelled to a number of Japanese cities and performed at the U. S. ambassador's residence in Tokyo.

Sponsorship donations were being raised by other city personnel to pay the travel and lodging expenses for the students and the Director. The Director was not doing any of the fundraising, although he said that the "invoices to the sponsors of the Tokyo trip will come out of my office."

Solicitation and acceptance of gifts is regulated by section 2-60 of the Denver Code of Ethics:

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

The purpose of this section is to avoid special influence by 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)

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

- 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 (emphasis added)

Neither the Director nor HRCF have any "direct official action" authority regarding the persons or entities that agreed to contribute to the sponsorships for the trip, although all of those entities or persons do business with the City and County of Denver.

The Board of Ethics concluded that, because the Director and the HRCF office have nothing to do with direct official action regarding the persons or entities that agreed to sponsor the students' trip, he will not violate Section 2-60 by accepting travel expenses from those entities. The Board also advised him that he should insist on being informed by those who are raising funds for the sponsorships of this trip of any new sponsors and, if any new sponsors are entities over which he or HRCF have direct official action power, he should not accept or use such funds.

Case13-15 (gifts, travel expenses)

The Interim Director of Fleet Management in the Department of Public Works requested an advisory opinion. The city had recently signed a contract with a manufacturing company, to purchase 2 new street sweepers. The Director said that the company wishes to pay for the travel expenses of 2 city employees to go to the factory in Huntsville, Alabama to inspect the units before they are shipped to Denver. He advised the Board of Ethics that:

These are a... sweeper never before operated by the City of Denver. These units are designed to be used in the Street Maintenance Paving Program. Because these units are new to the City of Denver the vendor wants us to be thoroughly knowledgeable on how these units were assembled and how they are to be used. If any changes or modifications are to be made they would like to make the changes there at the factory instead of at the Denver dealership...

The two employees have not been selected yet. One will probably be a salary employee and the other an hourly employee. One will be an employee from Street Maintenance and one from Fleet Management. None of these employees negotiated or approved the purchase. This was a bidding process which the lowest bidder won the contract. Public Works Purchasing Department awarded and administered the bid. No one from this department (Purchasing) will be selected for the visit.

Normally we have language in the spec sheets addressing travel to the build site but unfortunately it was not included in this bid.

Travel expenses paid by outside parties are regulated by Section 2-60 of the Code of Ethics:

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

The purpose of this section is to avoid special influence by 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)

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

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 a previous case, the Board of Ethics considered a somewhat similar fact situation. In Case 05-9, given to one of the Director’s predecessors at Fleet Management, the Board approved the idea of including in the bid and purchase documents a provision that travel expenses to a factory be paid by the vendor so that city representatives may inspect “specialized, custom-assembled, high-cost vehicles” before delivery to Denver. For some reason, however, such a provision was apparently not included in the city’s contract with this company.

The Board determined that acceptance of travel expenses to inspect the street sweepers at the Alabama factory will not violate the Code of Ethics, so long as the employees were not and will not be in a position to take direct official action regarding the contract in question with the manufacturing company, including involvement in administering the contract. The Board indicated that the Director should take care to select such Public Works employees to take the trip. The Board also advised that the travel and lodging expenses accepted should be reasonable and not extravagant. The Board also recommended that the Director work with the City Attorney’s office to include in future similar requests for proposals and contracts a provision for vendor-paid travel expenses to factories to inspect any specialized, custom-assembled, high-cost vehicles.

Case 13 - 16 (outside employment)

A city employee recently wrote a book as a private citizen regarding “graffiti vandalism.” He had obtained written approval from his department in 2012 and again in January 2013 for outside business activity as an “author,” pursuant to Section 2-63 of the Code of Ethics. He requested an opinion from the Board of Ethics about what activities related to the book are permissible, including making presentations (some of which would involve payment of fees), selling the book through distributors or retailers and marketing it through search-engine optimization.

The employee said that all of these activities will be on his personal time, that he will not use any city resources and that he will not portray himself during any activities regarding the book as representing his department or the City and County of Denver. Apparently there was some tension between the

employee and other city personnel due to lack of clarity about whether he was perceived as a representative of the city, as well as the fact that the book apparently focuses on different tactics in combating graffiti than those used by the city.

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

Approval of outside employment or outside business activity must be given by an employee's appointing authority (not the Board of Ethics), although employees and appointing authorities are "encouraged" to consult the Board.

The Board of Ethics advised the employee that, so long as written approval is obtained on an annual basis from his appointing authority, he may engage in paid outside business activity, so long as he does not use any city resources or city time for that activity, including writing books, making presentations (some of which would involve payment of fees), selling books through distributors or retailers and marketing books through search-engine optimization. The Board stated that "Even though you may emphasize different anti-graffiti tactics than the city government, that does not amount to a conflict of interest that should prohibit you from writing or speaking about or earning money from your ideas."

The Board also encouraged him to take extra measures to be very clear that in writing or promoting the book or speaking as an anti-graffiti expert he is not representing the City and County of Denver or any city agency, so that the media, citizens and city agencies will not be confused.

Case 13-17 (outside employment)

A Landside Service Agent II at Denver International Airport submitted a request for approval for outside employment to his supervisor, pursuant to Section 2-63 of the Code of Ethics. He wished to work as a shuttle driver for a hotel on some of his days off. Regarding the proposed outside employment, he said:

The job duties include driving hotel guests to different locations throughout Denver, including DIA on occasions...There are no scheduled pick-ups at DIA. It is strictly on a “will call” basis.

Apparently the supervisor or someone else at DIA denied the request as a potential conflict of interest. The employee advised the Board of Ethics that “I do issue parking citations in the parking lots” at DIA, but “I do not patrol Terminal areas. Ground Transportation does. I can only issue citations for parking, not for moving violations.” Some of the essential duties of a Landside Service Agent II at DIA are described in the job description for the employee’s position:

- Monitors contract compliance of commercial operators and parking contractors who provide services to airport passengers and employees ensuring contractual terms of service are fulfilled, as applicable;
- Patrols airport parking areas and passenger arrival and departure areas to monitor performance of contractors, assist passengers in securing services, inspect condition of facilities and construction areas and ensure safe and efficient movement of passengers and other users of the airport.
- Authorizes access of commercial carriers to appropriate designated terminal levels and lanes for individual and group passenger drop off and pick up. Updates or modifies information on commercial carriers in order to monitor and/or validate their authorized status to use commercial carrier areas of the airport;
- Responds to traffic problems, accidents, security incidents, and medical emergencies at airport parking and ground transportation areas;
- Issues citations and/or denies access privileges to the terminal for violations of contract provisions, parking restrictions, or conflicts among individual commercial carriers.
- Coordinates towing of improperly parked or abandoned vehicles, escorts towing contractor to the vehicle impound area, and inspects and records condition and contents of vehicles.
- Gains compliance for airport rules and regulations with regard to facilities use, parking access, traffic control, security, and passenger service...

Outside employment is governed by Section 2-63 of the Denver 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.
- (f) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.
- (g) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
- (h) City resources may not be used for any outside employment or outside business activity.

The Board of Ethics advised the employee, pursuant to Section 2-63 of the Code of Ethics, that he can only engage in outside employment if it is approved in writing by his appointing authority. In addition, since he does issue parking citations in the DIA parking lots and could possibly be assigned, according to the essential duties of a Landside Service Agent II, to monitor contract compliance of commercial operators and issue citations and/or deny access privileges to the terminal for violations of contract provisions, parking restrictions, or conflicts among individual commercial carriers, it would be a conflict of interest for him to have outside employment driving a hotel shuttle bus that transports hotel guests to or from DIA. As an example, during his on-duty time, he could possibly be put in the position of observing a shuttle bus of his outside employer improperly parked at DIA, which would pose a conflict between his job responsibility to issue a citation and the desire of his outside employer not to have its vehicle ticketed or its guests inconvenienced. The Board said that it understands the employee's desire to engage in outside employment, but encouraged him to look for other opportunities which would not have any connection with parking or ground transportation companies at DIA.

Case 13 - 18 (gifts, travel expenses)

A Forensic DNA Analyst in the Denver Police Department Crime Lab requested an advisory opinion. He had been invited to speak at one or two conferences sponsored by an international for-profit vendor of "instruments and reagents used in a variety of biotechnology purposes, including forensic casework applications." One of the conferences will be in Chicago and the other will be in Atlanta. The company offered to pay for his travel, hotel and per diem expenses, in return for his speaking at the conferences about "The Use of Familial DNA Searching as an Investigative Tool." The employee said that "Denver has been at the forefront in researching and implementing this new method" and that "personnel from the District Attorney's Office and the Crime Laboratory have been invited to present on this topic across the country."

The employee said that, as a scientist, he uses many of the company's products and instruments on a daily basis, but that he does "not make final decisions on what products the laboratory will use, nor do I place orders for supplies." He said that "the DNA Technical Leader (his supervisor) makes those decisions based upon scientific data and the needs of the DNA Section." He also advised the Board of Ethics that purchasing decisions are based on a team approach and on internal validation studies of the equipment and products to be purchased. He also indicated that the Crime Lab, which has approximately 50 employees, purchases such items from several different companies.

Gifts, including travel expenses are regulated by Section 2-60 of the Denver Code of Ethics:

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

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

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

The Board of Ethics advised the employee that he will not violate Section 2-60 of the Code of Ethics by accepting travel expenses from the company because, given all of the circumstances described above, he is not in a position to take direct official action regarding the company.

The Board urged him, however, to encourage his supervisors and colleagues to develop purchasing protocols so that direct official action decisions are not made by persons who have received impermissible gifts from vendors or potential vendors, unless a waiver has been obtained from the Board of Ethics. The Board also cautioned him that any travel and lodging expenses that he accepts should be reasonable and not extravagant.

Case 13-19 (no jurisdiction)

A citizen filed a complaint concerning “Denver Parking,” stating that there was inadequate signage at a location on a street where she was given a parking citation. This case was dismissed because the Board of Ethics does not have jurisdiction over such issues and because the Board cannot consider complaints against city departments or agencies and can only consider complaints against individual elected officials, employees or board and commission members.

Case 13-20 (conflicts of interest)

A City Councilmember requested an advisory opinion as to whether two appointees to the Cherry Creek North Technical Task Force have a conflict of interest prohibited by the Denver Code of Ethics because they are on the Denver Planning Board and one of them is also the Executive Director of the Cherry Creek North Business Improvement District. The Councilmember recently appointed an informal Technical Task Force to evaluate rezoning options for Cherry Creek North (CCN) and to assist the City in developing CCN as a new zone district that fits within the new 2010 Zoning Code. The Task Force is a group of interested stakeholders who will gather information and provide input to City staff concerning the potential rezoning of the CCN District to guide and inform the staff recommendation to the Planning Board and then to City Council.

The question presented is whether participation by these individuals on the CCN rezoning Task Force would be “direct official action” under the Code of Ethics or otherwise be a conflict of interest under the Code.

Section 2-52(b)(1) of the Code reads as follows:

Sec. 2-52. Definitions

(b) Direct Official Action means any action which involves:

- (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, 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...

Section 2-61 of the Code reads 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. A substantial interest shall be deemed to exist if:

- (1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;
- (2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;
- (3) He or she, a member of the immediate family, a business associate or an employer is an officer in another party in the matter;
- (4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;
- (5) He or she, a member of the immediate family, a business associate or an employer is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter, other than in a purely clerical capacity; or
- (6) A member of his or her immediate family performs more than a nominal portion of the work in the matter, or supervises or manages more than a nominal portion of the work
- (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.

Based on the above facts and the language of the Code, the Board of Ethics determined that the Code of Ethics does not apply to the appointment of the 2 members to the CCN Technical Task Force, which is a legislative study group composed of a variety of citizens and officials, all of whom have an interest in the rezoning. Under the tests set forth in [City of Aurora v. Zwerdinger, 194 Colo. 192, 571 P.2d 1074 \(1977\)](#), an original act of zoning is legislative because it is of a general and permanent character and involves a general rule or policy.

The proposed rezoning of a large area of the City is a legislative matter that is not a “contract, purchase order, lease, concession, franchise, grant, or other similar instrument” and therefore is not a “matter” covered by Section 2-61 of the Code of Ethics. The Task Force, staff, and Planning Board will gather information at public meetings, from informal conversations with citizens and others, from memoranda prepared by City staff, and from other sources, and present the information to City Council, which will then deliberate as a legislative body and implement a policy by enacting an ordinance. On some matters, the Planning Board and City Council act on contracts or in an administrative manner such that the Code of Ethics could apply, but not in this situation. Therefore, the Board concluded that the conflict of interest provisions in the Code of Ethics do not apply to this situation.

Case 13-21 (gifts, travel expenses)

The Controller requested an advisory opinion and/or waiver regarding travel expenses offered to a Senior IT Systems Analyst in the Payroll Division of the Controller’s Office.

In 2008 the city contracted with a major software company, to manage the timekeeping system for Career Service Authority employees. The implementation was completed in 2010 and is now being upgraded. The Analyst did not and does not have any direct role in negotiating, approving or administering the contract. The contract is managed/administered by the Technology Services Department, not the Controller’s Office. The Analyst says that she is the system administrator for the company, but would have no influence over the renewal or non-renewal of the contract. According to the Controller:

...as the city made the decision to utilize the company, there is no plan to cease its use. The current maintenance contract ends at the end of 2014, and Technology Services plans on extending that contract.

The company invited the Analyst to attend a conference in Orlando, Florida and to participate in a panel of their government customers to share their upgrade experiences, lessons learned and best practices. The purpose of the conference is to provide education workshops, technical sessions, new product information, technical training and business sessions. Approximately 2000 attendees are expected at the conference. The company offered to pay for the conference fee, airfare and hotel expenses for the Analyst, estimated to be \$2, 372.

Receipt of gifts, including travel and lodging expenses, by city personnel is regulated by Section 2-60 of the Code of Ethics:

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

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

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

Direct official action means any action which involves:

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

The Board of Ethics concluded that the Analyst would violate section 2-60(a) of the Code of Ethics if she accepts the conference expenses from the company, because she is in a position to take direct official action regarding the company. Even though she does not have a direct role in negotiating, approving or administering the contract, since the contract is managed/administered by the Technology Services Department, she is, nonetheless, the key person in the city for all questions related to the company. She also made recommendations about the size and scope of work of the upgrade contract and she receives and approves the bills and will probably also make recommendations about extending the maintenance contract in 2014.

However, the Board also concluded that it will be in the City’s best interest if the Analyst would attend the conference so that she can learn from the company and the other attendees about new developments and techniques in time-keeping for government entities and share Denver’s experiences with others. As a result, the Board determined to grant the Analyst a waiver, pursuant to Section 2-54(f) of the Code of Ethics so that she may accept the travel, lodging and conference registration expenses from the company. If a similar situation arises in the future, the Board encouraged the Analyst and/or the Controller to approach the Board again at that time, because the Board’s opinion may differ depending on the future specific facts and circumstances.

Case 13 – 22 (outside employment)

A technology employee at Denver International Airport requested an advisory opinion regarding possible outside employment as a part-time consultant for approximately 10 – 15 hours per week during off-duty hours. The employee told the Board of Ethics:

I have been asked by (the company) of Phoenix, AZ to consult with some of their airport clients. I would be presenting high-level concepts of non-proprietary solutions to improve their technical infrastructure for flight data and system data integrations. These are not trade secrets of DIA, but will present a “lessons learned” perspective based on our experiences.

The company provides information technology consulting, project management, design services and strategic planning for various airports. Although it had one contract in the past with DIA, the company does not currently have and is not competing for any contracts with DIA. The employee also expected that the company might ask him to consult separately with some of the company's airport customers.

The employee's supervisor indicated that he had no problem with approving this outside employment, but he preferred to have the employee obtain an advisory opinion from the Board of Ethics. The employee and the supervisor both indicated that neither believes that any competitive disadvantage, loss of proprietary information or any other harm to DIA would result from this consulting. Both indicated that it would be an advantage for all airports to share the information and techniques that the employee would be consulting about.

Outside employment or business activity is regulated by Section 2-63 of the Denver 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.

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

Outside employment is also regulated in the conflicts of interest section of the Code of Ethics by:

Section 2-61(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 advised the employee that, given his representations regarding the scope of the anticipated consulting engagement with the company, he will not violate Section 2-63 or Section 2-61(g) of the Denver Code of Ethics, so long as he obtains his appointing authority's written approval for the outside consulting work on an annual basis and also recommended, in order to avoid the appearance of impropriety that:

- He should not use any city time or other city or DIA resources in his consulting work;

- He should not share any proprietary DIA information or other information that would harm DIA or the City and County of Denver;
- He should not issue any recommendations or references for the company to any airports;
- If the company is being considered or is competing for any consultant work at DIA, the employee should not be involved in the selection.

Case 13-23 (outside employment)

A Senior Social Caseworker in the Department of Human Services (DHS) requested an advisory opinion. His principal work is foster care certification, in which he investigates and writes reports regarding whether one or more non-parent family members (such as grandparents or aunts/uncles) are suitable to be certified and paid financial support by DHS as foster parents of young people who are not in their parents' homes. His reports are given to others in DHS, who make the final decisions about certification.

The employee was considering whether to contract to perform similar tasks for a 3rd-party non-profit organization which provides similar investigations and reports for Arapahoe, Douglas and Jefferson Counties. He would be paid by the non-profit by the report. In Colorado, all counties use the same assessment criteria for foster care kinship certification.

The employee informed the Board of Ethics that:

I understand that in taking on this added work it in no way can occur during normal business hours, be conducted using any of Denver Human Services' property (i.e. a laptop, cell phone) or impede in any of my current duties with Denver Human Services. Given the nature of the work, I can at any time decline to work with a family should a conflict of interest arise. As each family being studied is pursuing Foster Care licensing for the purpose of a specific child, the potential for conflicts I believe is minimal. In addition, should my work with Denver Human Services become intensified to the point where I'm unable to take on work from the non-profit, I will have the flexibility to pass on work from them at that time.

Outside employment is regulated by Section 2-63 of the Denver 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.

Outside employment is also regulated in the conflicts of interest section of the Code of Ethics by:

Section 2-61(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 concluded that it did not find any conflict or incompatibility between his responsibilities to DHS and his proposed work for the non-profit or that the outside employment with the non-profit would adversely affect DHS or the City and County of Denver. The counties are not in competition with each other and the families are not in competition with each other.

The Board advised the employee that, so long as his appointing authority approves this outside employment on an annual basis and so long as he does not use any city time or other resources in his work for the non-profit, such outside work will not violate Section 2-63 or Section 2-61(g) of the Code of Ethics. The Board encouraged him to keep careful track of his time spent on DHS work and work for the non-profit, so that they will be kept separate.

Case 13-24 (conflict of interest, subsequent employment)

A citizen filed a complaint concerning a member ("the member") of the Denver Planning Board, who also was the chair of the Board for several years. His last meeting as a Planning Board member was June 19, 2013 and his term expired on June 30, 2013. The complainant claimed that the member, as a principal in an architectural firm, as well as his firm should not be allowed to present testimony or information before the Planning Board regarding a General Development Plan (GDP) for a large development project ("the project") before February 14, 2014 (seven months after July 13, 2013, the date on which the member was replaced by the vice-chair as Planning Board chair).

The complainant alleged that the member violated Section 2-64 of the Denver Code of Ethics because 1) he was the chair of the Planning Board, and 2) he was the chair of the Denver Zoning Code Task Force (the Denver Zoning Code was substantially revised in 2010). As a remedy, the complainant requested that the "Denver Planning Board should not allow testimony or presentation of the work product for either the member or his firm regarding this GDP before February 14, 2014".

The Board of Ethics considered the following chronology of certain meeting dates related to the Planning Board and/or the project in 2013:

Prior to June 19, 2013, no plans or agenda items relating to the project came before the Planning Board. June 19, 2013: Planning Board meeting: an Urban Renewal Plan for the project was a non-voting information item on the agenda. The presentation was by a representative of the Denver Urban Renewal Authority. No action was taken by the Board. Although no action was to be taken by the Board, the

member nonetheless recused himself and left the table for this information item because his firm was working on GDP for the site. This was the member's last Planning Board meeting as a member.

June 26, 2013: A public community meeting was held, scheduled and sponsored by the project's developer at a church, to present the draft of the project's GDP, at which the member spoke on behalf of the architectural firm, which had been hired by the developer to prepare concept drawings incorporated into the GDP. This was not a Planning Board meeting. The complainant claimed that at this meeting the member was a spokesperson for the developer's architectural firm and the "public face" of the project plans. The member agreed he was a spokesperson for the firm at this meeting but stated that his participation was about 20% of the total presentation.

June 30, 2013 was the last date of the member's term on the Planning Board. He was eventually replaced by another member, although the seat was vacant for a few months.

July 17, 2013: Planning Board meeting: The Urban Renewal Plan for the project was on the agenda for a finding that the plan conforms to the Denver Comprehensive Plan. The member was no longer on the Board and did not participate, nor did his architectural firm.

November 6th, 2013. The project's GDP was on the Planning Board agenda as an information item. The member was no longer on the Board, but he attended this meeting as a member of the audience. No action was taken.

December 18, 2013. Approval of the GDP for the project was expected to be on the Planning Board agenda. This would be the first and only official action to be taken by the Planning Board concerning the GDP. The member informed the Board of Ethics that he does not plan to be a presenter or spokesperson for the project at this meeting.

Section 2-64(A) of the Denver Code of Ethics reads as follows:

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

The Board of Ethics concluded that there are several elements to a possible violation of 2-64(A). First, the matter in question must be one on which the official took direct official action while in office. Second, the former City official must be able to take "direct advantage, unavailable to others" regarding a matter on which he took official action while in office. Third, the official or employee must have obtained employment outside the City. Fourth, the prohibition exists for six months following termination of employment.

The Board of Ethics found that the member took no direct official action relating to the project while on the Planning Board; therefore the first element of a possible violation is not met. Because the member recused himself at the June 19, 2013 Planning Board meeting (where this project was an information item), there is also no evidence that the member took direct advantage, unavailable to others, relating to this project due to his Planning Board membership. Therefore, the second element of a possible violation is not met.

The member does have employment outside the City, as do all Planning Board members. However, there is no evidence that the member intends to take any action relating to the project before the Planning Board during the six month period June 30, 2013 to December 31, 2013. If so, the fourth

element of the alleged violation is not met. The member's general experience on the Planning Board or the Zoning Code Task Force does not disqualify him from working on the project for his architectural firm.

The complaint was dismissed pursuant to Section 2-56 (6) of the Code of Ethics for failing to state a prima facie case of a violation of the Code. The allegations, if true, do not state a violation because the member did not take direct official action regarding the project while he was on the Planning Board, and the alleged "future" direct advantage (appearing before the Planning Board in the future), if true, would not constitute a violation. In any event, the member indicated he will not be a presenter or spokesperson for this project before the Planning Board on December 18, 2013.

The Board of Ethics further found that it has no jurisdiction to direct the Denver Planning Board not to take testimony or presentation from the firm on a matter before the Planning Board.

Case13- 25 (outside employment)

A police officer requested an advisory opinion about potential outside business activity. He proposed to be a "co-owner/investor" of a private security company, which would specialize in offering protection to faith-based organizations, such as churches, and their leadership. He told the Board of Ethics that the security guards "will be responsible for crowd control for special events, assist with guarding the facility after hours and during business hours." He said that he would only perform administrative duties, including scheduling, and would not perform any guard services himself. He said that the company might work inside and/or outside the City and County of Denver and that the company will not hire any Denver police officers to provide guard services and, although the guards would be armed, they would call upon police, fire or medical departments in the appropriate jurisdictions to deal with any incidents. He said that the company will "require all of our security personnel to be licensed. We also plan to be able to train and refer those who are not licensed to the appropriate county to receive proper licensing." Outside business activity is regulated by Section 2-63 of the Denver Code of Ethics:

Sec. 2-63. Contemporaneous or outside employment.

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

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

(b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.

(c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.

(d) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.

- (e) City resources may not be used for any outside employment or outside business activity.

In addition, Section 2-61(g) of the Code of Ethics provides:

Sec. 2-61(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 advised the officer that:

- He must obtain written approval in advance from his appointing authority for this outside business activity/secondary employment, pursuant to Section 2-63 of the Code of Ethics.
- He must renew that approval annually.
- He must not use any city resources, such as city time, computers, paper, etc., while working with the company.
- He should not hire any Denver police officers to work for the company.
- He should not advertise the company as being connected in any way with Denver police officers or the Denver Police Department.
- He should not be personally involved with any security issues while he is off-duty, except in case of emergency.
- The Board of Ethics does not find that this work with the company would be incompatible with his city duties or would adversely affect the interests of the City or would create a conflict of interest or the appearance of impropriety, so long as he complies with his representations and these conditions.