

DENVER BOARD OF ETHICS

DIGEST OF OPINIONS

January 1– June 30, 2019

PLEASE NOTE: This is a set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2019 in response to fact-specific requests for advisory opinions or complaints. These opinions should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss any specific issues you may have.

Case 18-15 (gifts, travel expenses)

NOTE: This case was decided on August 15, 2018 but was inadvertently omitted from the 2018 Digest of Opinions.

The Master Mechanic in the Denver Fire Department (DFD) was invited to attend an all-expenses-paid Fleet Advisory Committee meeting in Wisconsin by a large company devoted exclusively to manufacturing fire and rescue vehicles and apparatus. He requested an advisory opinion and/or waiver regarding the travel expenses. He believed that this is the first such meeting and that it is expected to become an annual event.

He advised the Board of Ethics that he understood that safety issues will be discussed as follows:

Especially in the “Trends” bullet (in the invitation). Vision Zero is a very big topic here in Denver right now. On the fleet side of things, it deals with reducing and eventually eliminating deaths related to accidents whether that is firefighters in the fire truck, other motor vehicle operators, or pedestrians on the street. It will talk about traffic patterns, street configurations, bike lanes, and ultimately the size of fire apparatus. The clean cab initiative is also a growing trend nationwide. In a nutshell, it deals with the cancer issue within the fire department. We put our people into hazardous environments and give them all the protective gear to wear. The problem arises when our folks get back into the cab after being in these hazardous environments and they bring the dirty gear back in the cab with them. Trying to keep a safe fleet of fire trucks on the road is a huge challenge these days...Fire apparatus have very unique challenges in repair and maintenance.

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

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

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

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor;

and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor...

(6) Travel expenses and lodging;... (emphasis added)

The Board of Ethics determined that the Master Mechanic has a large role in “recommending for or against a contract” for vehicles and equipment and, thus, he does have direct official action power regarding the company, as defined in Section 2-52(b) of the Code of Ethics. Therefore, he would be prohibited by Section 2-60(a) from accepting travel expenses for the conference from the company.

However, the Board determined that it was appropriate to grant him a waiver to attend this specific company conference pursuant to Section 2-54(f) which states: “The Board of Ethics is empowered to grant a waiver if it finds that the waiver will serve the best interests of the city.” The Board determined that it would be in the city’s best interests for him to attend and have the opportunity to discuss important issues with his colleagues from around the country and to learn about safety issues regarding the vehicles and apparatus, as this knowledge would benefit Denver citizens and firefighters.

The Board of Ethics requested that he advise the Board after the conference whether he believed that the conference had value for DFD and the City and County of Denver or whether much of the purpose was as a sales tool for the company. This would assist the Board to consider whether similar waivers in the future may be appropriate.

Case 18-27 (gifts)

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

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

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

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

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

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor;

and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

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

(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:

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

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

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

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

Case 18-28 (conflicts of interest)

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

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

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

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

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

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

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

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

Case 18-29 (outside employment)

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

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

Sec. 2-63 Outside employment or business activity.

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

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

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

(c) An officer or employee who has received the written permission of the

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

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

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

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

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

Case 18-30 (gifts, travel expenses)

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

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

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

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

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

- (1) Any money, property, service, or thing of value that is given to a person

without adequate and lawful compensation;...

- (6) Travel expenses and lodging;

“Direct official action” is defined as follows:

Sec. 2-52. Definitions.

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

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

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

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

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

Case 19 – 1(outside employment)

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

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

Case 19 – 2 (outside employment)

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

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

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

Case 19-3 (gifts)

A city employee who is a non-voting member of the Board of the Convention Center Hotel Authority requested an advisory opinion. The Authority’s board is responsible for owning, acquiring, constructing, equipping, operating and financing the 1,100-room Convention Center Headquarters Hotel on behalf of the city and its residents.

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

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

“Direct official action” is defined as:

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

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

- (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;...

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

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

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

Case 19-4 (no jurisdiction)

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

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

Case 19 – 5 (no jurisdiction)

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

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

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

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

Case 19-6 (subsequent employment)

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

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

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

Sec. 2-64. Subsequent employment.

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

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

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

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

Case 19-7 (gifts)

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

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

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

Case 19 - 8 (no jurisdiction)

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

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

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

Case 19-9 (no jurisdiction)

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

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

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

Case 19-10 (gifts, travel expenses)

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

The sergeant stated:

Police Week is a nationally attended event in which thousands of law enforcement officers from around the world converge on Washington D.C. to participate in several events to honor those in our profession who have paid the ultimate sacrifice.... There were three Colorado Heroes that fell in 2018 and their names will be added to the wall. It's important that the families not only hear our support but also see it as well.

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

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

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

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor;

and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

- (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;..
 - (6) Travel expenses and lodging;...
- b) Officers, officials, and employees and the members of their immediate family **may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor**, or, if the donor is a lobbyist or representative, the donor's client:...
- (7) Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, **or other meeting** if the person is scheduled to deliver a speech, make a presentation, participate on a panel, **or represent the city in an official capacity reasonably related to the recipient's employment by the city;**

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

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

Case 19 – 11 (subsequent employment)

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

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

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

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

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

Sec. 2-64. Subsequent employment.

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

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

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

Case 19 - 12 (conflict of interest)

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

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

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

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

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

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

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

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

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

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her

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

The Board determined that, because the Project Manager sat on the selection committee for this RFQ, he did have “direct official action” power regarding the companies responding to the RFQ, including HDR, the original responding company. He and the rest of the selection committee would not have any role, however, regarding the proposed sub-consultants, including his wife’s employer. There is an additional degree of separation because his wife does not work for the Mechanical, Electric and Plumbing Division of WSP USA. In addition, his wife has no ownership share of WSP USA, which is a large global organization.

The Board advised that the Project Manager would not violate the conflict of interest section of the Code of Ethics if he continued to serve on the selection committee for the RFQ because he did not have a substantial employment, contractual or financial interest in the matter as defined by Section 2-61.

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

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

Case 19 – 13 (supervision of family member)

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

Supervision of family members is regulated by Section 2-59(b) of the Code of Ethics:

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

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

(b) No officer, official, or employee shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate

family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.

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

- (1) The family member who is proposed to be hired was certified through a competitive process conducted pursuant to law and the officer, official, or employee who would make the appointment did not influence or affect the certification.
- (2) The officer, official, or employee who would officially make the appointment is acting ministerially and did not select the family member or attempt to influence the person who did.
- (3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.

(d) The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor.

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

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

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

The Board advised the superintendent that if Employee A is promoted to be the team supervisor, he would not violate Section 2-59(b) of the Code of Ethics because the definition of immediate family does not include half-brother or half-sister. However, in order to avoid the appearance of improper favoritism, in the instance Employee A becomes the supervisor for the team, the Board

recommends that he designate someone else other than Employee A in the Facilities Management Division to directly take any and all personnel actions regarding Employee B.

Case 19 - 14 (subsequent employment)

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

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

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

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

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

Sec. 2-64. Subsequent employment.

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

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

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

Sec. 2-52. Definitions.

- (b) *Direct official action* means any action which involves:
- (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
 - (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses,

benefits or payments;

- (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
- (4) Appointing and terminating employees, temporary workers, and independent contractors.
- (5) Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of (1) through (4) above.

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

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

Case 19 - 15 (subsequent employment)

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

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

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

Sec. 2-64. Subsequent employment.

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

- (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city

government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.
(emphasis added)

Direct official action is defined in the Code as:

Sec. 2-52. Definitions.

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

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

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

Case 19 - 16 (subsequent employment)

An Asset Manager for the Denver Public Works Department asked for an advisory opinion. He managed “fixed assets” in the Right-of-Way Division, including street signs, street signals and

pavement markings. Before he was hired, the Public Works Department already had a contract for a specific computerized software asset management system. He had nothing to do with the selection process.

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

He advised the Board of Ethics that:

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

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

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

Sec. 2-64. Subsequent employment.

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

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

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