- July 1-December 31, 2005

Board of Ethics
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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS–July 1–December 31, 2005

**Case 05-17**

Two department human resource officers requested an advisory opinion concerning whether the "incentive pay" for city employees, which was enacted by the City Council on May 31, 2005 is regulated by the Code of Ethics.

The Board concluded that "incentive pay" for city employees implements a compensation program that was authorized by the voters of Denver, the Mayor and the City Council, does not come within the meaning of "gifts" in the Code of Ethics and is not regulated by the provisions of Section 2-60 of the Code of Ethics. The Board also concluded that other types of employee recognition awards given by the city to employees, such as gift certificates, event tickets or administrative time off are not "gifts" within the meaning of the Code and are not regulated by Section 2-60.

The Board also concluded that if a city supervisor recommended that his or her immediate family member receive incentive pay, that recommendation would violate both Sections 2-59 and 2-67 of the Code of Ethics. The Board also recommended that agencies might wish to establish some type of review panels to review the recommendations from supervisors in order to avoid influence of favoritism and friendship in incentive pay decisions.

**Case 05-18**

A police officer requested an advisory opinion concerning his outside business activity. He and his wife have operated a small snack vending machine company for the past two years. He and his wife donate a percentage of the proceeds to the Police Athletic League. About half of the machines are located in the city of Denver. His wife performs the functions of bookkeeping and marketing for new locations and the officer purchases the products and cleans, stocks and services the machines. The officer apologized to the Board that he had not sought written approval for this outside business activity from his appointing authority until now.

The Board found that the officer had violated Section 2-63 of the Code of Ethics by engaging in outside business activity without having first obtained written permission from his appointing authority. The Board found that the violation may have been inadvertent and advised the officer that he must now obtain written approval from his appointing authority. The Board determined that there was no other violation of the Code of Ethics so long as the officer did not in any way use his city position for the benefit of his private business such as doing any work for the company in his police uniform or using city time or city facilities for the private business (which would violate Section 2-67 of the Code of Ethics).

**Case 05-21**

A deputy manager of a department that operates several facilities in the city requested an advisory opinion as to whether his spouse could rent space in one of those facilities for weekend classes that she would teach. The deputy manager advised the Board that the individual facility managers approve rental transactions, rather than he. The Board determined that, so long as the deputy manager did not take any action on behalf of the city to negotiate or approve or regulate any aspect of a room rental agreement with his wife or attempt to influence any decision-maker, he would not violate the Code of Ethics. In addition, the board recommended that he make efforts to assure that his wife is given no special treatment and should be treated no differently than any other citizen in this situation.

**Case 05-22**

An accountant in the Auditor's Office requested an advisory opinion concerning his desire to run for a seat on the Denver Board of Education. He indicated that he reviews city contracts before they are signed by the Auditor.

Section 1.2.9 of the Denver Charter (passed by the voters in May 2003) says that "No employee or appointed Charter officer shall have other employment or hold any public office that is incompatible with his or her duties. Every employee and appointed officer shall notify his or her appointing authority in writing before accepting any other employment or public office…"

The Board of Ethics determined that, if elected to the school board, he, as a member of the governing body of Denver Public Schools, should be considered to be an officer of DPS. He would, therefore, be prohibited by 2-61(3) of the Code of Ethics from taking any "direct official action," such as negotiating, approving, recommending for or against or doing research regarding any contract between the City and County of Denver and Denver Public Schools. In other words, he should abstain from any involvement in his city job with respect to any contract between the city and Denver Public Schools.

The Board also advised him that the Board does not find that serving on the Board of Education would be "incompatible" with his city job. The Board also advises him that he is required by Section 1.2.9 of the Charter to "notify" his appointing authority before he would "accept" a position on the school board, if elected.

**Case 05-23**

A prisoner in the state prison system filed an inquiry concerning conduct of an employee or a contractor in the state prison system (not a city employee). The Board of Ethics determined that the Board has no ability to deal with conduct of persons who are not employees, officers or officials of the City and County of Denver. The Board authorized its staff director to dismiss or reject an inquiry that does not name a Denver employee, officer or official, without review by the Board.

**Case 05-25**

An owner of a house in Denver filed an inquiry concerning conduct of a city inspector who had issued a notice of violation against the property for various alleged violations. The case was set for an administrative hearing. The owner stated that the allegations were false and the inspector was unethical. The Board dismissed the inquiry because the owner did not allege any violations of the Code of Ethics and advised the owner that "the Board of Ethics is not an alternative way to resolve a pending legal case."

**Case 05-26**

An arborist in the Forestry Division of the Parks and Recreation Department requested an advisory opinion concerning his desire to obtain a tree-trimmer's license from the Department and to engage in outside business activity to trim trees in Denver for family members and private clients. He indicated that he intended to work only for himself and not any company or another individual. He also stated that he did not have any authority to approve contracts or purchase orders in the Department of Parks and recreation.

The Board advised him that he must obtain written prior approval from his appointing authority for the outside business activity in order to comply with Section 2-63 of the Code of Ethics and that he must renew the approval annually. The Board further advised that he must not take any direct official action, such as to approve or negotiate or recommend a contract or purchase order in his city job with regard to his outside employer (himself) in order not to violate Section 2-61. The Board also recommended that he:

go through the same procedures that any other individual would have to go through in order to obtain the Denver tree-trimmer's license and not use any special influence arising from his city position

not use any city equipment such as tools, trucks, telephone or computer in the outside job

not perform any outside work during city time

Not do any outside-employment tree work for property owners who have received violation notices from the Forestry Division and not use any Forestry Division databases (for example, lists of property-owners who have received violation notices or other notices concerning tree problems) to develop customer lists and not encourage other Forestry Division employees to refer potential customers. (This will avoid the appearance that he is using his public employment for private gain, which is prohibited by Section 2-67 of the Code of Ethics.)

**Cases 05-27 and 05-28**

A city employee applied for a position in another city department and, after being interviewed for that position, was advised that he was not going to be hired for that position. He filed inquiries (complaints) concerning the conduct of two of the managerial employees who interviewed him and selected another candidate for the job. He appealed through the Career Service Authority, but the appeal was dismissed. The Board of Ethics dismissed the inquiries, indicating that the employee did not allege any violations of the Code of Ethics and indicated that "the Board of Ethics should not be used as an alternate appeal route to the Career Service Authority, unless

there is an allegation that one or more sections of the Code of Ethics have been violated."

**Cases 05-29 through 05-42**

A city employee filed inquiries (complaints) against the Mayor and all members of City Council. The employee complained that it was unethical for the City Council-members to vote to approve an amendment to the city budget for the hiring of additional police officers and for the Mayor not to veto the amended budget. The employee also claimed that the Council and the Mayor's action unfairly discriminated against city employees who did not have collective bargaining agreements with the city. The Board dismissed all of these inquiries, indicating that the Board does not have jurisdiction to review policy determinations by city government and stated that the salary-setting and budgeting processes were subject to much deliberation by the voters, the City Council, the Mayor and the Career Service Authority.

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