

July 1 – December 31, 2006

**DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
July 1 – December 31, 2006**

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between July 1, 2006 and December 31, 2006 in response to fact-specific requests for advisory opinions or inquiries (complaints). **They should not be used as conclusive guidance for situations where the facts may differ.**

Case 06-19

A Police Commander, who is the head of the Internal Affairs Bureau of the Denver Police Department, had obtained an advisory opinion in 2004 (case 03-47). He now requested a new opinion on the same general subject matter. The Commander had established a private security company and obtained approval from his appointing authority, pursuant to Section 2-63 of the Code of Ethics and Executive Order 10, in addition to approval from the Board of Ethics. At the time of the original advisory opinion, the Commander had indicated that the private company would not contract to protect any locations within the City and County of Denver. However, an opportunity arose in 2006 for the company to compete for a contract to protect some locations inside Denver. The Commander requested advice from the Board of Ethics concerning the new opportunity.

The Board indicated that the Commander had addressed a major ethical issue (although not one dealt with by the Code of Ethics) by specifying that the company will not employ Denver police officers. If the company were to employ Denver police officers, there could be an impression that company employees might receive more favorable treatment from the Internal Affairs Bureau than non-employees and vice versa.

The Board determined that the private security company is not prohibited by any section of the Code of Ethics from providing security for sites inside the City and County of Denver. However, the Board repeated the recommendations from the 2004 advisory opinion, namely that:

1. the company should not hire or solicit to hire any Denver Police Department employees or other City and County of Denver employees;
2. the Commander should not conduct any activities for the company in his police uniform or in any city workplace;
3. the Commander must obtain annual approval from his appointing authority.

The Board of Ethics determined that any of the company's employees who wish to act as security guards in the City and County of Denver need to be licensed as security guards by the Denver Department of Excise and Licenses. A Denver police detective is assigned to do background checks on any such applicants who have criminal histories. The Board was initially concerned that that detective might feel some pressure to approve license applications from employees of the company. However, the Commander assured the Board that his company does not and will not employ any individuals with criminal histories, meaning that the Denver

police detective would not have any involvement in reviewing applications from any of the company's employees. In addition, the Chief of Police assured the Board that he will instruct the detective assigned to the Department of Excise and Licenses to never involve himself in any review of security guards employed by the company. The Director of the Department of Excise and Licenses also indicated that the Department's employees can and will review any security guard applications from the company and that she will not involve any Denver Police Department officers in such review.

Cases 06-21, 06-22, 06-25, 06-27, 06-28, 06-29, 06-30, 06-31, 06-32, 06-34 and 06-35

The Board of Ethics dismissed all of these inquiries (complaints) concerning alleged misconduct by police officers or deputy sheriffs because the allegations, even if they were true, did not pertain to the Code of Ethics. The complaining parties alleged brutality, improper searches, improper seizures, improper arrests and/or improper treatment at the County Jail. The Board referred the complaining parties to the Police Department's Internal Affairs Bureau, the Sheriff's Department's Internal Affairs Bureau or the Office of Independent Monitor.

Case 06-23

An employee at the Denver Botanic Gardens, who was recently elected president of the board of a non-profit organization, requested an advisory opinion. The Board of Ethics advised the employee that, pursuant to an opinion from the Denver City Attorney's Office, Botanic Gardens employees are not legally subject to the Denver Code of Ethics, because the Botanic Gardens is an independent agency. However, with the employee's consent, the Board issued a voluntary advisory opinion to the employee, based on the assumption that the Denver Code of Ethics did apply to her.

The non-profit has as its major goal combating the infestation of tamarisk, an invasive weed. The organization hopes to obtain government grants and to contract with sub-grantees to facilitate reclamation of watersheds invaded by tamarisk. The employee asked: a) if the non-profit obtains funding, is the Denver Botanic Gardens able to obtain some of that funding for research purposes and 2) if the Botanic Gardens obtains funding through the non-profit, may the employee arrange for the Botanic Gardens to hire or sub-contract with an employee of the non-profit to do some work on a project.

After analyzing Section 2-61 of the Code of Ethics concerning conflicts of interest, the Board of Ethics recommended that the employee should not:

- Negotiate, approve, administer or recommend for or against a contract or grant or similar agreement between the Botanic Gardens and the non-profit, because the employee is an officer of the non-profit
- Appoint or hire employees or independent contractors on behalf of Denver Botanic Gardens that are affiliated with the non-profit because the employee is an officer of the non-profit

To accomplish this, the Board recommended that the employee should either resign as president or as a board member of the non-profit or else she should carefully abstain from any decision or action or discussion by the non-profit regarding any funding to the Botanic Gardens and/or to herself through the non-profit. Otherwise, some may perceive that she would be using

her position in the non-profit for her personal benefit and/or the benefit of her employer, the Denver Botanic Gardens and would not be committed to a fair, merit-based selection process for sub-grantees.

The Board also recommended that the employee and the board of the non-profit should develop a policy by which all of the officers and board members would avoid actual or perceived conflicts of interest. This can generally be achieved through scrupulous abstention from voting on or discussing matters by a person in which the person or a close relative of the person or the person's employer or another organization in which the person is an officer is the other party in the transaction.

Case 06-24

An architect employed by the Denver Department of Aviation at Denver International Airport (DIA) requested an advisory opinion. He had been responsible for the design and construction of a clubroom at DIA which opened in 2005 for use by United Service Organization (USO), a private national non-profit organization for the support of military personnel.

Apparently, USO was pleased with the facility and now proposes to hire the employee as a part-time consultant to work on another USO facility in another airport.

The Board of Ethics determined that the conflict of interest section of the Code, 2-61, would not prohibit him from engaging in outside employment for USO, so long as the employee would not do any outside architectural work regarding the facility at DIA. If he would do any new architectural work on behalf of USO at DIA or modify the original USO facility at DIA, there could be a violation of 2-61(a) if he were to exercise direct official action to review or approve his own work for USO. Also, if USO needs any new architectural work done at DIA, such work would cause a violation of 2-61(a) by the employee if he were to exercise direct official action to review those architectural plans on behalf of DIA (no matter who did the design work) submitted by his outside employer ("employer other than the city").

The Board of Ethics determined that the proposed outside employment by USO would not violate the Code of Ethics so long as:

- The employee obtains written approval from his appointing authority and such approval is renewed annually, pursuant to Section 2-63 of the Code of Ethics
- He does not do any work for USO related to DIA
- If USO submits any plans or modifications of plans related to DIA, he must completely abstain from reviewing such plans

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

- Not do any outside work on city time
- Not use city equipment or supplies for outside work
- Not engage other city employees (particularly subordinate employees) in the outside employment

Case 06-26

A city employee who worked for the Career Service Authority (CSA) requested an advisory opinion about possible employment after she retired from city employment on September 30, 2006. On July 1, 2005, she had been assigned through a memorandum of understanding between CSA and the city's Office of Economic Development (OED) to work as a part-time consultant for OED to work on a number of projects, including the development of a course curriculum and training courses for the OED University, a learning program for city employees

After her retirement from the city on September 30, 2006, the employee wished to continue her work at OED to complete the OED University project pursuant to a contract between herself and OED which would last until January 31, 2007.

The employee wished to know whether this proposed arrangement would violate Section 2-64(a) of the Code of Ethics relating to subsequent employment, which provides:

During six (6) 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 found that the employee would take direct advantage, unavailable to others, of work she did during her employment with CSA and OED. However, the Board stated that:

The principal problem which 2-64(a) appears intended to prevent is a conflict between a City employee's loyalty to the City and his or her loyalty to the person's next employer. If the next employer is also the City, that problem is alleviated. The Board is not able to discern any conflict in (the employee's) relationship with CSA and (her) subsequent employment by OED as an independent contractor to complete the OED University project which (she) began as a city employee. Therefore, the Board concludes that (she) will not violate the Denver Code of Ethics if (she works) as (she has) proposed on this project for OED

Case 06 – 33

An employee of Denver's Commission to End Homelessness, an agency in the Department of Human Services (DHS), requested an advisory opinion concerning potential conflicts of interest regarding:

1. unpaid service on the board of directors of a non-profit group (Non-Profit #1);
2. unpaid service on the board of directors of a different non-profit that operates some thrift stores (Non-Profit #2);
3. outside employment or business activity to assist in re-zoning a property for redevelopment purposes..

Non-Profit #1 receives contract funds from DHS; however, it does not have anything to do with the Commission to End Homelessness and the employee has no role in negotiating or approving those contracts. The employee advised the Board of Ethics that, if Non-Profit #1 were

to apply for any funding in the future related to homeless programs, she would recuse herself from viewing and giving any comment on and being involved in any way with the proposal.

Non-Profit #2 does not receive any funding from DHS and there is no connection between it and DHS.

Regarding the opportunity to assist in re-zoning a property, the employee would receive monetary compensation and/or shares of stock for her work. Presently, the work would involve only one property, but, if other opportunities arise, she might continue to work with the developer. The real estate proposal must be analyzed not only as a possible conflict of interest, but also as outside employment or outside business activity under Section 2-63. The Board of Ethics has generally considered that only paid outside employment requires compliance with 2-63, although some city agencies have a stricter interpretation.

The Board of Ethics determined that:

- The employee is not prohibited by the Code of Ethics from serving as an unpaid board member of Non-Profit #1 or Non-Profit #2 (or any other non-profit), but that, if she becomes an officer, she must not take any part in negotiating, approving or recommending any proposal for funding or other type of contract between DHS and the non-profit. In order to avoid the appearance of impropriety, however, the Board strongly recommends that she should similarly recuse herself from any involvement even if she is simply a board member but not an officer of the non-profit.
- She should also abstain from participating as a board member of any nonprofit in any matter which might involve applying to DHS for any funding related to the Commission to End Homelessness.
- In order to accept compensated outside employment or outside business activity regarding real estate development, she must obtain written permission from her appointing authority and renew such permission annually. The Board, however, does not believe that there is a conflict of interest between her city responsibility and this proposed outside employment or business activity.
- She should not use any city resources or facilities, such as time or equipment, in any outside employment.

Case 06- 36

A city employee filed an inquiry (complaint) that on two separate occasions a supervisor allegedly made comments or took an action that the employee feels were “sexual harassment” and “unprofessional and inappropriate.”

The Board of Ethics determined that, although the inquiry alleges actions or comments that, if proven, were unprofessional, crude and inappropriate to be used by a supervisor with subordinate employees, none of the allegations violate any section of the Code of Ethics. The Board dismissed this inquiry pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics and suggested that the employee might wish to pursue remedies available through the Career Service Authority process, one of which may be mediation.

Case 06-37

An employee in a city department filed an inquiry (complaint) alleging a conflict of interest because the head of the department privately employed and paid another department employee for some repair work at the department head's home. The Board of Ethics determined that the other employee, pursuant to Section 2-63 of the Code of Ethics and Executive Order 10, did properly submit an off-duty employment form requesting permission to have an outside business. The request was approved in writing by his immediate supervisor and then by the deputy department head. The department head was not involved in the decision to approve the outside business.

The Board of Ethics dismissed the inquiry because the facts as presented did not show any violation of either the conflict of interest section (2-61) or the outside employment section (2-63) of the Code of Ethics. Nothing in the Code of Ethics prohibits a city supervisor from hiring a subordinate employee or other city employee for personal off-duty employment, so long as the outside employment has been properly approved pursuant to section 2-63 of the Code of Ethics. In addition, there was no information before the Board that the department head did not pay a fair price for the work by the company or that there was any improper pressure by the department head over a subordinate to perform private work.

Case 06-38

An employee of a city agency filed an inquiry (complaint) concerning the employee's supervisor, the agency head. The employee requested the Board of Ethics to investigate whether the agency head may have violated the Denver Code of Ethics by being on the "conference team" which organized a state conference in 2006 for the Colorado chapter of a non-profit trade association of which the city agency was a member. The conference team solicited and accepted cash sponsorships for the conference from several for-profit companies, many of which have contractual relationships with the city agency.

The agency head appears to have been "in a position to take direct official action," as defined in Section 2-52(b) of the Code of Ethics for the selection and/or contract renewal of the vendors.

The agency head indicated that both the national and the Colorado organizations are non-profit and are classified as 501(c)3 tax-exempt organizations by the Internal Revenue Service. Section 2-60(c) of the Code of Ethics specifically permits solicitation of donations for charitable purposes to a 501(c) or other charitable organization, even if the solicitor is in a position to take direct official action over the potential donor. The agency head also indicated that 1) even though he was a member of the "conference team," he did not personally solicit any donations from the entities that did business with his agency.

The Board of Ethics dismissed the inquiry because the facts as presented did not show a violation of the Code of Ethics because, even if the agency head did solicit entities that did business or wanted to do business with the city agency, such solicitation would be permitted by Section 2-60(c) of the Code of Ethics. The Board, however, strongly recommended to the agency head that, in order to avoid the appearance of impropriety in the future, so long as he is involved in a position to take direct official action regarding a potential donor, he should not

directly or indirectly solicit charitable donations from such a person or entity. The reasoning for this recommendation is so that the potential donors and the public should not have any belief that the potential donors may receive favorable treatment from the agency or the agency head if they make a donation or may receive unfavorable treatment if they do not make a donation.

Cases 06-39 through 06-43

A citizen who resides in an apartment operated by the Denver Housing Authority (DHA) filed inquiries (complaints) concerning three Denver police officers and two employees of DHA. The Board of Ethics dismissed all of these complaints. The Board determined that the allegations concerning the police officers of threats, rudeness and refusal to enforce a restraining order, even if proven to be true, would not constitute violations of the Code of Ethics. The Board advised the complaining party that she might wish to contact the Office of Independent Monitor and/or the Police Department's Internal Affairs Bureau.

In addition, the Board advised the complaining party that, pursuant to an opinion from the City Attorney's opinion, DHA employees are not subject to the Denver Code of Ethics because DHA is an independent agency and the allegations against the DHA employees, even if proven to be true, would not constitute violations of the Code of Ethics.

Case 06-44

A city employee filed an inquiry (complaint) concerning a supervisor in the department about the apparent receipt by certain employees of substantial amounts of free food and household items. The employee requested an investigation to determine if there were violations of the gift section (2-60) and/or the conflict of interest section (2-61) of the Denver Code of Ethics. The Board determined that the donations of unused items had apparently been made by a retired citizen who worked as a volunteer at a church food bank. The Board dismissed this inquiry because there was no evidence that 1) the citizen or the church were doing or attempting to do business with the city (or that they were located in the city) and 2) that any of the city employees were in a position to take direct official action concerning the citizen or the church. Both of those factors must apply to constitute a violation of the gift section of the Code of Ethics.

Case 06-46

An employee in the Theatres and Arenas Division requested an advisory opinion regarding outside business activity. The employee is considering whether to accept an offer to be a marketing consultant on weekends to a company which owns a new performance venue in Arizona. The employee handles marketing of several performance venues owned by the City and County of Denver.

The Board of Ethics determined that, so long as the outside consulting work is on behalf of venues outside of Colorado, there would not seem to be any competition between the venues belonging to the City and County of Denver that he represents as a public employee and venues in other states that he consults with privately.

The Board of Ethics concluded that outside business activity will not violate the Code of Ethics so long as:

- The employee obtains written approval annually from his appointing authority pursuant to Section 2-63 of the Code of Ethics and also Executive Order 10 and
- No competition or other conflict of interest occurs between the City and County of Denver venues and one or more venues of the employee's private consulting client(s) and
- The employee does not consult with or work for any venue operators in Colorado, other than the City and County of Denver, because they might possibly be competing with Denver venues

In addition, the Board recommended, that, in order to avoid the appearance of impropriety or a violation of other city rules, the employee:

- should not conduct any private business on city time
- should not use any city facilities, such as computers, copiers, etc. in the private business
- should not offer or imply any linkage or special consideration for promoters or other customers of Denver venues if they do business with the Arizona venue (or venues of other clients) or vice versa.