DENVER BOARD OF ETHICS
2008 ANNUAL REPORT

February 15, 2009

I. INTRODUCTION

The Denver Board of Ethics hereby submits its eighth 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 members of the Board of Ethics.

In 2008 the Mayor appointed Syl Morgan-Smith to replace Samuel Williams, who died in November 2007. The terms of three of the current Board members will expire in April 2009.

The Board expresses its appreciation to all of the city elected officials, employees and board and commission members who have requested ethical advice or help in 2008 and for the advice and representation given to the Board by Assistant City Attorney Helen Raabe. The Board also thanks Ajenai
Clemmons for her help with the Board’s public forum relating to the Democratic National Convention.

The Board held eleven monthly meetings during 2008. This report is a summary of the work accomplished by the Board during that time.

II. ADVISORY OPINIONS, WAIVERS AND COMPLAINTS

In 2008 the Board received and handled a total of 73 written formal cases - as compared with:

- 47 cases in 2007
- 46 cases in 2006
- 46 in 2005
- 48 in 2004
- 47 in 2003
- 50 in 2002

(Note that many of the 2008 cases were complaints filed by inmates of the Denver County Jail concerning police officers or sheriff deputies which alleged matters such as brutality or illegal searches - issues over which the Denver Board of Ethics has no jurisdiction. The Staff Director of the Board of Ethics met with the Inmate Council at the County Jail in 2008 to inform the inmates of the limited jurisdiction of the Board of Ethics.)

Thirty of the 2008 formal cases were requests for advisory opinions and/or waivers, while 43 were complaints. A digest of the Board’s significant 2008 opinions is attached below as Appendix B and is posted on the Board of Ethics website at [www.denvergov.org/ethics](http://www.denvergov.org/ethics). The Board dismissed all of the complaints that it considered in 2008 after preliminary screening.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2008, the Board of Ethics has received a total of 387 written formal cases, consisting of 230 requests for advisory opinions or waivers and 157 complaints about possible violations of the Code of Ethics. Most of the complaints received have been dismissed because the allegations relate to persons and/or subjects not covered by the Denver Code of Ethics.

The subjects of the requests for formal advisory opinions or waivers during this entire 2001-2008 period break down as follows, with the 2008 cases enumerated in parentheses:

- conflicts of interest – 72 (including 11 in 2008)
- gifts – 61 (5)
- travel expenses and lodging – 25 (2)
- outside employment or outside business activity – 60 (10)
- hiring of relatives – 4
- supervision of relatives – 14 (2)
- subsequent employment – 50 (8)
- use of public office for private gain – 7 (1)
- other – 80 (27)

(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 2008 received approximately 277 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:

- 277 in 2007
- 254 in 2006
- 266 in 2005
- 249 in 2004
- 192 in 2003
- 130 in 2002

III. **ETHICS HANDBOOK**

A revised and updated Ethics Handbook was distributed to all city officers and employees in August of 2008. The last update had been in 2003.

IV. **ETHICS TRAINING**

The Board of Ethics continues to believe that excellent, consistent ethics training is critically important to the successful implementation of the Denver Code of Ethics. 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 2008, 99% of all city employees and officers subject to the Code of Ethics have received at least 3 hours of ethics training. The Board’s Staff Director gave ethics training in 2008 to several new Mayoral appointees and City Council staff and the Career Service Authority continued to give three-hour ethics training at least once a month to new city employees. In 2006, with support from the Board of Ethics, the Career Service Authority Board amended CSA Rule 6 to require that new CSA employees must receive ethics training before they can pass their probationary period, which significantly increased compliance with the ethics training requirement.
The Board expresses its continued appreciation to the Training and Organizational Development Division of the Career Service Authority, agency heads and many trainers in individual agencies who have made this ethics training effort successful.

V. OTHER MATTERS

BUDGET

The adopted 2009 budget for the Board of Ethics is $105,800, compared to:
- $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.

VI. OTHER 2008 ACCOMPLISHMENTS

The Board devoted significant effort to:
- Revising and updating its Rules of Procedure
- Providing information and assistance to the newly-established Colorado Independent Ethics Commission, which was established by Constitutional Amendment 41
- Sponsoring a public forum on June 25 (televised and replayed by Channel 8) and preparing an article to encourage city personnel and others to consider ethical challenges relating to the Democratic National Convention
- Reviewing the implementation of Executive Order 134 requiring city agencies to report gifts received by the agencies over $2500

VII. 2009 GOALS FOR BOARD OF ETHICS

A. Continue To Implement and Improve Ethics Training

The Board of Ethics, in cooperation with Career Service Authority, has overseen the delivery of ethics training for all Denver officers, officials and employees. The Board
should in 2009 continue to pursue this goal by working with all city ethics trainers to encourage accuracy and consistency and high quality of the ethics training with cooperation from CSA, city departments and the Ethics Training Oversight Committee.

B. **Continue to Receive, Review and Decide Expeditiously Requests for Advisory Opinions, Requests for Waivers and Complaints regarding alleged misconduct**

C. **Improve Public Information about Code of Ethics**

a) Develop regular articles about Code/Board of Ethics to submit to City departmental newsletters and the city employee newsletter, *Insight*.

b) Organize and publicize City-wide and/or departmental informational lunchtime or after -work discussions of ethical issues – twice per year. Seek public comments at that meeting about ethics concerns of citizens.

c) Continue to publish updated digests of the opinions of the Board of Ethics

d) Work with city departments to inform city employees about which departments have stricter codes of ethics than the citywide Denver Code of Ethics

D. **Work On Implementation of Executive Order 134 Regarding Gifts to the City**

a) Continue to develop and implement a process for reviewing and commenting on proposed anonymous gifts to the City and County of Denver, pursuant to Executive Order 134, issued by the Mayor on December 20, 2007.

b) 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.

c) Work with City Clerk’s and Mayor’s offices to develop a uniform reporting form for Executive Order 134.

E. **Continue to Explore with Independent Agencies whether they wish to adopt the Denver Code of Ethics and Utilize the Denver Board of Ethics for Advisory Opinions, Waivers and Inquiries**

Continue to explore with independent agencies, such as the Denver Public Library, Denver Housing Authority, Denver Water, Denver Urban Renewal, the Denver Museum of Nature and Science, the Denver Art Museum, the District Attorney’s Office, etc. whether they would voluntarily wish to adopt the Denver Code of Ethics and utilize the Denver Board of Ethics to assist them in training and/or
dealing with requests for advisory opinions, waivers and inquiries. This would foster ethical consistency among the independent agencies.

F. **Work with Career Service Authority, Mayor’s Office, City Council and other agencies to assure that city employees are aware of Whistle-Blower Protection Ordinance (passed in August 2007).**

G. **Analyze ethics-related responses to 2008 Employee Survey and work with Career Service Authority Training Division to assist departments and agencies if survey indicates need for improvement of ethical culture.**

H. **Study Code of Ethics in light of the Board’s experience and research Codes of Ethics from other jurisdictions and recommend any improvements to City Council for approval.**

I. **Develop and implement a method to survey customer satisfaction with the Board of Ethics.**

J. **Develop and implement a method to inform the City’s on-call employees (approximately 2000) of the Denver Code of Ethics.**

**VIII. CITY GOALS**

The Board of Ethics believes that its work during 2008 and its goals for 2009 support the following of the City and County of Denver’s goals:

- Better place to live and create jobs – by encouraging an ethical culture in Denver city government and by encouraging confidence in Denver city government among its citizens and customers
- Better place to work – by encouraging high ethical standards throughout city government
- Denver city government will live within its means – by thriving as the city’s smallest agency with the smallest budget

**IX. CONCLUSION**

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney’s Office, Career Service Authority, the ethics trainers in city agencies and the great majority of managers and employees of the City and
County of Denver, it made continued good progress in 2008 to establish ethics as a recognized core value and to cultivate public confidence in Denver 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 February 2009)

**Lori Mack** earned a B.A. in Communication from the University of Colorado. She was one of the first fellows for the Denver Fellowship in Urban Government in the Denver Office of Accountability and Reform. During her 20 years with the City and County of Denver, she worked at Art, Culture and Film; Aviation; Excise & Licenses and is currently a Human Resources Specialist for the Career Service Authority. She is a graduate of State Senator Gloria Tanner’s Leadership Institute and has served on various private and public committees. Appointed by the Mayor and City Council. Term expires 4-30-2009. In May 2006 she was elected Vice-Chair of the Board of Ethics and in May 2007 was elected Chair and served for one year.

**Leslie M. Lawson** earned a B.A and J.D. from the University of Wyoming. She has served as an attorney for the Equal Employment Opportunity Commission, as an in-house attorney for a major oil corporation, as an attorney in a small law firm, as a Denver district judge and as a member of the Judicial Arbiter Group. She is a past president of the Colorado Women’s Bar Association. Currently she is a mediator and arbitrator and a partner in Dispute Management, Inc. Appointed by City Council. Term expires 4-20-2009. She served as Chair of the Board of Ethics from May 2005 through May 2006 and as Vice-Chair from May 2007 to May 2008. Due to her experience as a judge, she serves as presiding officer at hearings on complaints conducted by the Board.

**Ann A. Terry** earned a B.A. in Sociology from the University of Iowa and a J.D. from Drake University Law School. She was a prosecutor in Iowa and then worked in Colorado with the Jefferson County District Attorney’s Office and the Colorado District Attorneys’ Council. Currently she is employed as a legislative liaison and public policy analyst for the Colorado Department of Public Safety. She has served on a number of non-profit boards and committees and has taught several law school courses. She developed an ethics curriculum for prosecutors, law enforcement and victim advocates and has taught ethics to attorneys. Appointed by the Mayor. Term expires 4-30-2009. In May 2006 she was elected Chair of the Board of Ethics and served through May 2007. She currently serves as Vice-Chair, having been elected in May 2008.

**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 twenty five years. His focus is on commercial and construction matters, representing contractors, insurers and surety companies in complex claims and litigation. He is a director and currently the president of the Denver law firm of Pendleton, Friedberg, Wilson and Hennessey, P.C. He was the District Director for Congresswoman Diana DeGette in 1997. Appointed by City Council. Term expires 4-20-2011. He was elected chair of the Board of Ethics in May 2008.

**Syl Morgan-Smith.** Originally trained as a graduate nurse, she has past careers as a Denver television news anchorwoman, radio producer/announcer, managing newspaper editor and Director of Communications for Rockwell International at the Rocky Flats Facility. She is now Manager of Diversity & Community Relations at the National Renewable Energy Laboratory in Golden. She is the founder and president of the Colorado Gospel Music Academy and Hall of Fame. She received the Martin Luther King, Jr Trailblazer Award, and was inducted into the Colorado Black Hall of Fame for outstanding community service. She previously served as the first civilian member of the Denver Police and Firemen’s Pension Fund board, chair of the Denver Commission on Community Relations, Board member for Denver Children’s and Spaulding Rehabilitation Hospitals, the Denver Zoo, and First National and First Interstate Banks in Jefferson County. In 1997, she founded a tutorial program at Denver Public Schools to help children with English as second languages learn to read, and is the recipient of two honorary doctorate degrees. Appointed by the Mayor. Term expires 4-30-2011.
APPENDIX B

DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1–December 31, 2008

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2008 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.

Cases 08-1, 08-41 and 08-42 (conflict of interest)

In Case 08-1 a member of City Council requested an advisory opinion as to whether there would be a prohibited conflict of interest if he voted on a controversial re-zoning case in his district because of the fact that one of his Council aides is married to one of the citizens most active in the zoning controversy. The Councilperson had already directed that aide not to work on the re-zoning matter and assigned another of his aides to assist him on all matters related to that re-zoning case.

The Board of Ethics advised the Councilmember that he is not prohibited by Section 2-61 of the Denver Code of Ethics (conflict of interest) or the City Charter from discussing or voting on the re-zoning matter because neither he nor his immediate family members nor any business associates have any financial or property interests in the rezoning areas and because he and his aide had taken appropriate measures to avoid any potential conflict of interest due to the involvement of the aide’s spouse in the re-zoning matter. The Board encouraged the Councilmember to take great care to maintain his own impartiality in word and in deed and to continue to maintain his aide’s separation from the matter by ensuring that the aide is not assigned to any role or placed in any position where the aide could take any direct official action regarding the re-zoning matter.

In Cases 08-41 and 08-42, a citizen filed complaints against both the Councilmember and the aide, soon after the City Council voted on the re-zoning case, accusing them of conflicts of interest and mentioning that the aide had signed a petition, also signed by many other neighborhood residents, requesting the Zoning Administrator to waive the fees normally charged for re-zoning applications. The Board of Ethics dismissed both of these complaints because the aide was specifically directed by the Councilmember not to have any involvement as a city employee in the rezoning matter and because the Councilmember had earlier obtained an advisory opinion from the Board of Ethics which he complied with.
Case 08-2 (subsequent employment)

An employee of the Public Works Department requested an advisory opinion and/or a waiver concerning whether and how Section 2-64(a) of the Code of Ethics would apply to him:

Sec. 2-64. Subsequent employment.

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

The employee had served in a number of roles with increasing responsibility for several years in the major project of redeveloping Denver Union Station. For approximately two years, he was one of two city leads on the project management team for the Union Station project. The employee was considering leaving city government and working for the primary private consultant on the Union Station project.

The Board of Ethics concluded that his role as a city lead on the project management team amounted to “direct official action” of the type that would cause a violation of 2-64(a) without a 6-month waiting period.

However, the Board determined, pursuant to Section 2-54(f) of the Code of Ethics, to grant the employee a waiver because it would be in the city’s best interests if he would not be required to wait six months to begin work for the private consultant on the Union Station project, due to the importance of the project to the City and County of Denver and the Denver metropolitan area and the great complexity of the project and his understanding of many aspects of the project. The Board indicated that the consultant’s work would be environmental review and would be entirely in support of the city’s goals relating to the project and that the employee would be using his expertise consistently with the city’s objectives and needs and not to the city’s disadvantage.

Case 08-3 (gifts)

The director of the Division of Small Business Opportunity (DSBO) requested an advisory opinion. A private company which manages the DSBO data-base, was offering a scholarship to an educational conference to an employee of one of its “customers.” The scholarship would cover travel, room and registration. The director wished to know if any DSBO employees may apply for or accept such a scholarship from the company.

Section 2-60(a) of the Code of Ethics provides:
Sec. 2-60. Gifts to officers, officials, and employees.

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

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

The purpose of this section is to avoid the actuality or appearance of special influence by those who give gifts to city personnel. Since the company has a current contract with DSBO (and probably would like to extend its contract in the future), the Board of Ethics decided that anyone “in a position to take direct official action” with regard to the company, including approving or negotiating or recommending for or against the contract or renewal of the company’s contract, would be prohibited from accepting a gift (which would include a scholarship) from the company. Any DSBO employee who is not “in a position to take direct official action” regarding the contract with the company would be permitted to apply for and accept a scholarship.

Case 08-4 (gifts)

A Deputy Chief of the Police Department asked whether it is permissible under the gift section of the Denver Code of Ethics for police officers to obtain discounts from a firearms manufacturing company. Denver police officers are required to purchase their own handguns for use on duty.

The company in question has an “Appreciation for Service” discount program in which it offers a discount for all members of law enforcement agencies or military agencies. The discount is offered for just one model handgun. That model has been approved for use on duty by DPD.

No Denver police officers are involved in negotiating or approving contracts or purchase orders for the purchase of firearms. In fact, the city does not purchase any handguns for police officers, since officers are required to purchase their own handguns for use on duty. The Police Department’s purchasing is handled by a civilian employee in the Police Department. The Denver Police Department does not currently have any type of contract or purchase order with the company in question and does not know of any effort by the company to obtain a contract or purchase order with the Police Department in the future.

Section 2-60(a) of the Denver Code of Ethics includes in the definition of “gift” “any “reduction in price or any discount that is not similarly available to all city officers, officials and employees on the same terms.” Since the discount in question is only
available to police officers and military personnel and is not available to all city employees, this discount would be defined as a “gift.” However, only city personnel who are “in a position to take direct official action with regard to the donor” (the company offering the discount) are prohibited from accepting a gift pursuant to section 2-60(a) and only if the city “has an existing, ongoing or pending contract, business or regulatory relationship with the donor.” Neither of those conditions applies in this case. Therefore, the Board of Ethics concluded that all Denver police officers are able to accept the discount and would not violate the Code of Ethics.

Case 08-5 (subsequent employment)

A former city employee requested an advisory opinion and/or a waiver. He had been employed by Denver International Airport in a number of capacities since 1996. His last job title was Airport Operations Manager (one of fourteen). He left city government in November 2007 and was hired by a private company which provides security services for aviation facilities. After leaving city government, he worked for several months for the company on a project related to an airport in Florida. Now the company would like to assign him to manage the security contract at DIA and also a Registered Traveler Program contract which the company is in the process of finalizing with DIA.

In 2005, while he was working on security for DIA, he wrote a request for proposals and evaluation criteria when DIA was trying to contract with a private security organization. DIA ultimately selected the company in question, whose predecessor company was the incumbent firm that already had a security contract with DIA. He also served on a review panel of 6 to 8 city employees that reviewed the applicants, including the company in question.

In 2005-2006, he also prepared an earlier request for proposals for the Registered Traveler Program for DIA, but he was not involved in contract selection or negotiations relating to the contract eventually awarded to the company in question. He was transferred away from the DIA security office in July 2007, when he accepted a position as an Airport Operations Manager.

He and the company wished to know if he is prohibited by Section 2-64(a) of the Denver Code of Ethics from working for the company to manage the two contracts between DIA and the company now, without waiting until six months after November 2007.

Section 2-64(a) of the Code of Ethics provides:

Sec. 2-64. Subsequent employment.

(a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with
“Direct official action” is defined in Section 2-52(b) 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, 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;

(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…

Even though the former employee prepared two different requests for proposals more than two years ago under which the company was selected and served on one of the review teams, the Board concluded that this does not amount to direct official action of the type that would require a six-month waiting period. He did not personally negotiate or approve a contract with the company and his involvement with the review team for the security contract was more than two years ago.

The Board found that, due to the significant time gap, he would not violate Section 2-64(a) if he were to be employed now to manage the two contracts with DIA. Technically, he was still within six months of the time that he terminated his employment with the city, but, in fact, he had not worked in the security office or on matters relating to security in more than six months.

**Case 08-6 (no jurisdiction)**

A part-time city hearing officer filed a complaint concerning an agency head who he alleged had improperly terminated his employment. He had also appealed to the Career
Service Authority Board. The Board of Ethics dismissed the complaint for the reason that it does not have jurisdiction over personnel matters of this nature.

**Case 08-7 (conflict of interest)**

A member of City Council filed a request for an advisory opinion. The Councilmember’s spouse had recently been hired by a Denver law firm that has considerable dealings with the City and County of Denver.

The attorney and the law firm indicated, however, to the Board of Ethics that the firm has established a policy that the Councilmember’s spouse will not be involved in any matters that involve the City and County of Denver directly or the City Council.

Conflicts of interest are regulated by Section 2-61 of the Code of Ethics. In summary, the Code would prohibit the City Councilmember from taking direct official action (including, for example, approving a contract or lease) if the spouse:

- Is the other party in the matter
- Owns more than 1% of another party in the matter
- Is an officer of another party in the matter
- Is directly involved in obtaining the city’s business for another party in the matter
- Is an officer in another party in the matter
- 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
- Performs more than a nominal portion of the work in the matter or supervises or manages more than a nominal portion of the work

The Board concluded that, so long as the spouse does not work on any cases involving the City and County of Denver for the law firm, there is no conflict of interest prohibited by the Denver Code of Ethics which would require the member of City Council to abstain from voting as a City Councilmember. However, in order to avoid the appearance of impropriety, the Board recommended that if a contract or other matter in which the law firm is a party or represents a party comes before City Council or a City Council committee, the Councilmember should disclose for the record that the spouse works for the law firm, even though the spouse did not work on that particular matter. In addition, the Board recommended that, if any type of contract between the City and County of Denver and the law firm comes before City Council, the Councilmember should abstain from discussing or voting on that contract.

In addition, even though the Board of Ethics acknowledged that it has no jurisdiction to regulate the law firm, the Board encouraged the law firm to:

- Continue its policy that the Councilmember’s spouse will not be involved on matters that involve the City and County of Denver directly or the City Council and
- build a confidentiality wall so that the spouse will not be aware of the law firm’s
actions and information on certain matters if and only if the firm is involved in any cases in which the interests of the firm or its clients are adverse to the City and County of Denver.

The Board of Ethics indicated that all lawyers in the law firm are obligated to follow the ethical rules established in the Colorado Supreme Court’s Rules of Professional Responsibility, including those related to conflicts of interest.

**Cases 08-8, 08-9 and 08-17 (no jurisdiction)**

These complaints were filed by an inmate of the County Jail concerning a public defender, a prosecuting assistant city attorney and a county judge, alleging mishandling of a criminal case against the inmate. The Board of Ethics dismissed these cases because 1) issues such as those raised in the complaints can only be handled through the appeals process; 2) the Board of Ethics does not have jurisdiction over issues such as those and 3) the Denver Code of Ethics does not apply to public defenders or judges.

**Cases 08-10 through 08-15 (no jurisdiction)**

A citizen filed complaints against the Mayor and several department heads, concerning the death of a young woman (her niece) while in custody in the Denver City Jail. She alleged failure to provide proper training and supervision to employees at the jail, falsification of records and failure to investigate properly.

The Board dismissed the complaints pursuant to Section 2-56(6)(a) of the Denver Code of Ethics because the Board of Ethics has no jurisdiction over these types of issues and pursuant to Section 2-56(6)(b) because the alleged violations, if true, would not constitute violations of the Code of Ethics. The Board indicated that it believes that the appropriate remedies in these cases are through the litigation process and expressed sympathy for the tragic death.

**Case 08-15 (outside business activity)**

A police officer requested an advisory opinion about a book that he has written based on some of his experiences and which he is seeking to publish. He indicated that he has taken precautions not to compromise anyone’s identity or any unsolved police cases and that he does not mention Denver or the Denver Police Department in the book. The officer’s appointing authority has approved the outside business activity in writing as required by Section 2-63 of the Code of Ethics concerning outside employment or outside business activity.

The Board of Ethics concluded that, so long as he has obtained written approval from his appointing authority, his writing or publishing the book will not violate Section 2-63 of the Code of Ethics. The Board reminded the officer that the approval must be given annually so long as that business activity continues.
The Board also reviewed Section 2-61 of the Code of Ethics, regulating conflicts of interest, and did not find any violation of that section, since the officer will not be taking any “direct official action” regarding the book. The Board also concluded that there is not any “incompatibility” with his city job or adverse effect on the city’s interests, which would be prohibited by Section 2-61 (g) of the Code of Ethics, which provides that “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, however, recommended that, in order to avoid the appearance of impropriety, he should not conduct any of his writing or publishing activities on city time or with city resources.

**Case 08-16 (no jurisdiction)**

An inmate at the County jail filed a complaint against a deputy sheriff. He said that he had filed a written grievance at the County Jail and that the deputy that he complained about in the grievance “came back to the unit and read the grievance and made threats to me. He informed me that he’s going to send me to the hole and make my time hard. He also tried to get me in a confrontation. I refused and walked away…”

The written grievance form was never received or logged in as an official grievance at the County Jail.

The Board of Ethics stated that if it could be proven by clear and convincing evidence that the deputy sheriff destroyed or diverted a written grievance against him and/or threatened or retaliated against the inmate, that would be improper conduct.

The Board, however, dismissed this complaint pursuant to Section 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.

The Board of Ethics recommended to the Sheriff Department that it might wish to strengthen or clarify information to inmates and improve training for deputies about the proper procedure for filing and handling grievances so that:
1) a deputy complained about in a grievance should not read a grievance before it is properly logged in;
2) inmates are clearly advised how to file an official grievance;
3) all of the procedures recommended by the American Corrections Association regarding inmate grievances are followed.

**Case 08 – 18 (gifts)**

An Assistant Fire Chief requested an advisory opinion. A private for-profit chain of exercise facilities and employees of the Fire Department have asked whether firefighters
may be given free use of such private exercise facilities. The Assistant Chief asked for an advisory opinion as to whether it would violate the Code of Ethics for firefighters to receive and use free rights to use private exercise facilities.

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

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

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

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

The prohibition on accepting gifts only applies to city personnel “in a position to take direct official action” concerning the donor of the gift and if “the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor.”

Firefighters are charged with the inspection of all businesses within the response areas of their firehouses. All businesses in Denver are required to undergo a fire inspection on a regular basis. Therefore, firefighters are in a position to take direct official action, by making regulatory fire inspections – which fits within the definition of direct official action in Section 2-52(b), specifically “enforcing laws or regulations or issuing, enforcing or regulating permits” regarding fitness facilities in the territorial jurisdiction of their firehouses. Likewise, fitness facilities, like most other businesses in Denver, are in a regulatory relationship with the city. Therefore, acceptance of gifts in those circumstances would be prohibited unless one of the exceptions in Section 2-60(b) applies or unless the Board of Ethics grants a waiver. None of the exceptions in 2-60(b) apply to this situation.

The Board of Ethics learned that the Department of Parks and Recreation and the Denver Fire Department entered into a written memorandum of understanding on February 21, 2008 by which each firehouse was issued one adult recreation center card (Special User Membership) to allow one or more firefighters on duty during their 24-hour shifts to use the fitness and weight rooms of the city’s 29 recreation centers at no charge. The Assistant Chief indicated that the Fire Department would publicize this program to all firefighters. The Assistant Chief and the Board of Ethics agreed that this recreation center program not only provides fitness/wellness benefits to firefighters but has the added benefit of providing an opportunity for firefighters to interact with young people using the recreation centers, which is a valuable recruitment tool for the Fire Department.
The Board of Ethics determined that there is a possibility of confusion and loss of public trust if firefighters are allowed to accept free passes or memberships from private fitness facilities, which some might suspect might lead to special treatment for those offering free memberships. The Board determined that it would be a violation of section 2-60(a) of the Code of Ethics for any firefighter to accept a free membership or pass from a private fitness facility within his or her service area.

The Board encouraged the Fire Department to publicize to all firefighters the opportunities at Denver’s recreation centers and also encouraged the Department of Parks and Recreation to consider a similar Special Use Membership for police officers and deputy sheriffs, who have similar needs to maintain their fitness and wellness.

**Case 08-19 (outside business activity and conflict of interest)**

An appointee of the Mayor, who was hired in early 2008, who advises on public safety issues, requested an advisory opinion. Until then, he was a fulltime employee and one of two active members of a Denver limited liability corporation which has approximately 50 employees. The appointee was and still is the president of the company and owns 2 or 3% of the company.

He now spends approximately 20 hours per month “managing the business.” He has obtained written approval from the Mayor’s Chief of Staff for this outside employment or outside business activity pursuant to Section 2-63 of the Denver Code of Ethics.

The company recently applied for and received approval for a $225,000 loan from Denver’s Office of Economic Development (OED). The appointee will be a guarantor of the loan if and when it is granted. The appointee was not involved in any negotiations with OED which were conducted only with his business partner. OED indicated that the company’s loan application was subject to OED’s regular standards and underwriting criteria and that the company received no special preference due to the fact that the president is a Mayoral appointee. The OED employee who recommended approval of the loan said that he did not even know that the president was a Mayoral appointee until after he formulated his recommendation to approve the loan.

The conflict of interest section of the Code of Ethics (2-61) prohibits any city person from taking “direct official action” on a matter before the city if he or she has a substantial conflict of interest. In this case, the appointee works with the Department of Safety and had no connection with OED and had no role in negotiating or approving the loan by the city or any other aspect of the definition of direct official action.

The Board of Ethics determined that there would not be a violation of the Code of Ethics for the company to apply for or to receive a loan from OED, due to the facts that:

1. the appointee had no connection with the loan approval decision by OED
2. OED did not give the appointee or the company any preferential treatment whatsoever by virtue of his current employment as a Mayoral appointee
3. the loan application was subject to the same underwriting and program standards
to which OED subjects all loan applications.

The Board recommended that, if the loan is granted, the appointee should avoid any discussions or negotiations with OED concerning the loan and should continue to refrain from asking for any special treatment in the handling of the loan.

**Case 08-20 (no jurisdiction)**

A citizen who used to work for the city filed a complaint against an assistant city attorney who was assigned to defend the city in a lawsuit filed by the former city employee against the city. The Board dismissed this case pursuant to Section 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.

**Cases 08-21, 08-22, 08-23, 08-34, 08-40, 08-44, 08-45, 08-47, 08-48 and 08-49 (no jurisdiction)**

These complaints were filed against deputy sheriffs by inmates of the County Jail who alleged various types of improper behavior not related to the Denver Code of Ethics. The Board dismissed these cases 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. The Board suggested that the inmates pursue their issues through the grievance process at the County Jail and/or complaints to the Internal Affairs Bureau of the Sheriff Department and/or the Independent Monitor.

**Cases 08-24, 08-25, 08-29, 08-37, 08-38, 08-50, and 08-51 (no jurisdiction)**

These complaints were filed by inmates at the County Jail concerning police officers alleging various issues of misconduct which were not related to the Code of Ethics. The Board dismissed these cases 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. The Board suggested that the inmates pursue their issues through complaints to the Internal Affairs Bureau of the Police Department and/or the Independent Monitor.

**Case 08-26 (hiring and supervision of family members)**

A deputy division manager in a city department requested an advisory opinion. She was considering applying for the vacant position of division manager. She wished to know if the Code of Ethics would prohibit her from applying for or being hired for the job due to the fact that her son works for the same division. The Board of Ethics determined that
there would not be a violation of Section 2-59 of the Code of Ethics, regarding hiring and supervision of family members, due to the facts that 1) she had no involvement in the hiring of her son; 2) she does not supervise her son and 3) if hired as division manager, there would be two levels between that position and her son’s position. The Board also recommended that, if hired as division manager, she should abstain from any involvement in any personnel actions directly related to her son.

**Case 08-27 (no jurisdiction)**

A citizen filed a complaint against a city cashier, alleging that the cashier was rude, confrontational, demeaning and un-customer-friendly. The cashier responded with a very different version of the events and also asked her supervisor to review the situation. The Board of Ethics dismissed the complaint 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 08-28 (conflict of interest)**

A city employee co-owns a small catering company. She requested an advisory opinion about whether there is any prohibition against a company owned or co-owned by a city employee doing business with the city or doing business with her specific city department. The employee had already obtained written approval from her supervisor to engage in the outside business activity, pursuant to Section 2-63 of the Code of Ethics.

The Board determined that there is no prohibition in the Code of Ethics, the Revised Municipal Code or the City Charter against a company owned or co-owned by a city employee doing business with the city, so long as the employee does not have a “direct official action” role in negotiating or approving the contract or purchase order. The Board of Ethics, however, is not aware whether or not the employee’s specific agency has a stricter policy on this issue, which is permitted by Section 2-51 of the Code of Ethics.

The Board encouraged her, however, in order to avoid the appearance of impropriety, not to attempt in any way to influence the decision of any department personnel about who to hire to cater any functions.

**Case 08-30 (use of public office for private gain)**

A citizen filed a complaint against his City Council representative for putting information in her monthly electronic newsletter sent to her constituents concerning a film festival and an essay contest related to the Democratic National Convention. The newsletter also contained many other items relating to city government, neighborhood associations and various non-profit organization activities. The complainant claimed that including those items violated Section 2-67 of the Code of Ethics, which prohibits use of public office for private gain, and that those newsletter items “promoted the activities of the Democratic
Party and other organizations not controlled by or part of the City and County of Denver.”

The Board of Ethics determined that nowhere in the Councilwoman’s newsletter were there any items which would benefit her own private interests or that of any of her family members, or business associates. Nor was she urging her constituents to vote Democratic or contribute to the Democratic Party, which would certainly be inappropriate, even if not in violation of Section 2-67.

The Board dismissed the complaint pursuant to Section 2-56(6)(b) of the Code of Ethics because the alleged violation does not constitute a violation of the Code of Ethics.

**Case 08-33 (subsequent employment)**

A traffic engineer was employed by the Public Works Department for six years and left city government in 2004 to work for himself and later for a private consultant. He then was hired again by the city in 2008, but left city government again after 2 1/2 months to work again for the same consultant company. During his most recent period with the city, he was assigned to two specific traffic engineering projects. He requests an advisory opinion as to whether Section 2-64(a) of the Code of Ethics will permit 1) the consultant company to bid to work on the projects in question and, if awarded the bid or bids, may the former employee work on those projects without waiting six months.

Section 2-64(a) provides:

**Sec. 2-64. Subsequent employment.**

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

The applicability of this section depends on whether or not the former employee performed any “direct official action” during the recent 2 1/2 months that he worked for the city. The definition of “direct official action” is as follows:

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

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. With regard to “recommending,” direct official action occurs only if the person making the recommendation is in the formal line of decision making.
(2) Enforcing laws or regulations or issuing, enforcing, or regulating permits;

(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 former employee and his former city supervisor advised the Board of Ethics that the former employee had not performed any “direct official action” regarding the projects in question during 2008. The Board determined that it would not be a violation of Section 2-64(a) of the Code of Ethics for the former employee to begin to work immediately for the consultant on the projects in question because he did not take any direct official action during the 2 ½ months that he worked for the city most recently. The Board also decided that there is nothing in the Code of Ethics that would prohibit the consultant company from bidding on any work on the projects in question.

**Case 08-35 (conflict of interest and outside business activity)**

A sergeant in the Police Department and his supervisor requested an advisory opinion. The sergeant proposed to open a non-police secondary job of business security consulting with schools which wanted to be prepared for various types of emergencies.

The Board of Ethics advised the sergeant that he must obtain written permission on an annual basis from his appointing authority before he can begin any type of outside business activity or employment in order to comply with Section 2-63 of the Code of Ethics. In addition, in order to avoid a conflict of interest, as described in Section 2-61 of the Code of Ethics, the Board recommended that the sergeant:

- Not consult with any clients with locations in the City and County of Denver, which would avoid the possibility that a prospective client might feel that it might receive preferential law enforcement help if it hires the sergeant or might receive less law enforcement help if it fails to hire him.
- Not use any of his city time or city resources in his outside business
- Not solicit clients or engage in the outside business in his police uniform
- Not identify himself in any advertising letters or material as a Denver police officer, including using any photographs in his police uniform
Case 08-39 (subsequent employment)

A city employee who intends to retire from city government asked for an advisory opinion. He was considering the possibility of working on a contract basis for the same department after his retirement and wanted to know if the Code of Ethics would prohibit this or would require a 6-month waiting period, pursuant to Section 2-64(a) of the Code of Ethics:

Sec. 2-64. Subsequent employment.

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

The Board stated that the phrase “outside of the city government” was specifically added by City Council in 2007, at the request of the Board of Ethics, to clarify situations such as this.

In an earlier advisory opinion (Case 06-26), the Board of Ethics stated:

…the Board believes 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 advised the employee that the Denver Code of Ethics does not prohibit him from working on contract for a city agency following his retirement from his work as a city employee.

Case 08-43 (outside employment and conflict of interest)

An employee in the Community Planning and Development Department (CPD) requested an advisory opinion. He was considering being a candidate for the Regional Transportation District (RTD) Board of Directors in the November 2008 election. RTD board members are paid $12,000 per year. The work includes monthly board meetings and numerous committee meetings.

The employee does not have any “direct official action” decision-making or policy-setting power within CPD, as defined in Section 2-52(b) of the Code of Ethics.. Various CPD planners and managers do make decisions regarding how RTD bus and light-rail routes and facilities interact with city streets, parks, neighborhoods, etc.; however, the employee is not part of the decision-making.

Since RTD board positions are paid positions, the Board of Ethics determined that he
would need to comply with Section 2-63 of the Code of Ethics if he were to be elected to the board, by obtaining written approval from his appointing authority of the outside employment as an RTD board member. The Board also determined that, as long as his city job does not involve “taking direct official action” on any matters relating to RTD, he is not prohibited by the Denver Code of Ethics or the Denver Charter from running for or serving on the RTD board.

The Board also found that there would not be anything “incompatible” between his city job and the RTD board position, which would violate Section 2-61(g) of the Code of Ethics and also Section 1.2.8(A) of the City Charter.

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

- Not use city resources or any of his city time to gather signatures or campaign for the RTD board
- Not use any city resources or any of his city time to perform RTD functions, if elected (in other words, he should take city leave time for any RTD activities during city time)
- Abstain from voting as an RTD board member on any contract or other matters to which the City and County of Denver is a direct party.

**Case 08-46 (subsequent employment)**

A former city employee requested an advisory opinion. She was the Director of Security at Denver International Airport for several years before she retired in early 2008. She then established her own aviation security company, which has been requested by a major engineering firm to be part of a team that is responding to a Request for Qualifications (RFQ) for engineering and architectural services for a large new project at DIA. If the engineering firm is awarded the contract and if her company is part of the team, the company would be responsible for “providing guidance” on safety and security matters on the project.

She advised the Board of Ethics that, as a city employee, she did not manage engineering projects and specifically had no dealings with this project and she had no business relationships with the engineering firm. She was not involved in preparing the RFQ and the RFQ was not prepared until after she left city government.

Section 2-64(a) of the Code of Ethics regulates subsequent employment for city employees:

**Sec. 2-64. Subsequent employment.**

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

The Board of Ethics concluded that the former employee would not violate Section 2-64(b), even if her company were to begin work on the engineering team for the project at DIA before the six-month anniversary of her retirement from city government because she took no direct official action during her employment with the city regarding the engineering firm or the project.

**Case 08 – 52 (supervision of family member)**

A Sheriff Department major at the County Jail requested a waiver from Section 2-59(b) of the Code of Ethics, which prohibits a city employee from supervising or being in the direct line of supervision over a member of his or her immediate family. The major had recently been transferred from another assignment to the County Jail on the day shift. The major’s son has been for some time a deputy sheriff at the County Jail on the night shift. This situation complies with the guidelines in Sections 2-59(c) and (d) in that the deputy sheriff was already assigned to the County Jail before his father was assigned to the County Jail and, since there are two intermediate levels of supervision between the father and the son, the father should not be prohibited from being in a direct line of supervision over his son. The Board of Ethics found that it is in the best interests of the city to grant a waiver from Section 2-59(b) to the major, based upon the condition that any disciplinary or other personnel actions or annual personnel reviews for the son will not be conducted or reviewed by his father. Instead, review of those matters will be handled by others in the Sheriff Department. A waiver might not be required in this situation under the Code, due to the fact that the father and the son normally work on different shifts and have two intermediate levels of supervision between them. However, the waiver will cover any eventuality where the major might be put in a temporary situation of supervising his son, such as an emergency at the County Jail or a vacation or sick-schedule of others at the County Jail.

**Cases 08 – 53 and 08 – 66 (no jurisdiction)**

Citizens filed complaints concerning a police officer, alleging rude and unprofessional remarks by the officer to the citizens. The Board of Ethics dismissed the complaints due to lack of jurisdiction over complaints of this nature.

**Case 08 – 54 (gifts)**

An employee in the Office of the Controller who administers the city’s payroll system requested an advisory opinion and/or waiver. In 2007 the city entered into a major contract to purchase software and services for the payroll system. The employee was not involved in preparing the request for proposals that led to the contract with the software company; however, she was involved in the contract process. There is a budget request
for 2009 to purchase additional licenses and functionality from the software company. Although the purchase would be through a different agency (Technology Services), the employee “will be involved from an advisory perspective to ensure that our needs are met.”

The employee was invited by the software company to attend a conference in Florida and to speak on behalf of the city to describe Denver’s “successes as they relate to the roll-out” of the software. The city would pay for the travel, lodging and meals for the conference; however, the software company offered to waive the $1500 conference fee for the employee in return for speaking at the conference. It is standard practice for the company to waive the conference fee for speakers. The 2008 budget for the Office of the Controller did not have sufficient funds to pay for the $1500 conference fee. The employee requested an advisory opinion as to whether acceptance of the payment of the conference fee by the company would violate the Code of Ethics and, if so, she requested a waiver. Acceptance of gifts is regulated by Section 2-60 of the Code of Ethics:

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

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

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

The Board of Ethics found that the employee will be in a position to recommend for or against any future contract amendment with the software company and, therefore, that she is “in a position to take direct official action” regarding the company. However, since she would be speaking at the conference, her talk, including preparation for the talk, will be “adequate and lawful compensation” for the conference fee waiver by the company and, therefore, the conference fee is not a “gift” as defined in 2-60(a). Therefore, her acceptance of the conference fee waiver from the company would not violate the gift section of the Code of Ethics. Since the Board found that the Code of Ethics would not be violated, a waiver was not required.

Case 08 – 55 (subsequent employment)

An Administrative Support Assistant IV in the Technology Services Division requested an advisory opinion. She was considering applying for a job as a sales manager for a company that has a contract to supply communications equipment to the City and County of Denver. She was not involved in negotiating or approving the contract with the company. Subsequent employment for city employees is regulated by the Denver Code of Ethics as follows:
Sec. 2-64. Subsequent employment.

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

The Board found that the employee did not have any role in negotiating or approving the contract or purchase orders with the company, so her job duties as an Administrative Support Assistant did not amount to “direct official action.” Therefore, the Board determined that she would not be required to wait six months after leaving city government before working for the company. The Board, however, cautioned her not to use any confidential information (that the company would not already know) on behalf of the company.

Case 08 – 56 (no jurisdiction)

A city employee filed a complaint concerning his supervisor, alleging that the supervisor harassed and defamed him. The Board of Ethics dismissed the complaint for lack of jurisdiction over allegations of this nature and encouraged the employee and the supervisor to consider mediation through the Career Service Authority (720-913-5703).

Case 08 – 57 (outside employment, conflicts of interest)

The Human Resources Director for the Department of Aviation raised several questions regarding snow removal operations for the upcoming winter season at Denver International Airport. The first issue was whether the Code of Ethics would permit Aviation Department employees to perform “outside employment” for private contractors hired to perform snow removal as needed at DIA. The Director set out different scenarios on which he asked for advice.

Since all of these outside job opportunities would be paid jobs, the Board determined that the Aviation Department employees would have to obtain their appointing authority’s written approval for the outside employment, pursuant to Section 2-63 of the Code of Ethics. Unless each employee obtains such written approval, he or she is prohibited from engaging in the outside employment. The appointing authority would need to evaluate and discuss with each individual employee whether the outside job may interfere with the employee’s city job responsibilities or cause confusion by other city employees or supervisors about whether the employee is working at any particular moment for the Department of Aviation or the private contractor.

The second issue was whether the different scenarios created a conflict of interest. Conflicts are regulated by Section 2-61 of the Code of Ethics: The Board of Ethics
determined that there is not a conflict of interest in these situations that would be directly prohibited by Section 2-61 unless the city employee takes “direct official action” concerning that contractor as defined in Section 2-52(b) of the Code of Ethics (negotiating, approving, administering or enforcing the contract or purchase order) and the employee’s situation regarding the snow-removal company amounts to a “substantial conflict of interest” as described in sub-sections 1 through 6 of Section 2-61. Accordingly, the Board determined that each employee’s situation would need to be evaluated on a case-by-case basis.

However, the Board of Ethics indicated that there was an obvious appearance of impropriety if any employee in a supervisory or administrative capacity in their city job might be or might appear to be less likely to strictly oversee or diligently challenge problems or discrepancies in the work of a contractor if the employee had received or was expecting to receive payment for working for that contractor in his or her outside employment. The Board of Ethics said that it does not have enough familiarity with the jobs in question to recommend “what types of assignments would be acceptable, and which types of assignments would not be acceptable” regarding all of the scenarios that were presented. The Board concluded that such discussions and decisions should be left to the appointing authority.

**Case 08 – 58 (outside business activity – rental property)**

A city employee requested an advisory opinion. He owns two apartment buildings (total of ten units and 5 garages) in Denver and lives in one of the units. He manages and maintains the apartments himself. The employee wished to know whether ownership and management of such rental properties are required to be disclosed to and permitted by his appointing authority pursuant to Section 2-63 of the Code of Ethics regarding outside employment and outside business activity. The section is as follows:

**Sec. 2-63. Contemporaneous or outside employment.**

(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 (emphasis added)…

The Board of Ethics has not yet answered this question in any other case. Neither “outside employment” nor “outside business activity” is precisely defined in the Code of Ethics. The Board indicated that there are at least four reasons that justify the city government’s requirement that a city employee’s outside employment or outside business activity must be disclosed and permitted:
1. so that the employee and the appointing authority may discuss whether the outside work will harm the employee’s ability to work a full day for the city;
2. so that the employee and the appointing authority may discuss whether the outside work will cause harmful disruptions or interruptions to the employee’s city job;
3. so that the city will have a record of how to reach the employee in case of a city emergency which requires the employee’s involvement, such as snow-plow drivers during an unexpected blizzard; and
4. so that the employee and the appointing authority can discuss whether a conflict of interest might exist between the employee’s city job and his or her outside employment or outside business activity.

The Board found that managing rental property can sometimes take considerable time. Therefore, disclosure under 2-63 will determine issues 1, 2 and 3 above. Owning one or more rental properties in Denver could also be a conflict for some city employees, depending on the specifics of each situation. For example, if a city building inspector manages rental property that he or she owns, he or she should make his or her appointing authority aware so that the employee will not be assigned to inspect a building that he or she manages.

The Board of Ethics did not find any conflict of interest between this employee’s city job and the management of his rental properties. The Board determined that that self-management of rental properties amounts to outside business activity of the type that must be disclosed on an annual basis pursuant to Section 2-63 of the Denver Code of Ethics; however, the Board determined that ownership alone (without self-management) does not need to be disclosed under Section 2-63.

**Case 08 – 59 (conflict of interest)**

The Manager of the Public Works Department requested an advisory opinion. He indicated that he approves most, if not all, contracts between the Public Works Department and private vendors and contractors. The Department is now engaged in contracting with many contractors to handle various projects for capital improvements. He indicated that he has asked the Public Works Department staff to develop a new selection process for contractors in order to develop a broader and more diverse pool of contractors. The Public Works Department recently solicited potential contractors through a request for proposals. One of the responding companies was a company, one of the managing partners of which is the Manager’s brother-in-law. Conflicts of interest are regulated by section 2-61 of the Denver Code of Ethics:

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

(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…

“Immediate family member” is defined in Section 2-52(c):

a. **Immediate family** means husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, 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…

“Immediate family member” does not include brother-in-law. The Board of Ethics, therefore, determined that section 2-61 does not prohibit the Manager from taking direct official action regarding a contract with his brother-in-law’s firm. However, the Board strongly recommended that, in order to avoid the appearance of impropriety, at any time that the Manager would learn that his brother-in-law’s company is in contention for any contract with the Public Works Department he should:

- disclose such interest to his appointing authority (the Mayor);
- not act on the proposed contract in any way, including short-listing, interviewing, negotiating, approving, disapproving or reviewing for possible violations;
- refrain from attempting to influence the decisions of others in acting on the contract; and
- work to ensure that the matter is assigned to someone without conflicting interests

**Case 08 – 60 (no jurisdiction)**

A citizen filed a complaint concerning his next-door neighbor, who is a city employee, alleging that the city employee filed numerous frivolous zoning and animal control complaints against the citizen, threatened to make an unjustified complaint to the Internal Revenue Service, made a number of other threats and took other harassing actions. The Board of Ethics stated that it “believes that Denver city employees should be good
citizens and good neighbors, should not expect special treatment from city agencies and should not file complaints in a retaliatory way.” However, the Board dismissed the complaint, finding that it does not have jurisdiction over allegations of this type. The Board also recommended that the two neighbors engage in mediation through Denver Mediation and urged both neighbors to “reduce your level of hostility and use your best efforts to co-exist as peaceful neighbors.”

**Case 08 – 63 (outside employment and conflict of interest)**

An employee of the Department of Aviation requested an advisory opinion. He has been asked by an airline company to consider an outside consulting job to help the company evaluate future options for one of its private facilities in Denver. One of several options would be to relocate the facility to Denver International Airport from its current non-DIA location. The employee is responsible for developing non-airline revenue for the Department of Aviation and also for airline leases and property. Before he joined the city, the employee worked for the same airline company as a financial analyst and then as manager of scheduling and director of sales and marketing for the facility in question.

The employee advised the Board of Ethics that the airline company might consider relocating the facility to DIA. He said that his city job does not involve any dealings with the division of the airline company that involves the specific facility. However, he also advised the Board that, if the airline company did decide to relocate the facility to DIA, that would involve his division at DIA and he “would need to be involved.”

The Board decided that the employee would need to obtain written approval from his appointing authority to do the outside consulting, as required by Section 2-63 of the Code of Ethics. The Board then reviewed any potential conflicts of interest, which are regulated by Section 2-61 of the Code of Ethics:

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

(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 owns 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

(7) 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…

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

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city…

The Board determined that nothing in Section 2-61 would prohibit the employee from doing consulting work for the airline company. If, however, he did the consulting work for the company and then the company decided to propose to relocate the facility to DIA, he would then be prohibited by Section 2-61(a)(1) from taking any direct official action (such as negotiating or approving or administering a lease or contract) with the company. Section 2-61(f) describes the steps he would have to take in light of the substantial conflict of interest. The employee indicated to the Board that it would be very difficult for him or his appointing authority to assign his duties to someone else in this particular matter.

In summary, the Board of Ethics advised the employee that:

1. he must comply with 2-63 by obtaining his appointing authority’s written approval for the consulting job with the company;

2. he is not prohibited by the Code of Ethics from doing consulting work for the company, so long as he complies with Section 2-63;
3. a conflict would be created if the company decided to consider relocating the facility to DIA and the employee would then be unable to take any direct official action regarding the matter on behalf of the City. If there was no one else who could be assigned the matter, Section 2-61(g) might be implicated, as he would apparently have taken employment which is incompatible with his duties and responsibilities for the City.

**Case 08 – 64 (gifts)**

A city Fire Protection Engineer, who reviewed plans and was helpful in obtaining approval for a temporary facility used during the Democratic National Convention unexpectedly received a bottle of rare scotch whisky after the conclusion of the convention in gratitude from the non-profit organization that hosted the venue. He requested an advisory opinion about what to do with the gift, which was valued at more than $25. Gifts are regulated by Section 2-60 of the Code of Ethics:

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

(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, or any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

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

The Board of Ethics decided that the city employee was in a position to take “direct official action” regarding the owner or tenant of the venue through “issuing, enforcing or regulating permits” and the city did have a “regulatory relationship” with the donor. Therefore, a gift over the value of $25 from the entity sponsoring the venue to the city employee would normally be prohibited, since none of the exceptions in Section 2-60 apply to this situation. However, the Board reviewed prior decisions, finding that Cases 04-44 and 05-6 are quite similar to this case in that: 1) the city employee was in a position to take direct official action concerning the donor; 2) the gifts were unsolicited and modest in value; 3) the gifts were given after the service was rendered by the city employee and 4) the apparent motivation for giving the gift was gratitude and not an intent to influence any decision or action of the city employee. Because the same conditions apply to this case, the Board decided that the Code of Ethics would not be violated if the employee accepted the whisky.

**Case 08 – 65 (outside employment)**

The Auditor requested an advisory opinion to determine whether Section 2-63 of the Code of Ethics, regarding “outside employment” or “outside business activity” requires
that city employees who wish to work temporarily for other city agencies to obtain written approval from their appointing authorities. In particular, he was concerned about employees of the Auditor’s Office who wish to volunteer (and obtain overtime pay) to help with snow emergencies at Denver International Airport either: 1) by working for the Department of Aviation-run snow program or 2) by working for a private company under contract with the Department of Aviation for assistance in snow removal.

Section 2-63 of the Code of Ethics provides:

**Sec. 2-63. Contemporaneous or outside employment.**

(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.

In addition, Career Service Authority Rule 15-51 provides:

Any employee desiring to take outside employment or engage in other business activities must submit a written request to his or her appointing authority before the outside employment or business activities commence. The appointing authority will not approve outside employment that compromises an employee’s ability to perform effectively or to accept overtime or travel assignments. Outside employment or business activities shall not be incompatible with an employee’s duties, nor shall the outside employment or business activities create an actual or apparent conflict of interest.

Section 1.2.8 of the Denver Charter also provides:

No employee or appointed Charter officer shall have other employment or hold any public office that is incompatible with his or her duties.

The Board of Ethics believes that any city employee’s appointing authority should be made aware and should be able to discuss with the employee whether outside employment would pose a conflict of interest and/or whether it would interfere with the employee’s work for his or her agency, which should be of paramount importance. These are the reasons underlying Section 2-63 of the Code of Ethics and CSA Rule 15-51.

The Board of Ethics decided that temporary work for another city agency is not to be considered “outside employment or outside business activity,” within the meaning of Section 2-63 because that section is intended to cover paid employment outside the City. An employee working for another agency within the City would be in the nature of a loan of personnel from one agency to another and should be considered a management issue between the agencies. On the other hand, if a city employee wishes to obtain outside
employment with a private contractor that is engaged in assisting with snow removal at DIA, that employee must comply with section 2-63 of the Code of Ethics.

Case 08 – 67 (outside employment, subsequent employment, on-call employees)

A former city employee at the Department of Aviation, who retired in July 2008, requested an advisory opinion. For the last 3 years of his city employment, he was a contract compliance technician with the Airport Property Office. He advised the Board of Ethics that his duties were clerical and that he did not negotiate any insurance requirements or other provisions of any contract with any tenant. The former employee applied for Colorado licenses to sell life, health, property and casualty insurance products and anticipates receiving the licenses in December 2008. He wished to contact various tenants, such as concessionaires, at Denver International Airport and in order to sell insurance policies to some of them. The former employee also began an appointment as an on-call employee with the City on December 1, 2008, performing inventory work in the DIA Engineering Division Records Management Section. He wished to know if and how the Code of Ethics will impact: 1) his ability to sell insurance to DIA tenants as a retired city worker and 2) his ability to sell insurance to DIA tenants as an on-call employee for the Department of Aviation.

The section of the Code of Ethics that applies to retired employees is:

**Sec. 2-64. Subsequent employment.**

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

The Board of Ethics determined that the employee did not take any “direct official action” regarding any tenants (or anyone else) at DIA, since his work was clerical in nature. Therefore, if he took no “direct official action,” he would not be prohibited by Section 2-64 as a retired city employee from trying to sell insurance to DIA tenants. In addition, the 6-month period following his retirement, will expire on December 31, 2008.

The Board then addressed his status as an on-call employee. The Code of Ethics applies to all city employees and the Code defines “employee” as:

**Sec. 2-52. Definitions.**

(a) Employee means any person in the employ of the city or of any of its agencies or departments and any person employed without compensation under the terms and provisions of chapter 18, article II, division 19 of this Code....
The Board of Ethics determined that the definition of “employee” does include on-call employees, as well as permanent and probationary employees. Therefore, during any period when he is an on-call employee, he will need to comply with Section 2-63, which requires approval of any outside employment or outside business activity by the employee’s appointing authority. If he does obtain such approval, he should not do any outside work during city work time and should not use city resources for the outside work. He should also not use any city records or lists for his insurance business.

**Case 08 – 69 (subsequent employment)**

A City Council aide planned to leave city government effective December 31, 2008 to seek private-sector employment as a contract consultant working “in community relations and outreach as well as governmental relations.” She said that she planned “to do subcontracted work mostly with existing, larger consulting firms.” The aide requested an advisory opinion about which type of clients she can work for and which types of tasks she can perform “related to the city” and be in compliance with the Denver Code of Ethics. She indicated that she currently did not have a specific employment proposal from any particular group.

The section of the Code of Ethics which regulates subsequent employment is:

**Sec. 2-64. Subsequent employment.**

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

The definition of “direct official action” is:

**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, 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;

(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 of Ethics decided that the aide was prohibited by Section 2-64(a) from work during the first six months after leaving city government in which she would take direct advantage, unavailable to others, of matters with which she took direct official action during her service with the city. Since she may have done research for and/or made recommendations (both of which are defined as “direct official action”) to her City Council member on a number of topics, including leases or large contracts that City Council must vote upon, as well as legislation, the Board found that she should not take any consulting or lobbying jobs for six months regarding any matters regarding which she did research or made recommendations while she worked for her City Council member. This includes lobbying or attempting to educate or persuade City Council members or any other city employees or elected officials or members of the public. This prohibition would include work as a sub-contractor working under any city contract on which she had done research and/or made recommendations before the contract was approved by City Council.

The Board also recommended, in order to avoid the appearance of impropriety, that she should not lobby or attempt to persuade her former employer on any matters on behalf of a client during the first six months after leaving city government. This would reduce the likelihood that an employer would engage her in the hope of bringing special influence on the Council member through the efforts of the former employee.

**Case 08 – 73 (outside employment)**

A traffic engineer in the Public Works Department requested an advisory opinion. As a result of her work for the city on traffic issues related to the Democratic National Convention, she had been asked to do outside work to help in traffic planning for two major events in other cities – the inauguration of the new president and the All-Star game of the National Hockey League. She was also considering doing other transportation-related consulting in the future. She advised the Board of Ethics that, so long as she is a city employee, she will not do any outside consulting jobs for events inside the City and County of Denver.

The Board of Ethics found that the employee must obtain written approval for any other outside consulting jobs in order to comply with section 2-63 of the Code of Ethics. Because such jobs could possibly interfere with her city work, depending on the timing and duration of location of each job, she should ask for approval of each job individually, rather than on a general basis. In addition, the employee and her appointing
authority and/or the human resources office in the Public Works Department will need to be sure that the city rules regarding vacation time or leave without pay are complied with.

The Board of Ethics did not find any conflict of interest, so long as the employee does not do any outside consulting work for events or projects inside the City and County of Denver, which would pose a conflict of interest. The Board also determined that she should abstain, in her city job, from working on any project relating to any of her outside consulting clients. The Board of Ethics also strongly recommended that she not use any city resources or city time for any outside consulting work.