



**Denver Board Of Ethics**

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January 22, 2018

Ms. Tracy Davis  
Assistant City Attorney  
Webb Municipal Office Building  
201 West Colfax Avenue  
Denver, CO 80202

Dear Ms. Davis:

Thank you for attending the Denver Board of Ethics meetings on December 20, 2017 and January 18, 2018 to discuss your request, on behalf of the City Attorney's Office, that the Board reconsider its November 17, 2017 official advisory opinion in Case 17-27.

The Denver Code of Ethics restricts when gifts may be accepted by a City decision-maker (*i.e.*, a City officer, official, or employee who is in a position to take direct official action with regard to the donor). The Code's restrictions about when a decision-maker may accept a gift are based on a number of concerns, including the following: (a) the gift may tend to or will improperly influence the actions of the decision-maker; (b) the donor may, as a result of having made the gift, expect favorable decisions or treatment; and (c) the acceptance of gifts by a decision-maker creates, or may create, an appearance of impropriety and appearance of improper influence.

Similarly, the Code restricts when a City decision-maker may solicit gifts based on similar concerns, namely that (a) the "donor" will fear his or her refusal will result in an unwanted decision or action by the decision-maker; (b) given the decision-maker's position of power, the donor will feel pressured to comply with the request when he or she doesn't wish to do so; (c) if a gift is made, the donor may feel entitled to more favorable treatment; and (d) the solicitation of gifts by the decision-maker creates, or may create, an appearance of impropriety and appearance of improper use of official power and authority.

As regards City agencies, City agencies act through their department heads and other personnel, each of whom, as a City employee, has a business or contractual relationship with the City. Under the City Attorney's view, assuming the conditions of Section 2-60 are otherwise met, a city councilperson could, for example, accept or solicit substantial gifts from heads of City agencies and would not violate the Code of Ethics by doing so, so long as the gifts come from the agency itself rather than the agency heads personally. The Board sees no principled basis for such an artificial distinction. The harms the Code is intended to address—improper influence, using official office for personal gain, and the appearance of

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impropriety—are equally present when a City decision-maker solicits or accepts gifts from an agency's head or other authorized agency personnel. Put simply, The Board believes the City Attorney's interpretation of Section 2-60 is unduly restrictive and inconsistent with both the intent and text of the Code.

Further, the Board believes any concerns the City Attorney may have about the application of Section 2-60 are similarly unfounded. Section 2-60's prohibition against soliciting or accepting gifts is not absolute. Section 2-60(b) contains no less than 12 exceptions to Section 2-60(a)'s prohibition against soliciting or accepting gifts. Under Section 2-60(b)(5), for example, a decision-maker can accept unsolicited items worth less than \$25.00, such as mugs, scarves, water bottles, plants, tee shirts, or a myriad of other items. Such gifts are not required to be disclosed under the City's Financial Disclosure Ordinance. Under Section 2-60(b)'s other exceptions, decision-makers may accept campaign contributions, meals, tickets, reasonable expenses paid by non-profit organizations or other governments for conventions and fact-finding missions, gifts to commemorate public events, and memberships and passes from the Denver Art Museum, Denver Botanic Gardens, Denver Museum of Nature and Science, and the Denver Zoo. Thus, only a small (but important) category of gifts falls within the ambit of Section 2-60's prohibitions.

In light of the foregoing, and in recognition of Section 2-60's broadly stated purpose of avoiding special influence, the Board respectfully declines your reconsideration request.

For the Board of Ethics:

A handwritten signature in black ink, appearing to read "Patrick D. Tooley". The signature is fluid and cursive, with a prominent initial "P" and "T".

Patrick D. Tooley  
Chair