



# CITY AND COUNTY OF DENVER

**HARRY MACLEAN – CHAIR**  
**MARCELINA RIVERA – VICE-CHAIR,**  
**CHARLES SAVAGE, CAROLYN LIEVERS,**  
**CHRISTOPHER C. WEIMER,**

## BOARD OF ETHICS

Location: 1675 BROADWAY, 6<sup>TH</sup> Floor  
DENVER, CO 80202-4705  
Mailing Address: 1437 BANNOCK ST., #353  
DENVER, CO 80202-5375

WELLINGTON E. WEBB  
Mayor

**L. MICHAEL HENRY**  
**INTERIM DIRECTOR**

PHONE: (720) 913-3195

FAX: (720) 913-3197

July 30, 2001

Helen Eckardt Raabe  
Deputy City Attorney  
Department of Law  
City & County Building  
1437 Bannock, Room 353  
Denver, Colorado

Re: Request for Advisory Opinion Concerning James Mejia  
Case No. 01-18

Dear Ms. Raabe:

You have relayed to us a request for an advisory opinion from the Mayor concerning the potential conflict of interest resulting from the fact that Mr. James Mejia is the Manager of Parks and Recreation and is also a member of the Board of Denver School District No. 1. As you explained to us at the July 20 meeting of the Board, the School District and the Parks and Recreation Department (the Department) enter into a variety of cooperative agreements. An example of such an agreement would be the city being allowed to use a school ball field in exchange for the school being allowed to use a city athletic field. Mr. Mejia indicates in a letter to the Mayor that these types of agreements constitute only 3.5% of the agreements entered into by the Department, or only \$0.5% in the aggregate of the Department's \$92 million budget.

In his letter to the Mayor, Mr. Mejia states that he has undertaken certain steps to "insulate himself from any inadvertent involvement in matters that might pose an actual or apparent conflict of interest between my capacities as Manager of this department and those arising as a member of the Denver School Board." Mr. Mejia has removed himself from all transactions and communications which would ordinarily be received, initiated or signed by the Manager. He will not participate in any "contract requests, grants, cooperative agreements, as well as negotiations, progress reports, vouchers, or other forms of payment, receipts of revenues and associated correspondence." For these matters, Mr. Martin Flahive, Deputy Manager of Finance and Administration will represent the Department. Mr. Flahive has been designated as an alternate signatory for official Department documents.

You also reference Section C5.3 of the City Charter, which provides that officers of the city ". . .(M)ay, subject to the requirements of this section, likewise serve upon such governing

board or body, and receive compensation therefor, or may be employed by any other governmental jurisdiction or agency and receive compensation therefor.”

In general, Section 2-61 of the Code prohibits an officer from taking “direct official action” on a matter before the city if the employee has a “substantial employment, contractual or financial interest in that matter.” Section 2-52 defines “direct official action” to include:

- (1) Negotiating, approving, disapproving, administering, enforcing, or
- (2) recommending for or against a contract, purchase order, lease, concession, franchise, grant of other similar instrument in which the City is a party.
- (3) Enforcing laws or regulations or issuing, enforcing, or regulating permits.

In Section 2-61, the Code states that a substantial interest will be deemed to exist if:

- (1) He or she or a member of the immediate family is a party to the instrument; or
- (2) He, she, a spouse, or a domestic partner owns 1% or more, or a member of the immediate family other than a spouse or domestic partner owns 5% or more, of another party to the instrument; or
- (3) He or she or a member of the immediate family is an officer in another party to the instrument; or
- (4) He or she or a member of the immediate family is directly the instrument; or
- (5) She or a member of the immediate family is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party to the instrument, other than in a purely clerical capacity; or
- (6) A member of his or her immediate family performs more than a nominal portion of the work required by the instrument or supervises or manages more than a portion of the work.

The fact that Mr. Mejia is both the Manager of the Department and sits on the Denver School Board does not in and of itself constitute a conflict of interest under the Code. The conflict would arise only if and when Mr. Mejia would be called upon to take “direct official action” on a matter in which he has a “substantial employment, contractual, or financial interest.” The most effective manner to avoid a conflict of interest from arising is to attempt to ensure, as Mr. Mejia has, that he is not placed in a position where he is called upon to take any direct official action on a matter involving the Denver Public Schools. On the face of it, the plan adopted by Mr. Mejia would seem to accomplish this purpose.

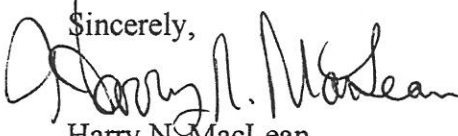
However, the Board would advise Mr. Mejia to take additional steps to ensure that a conflict of interest does not arise. In order to avoid having a “substantial interest” in a matter before the city, particularly as defined in Section 2-61(5) above, Mr. Mejia should take steps to insure that he is not involved directly or indirectly as a Denver School Board member in

any matter involving the Department. We understand that steps are being taken to accomplish this, and we recommend that Mr. Mejia develop, sign, and distribute a document indicating the actions taken in this regard.

In the Board's opinion, this interpretation of the Code is consistent with the intent of the Charter provision quoted above to allow employees and officers to sit on governing boards or public bodies.

Thank you for requesting the advisory opinion. Please feel free to contact the Board if you have any further questions.

Sincerely,

A handwritten signature in cursive script that reads "Harry N. MacLean". The signature is written in dark ink and is positioned above the printed name.

Harry N. MacLean  
Chairman

Copy: James Mejia