

DATE: April 28, 1986

TO: William B. Kolender, Chief of Police
FROM: City Attorney
SUBJECT: Disclosure of a Private Loan to Purchase a
Personal Residence

Because of concerns raised by recent accounts of a fifty thousand dollar (\$50,000) second mortgage from James A. Vaus, Jr. secured by and used to purchase your personal residence, you have asked whether this loan is reportable on your annual Statement of Economic Interest (S.E.I.) Form 730.

Your question raises the often blurred distinction between the reporting requirements of specified officials under the Political Reform Act, California Government Code section 87200 and designated officials under section 87300. While both sections require the reporting of financial information, the Political Reform Act permits individual agencies and their officers to design local codes suited to their own function and authority. Conflict of Interest Codes: Their Purpose and Preparation, Conflict of Interest Division, Fair Political Practices Commission, August, 1976.

Hence local agencies are encouraged to promulgate their own individual conflict of interest codes (Section 87300) subject to certain required provisions (Section 87302). Your reporting requirements as Chief of Police then flow entirely from the reporting requirements specified in the local Conflict of Interest Code of the Police Department adopted by Resolution No. 218256 on April 27, 1977 and revised on February 18, 1986 by Resolution No. 265080.

Section 301 of the Code provides as follows:

SECTION 301 DISCLOSURE STATEMENTS

Designated positions shall be assigned to one or more of the disclosure categories set

forth on EXHIBIT B. Each designated employee shall file an annual statement disclosing that employee's interest in investments, real property, and income, designated as reportable under the category to which the employee's position is assigned on EXHIBIT B.

As Chief of Police, you are required to report under Categories 1, 2 and 3 of Exhibit B which provide as follows:

EXHIBIT "B"

DISCLOSURE CATEGORY

CATEGORY 1: All interests in real property

located within the City of San Diego. "Real property" means any interest or option to purchase an interest in any real property, but does not include a home or property used by the owner primarily for personal or recreational purposes.

CATEGORY 2: All reportable investments in, and all reportable income from, any firm or entity that supplies goods or services to the City of San Diego.

CATEGORY 3: All reportable interests in real property owned or used by any person, firm or entity that supplies goods or services to the City of San Diego.

Therefore you are required to report on Form 730 each matter required by the three (3) categories. This is, of course, not only consistent with the requirements of Section 87300 but is highlighted in the Manual for Statements of Economic Interests for Designated Employees Form 730 published by the Fair Political Practices Commission which states:

WHAT INTERESTS MUST BE DISCLOSED?

Consult your agency's Conflict of Interest Code to determine the types of interests you are required to disclose. These interests are

described in the disclosure categories applicable to your position, which are listed in your agency's Code.

Directing our analysis to the loan in question, loans are considered an aspect of "income."

Sec. 82030. Income

(a) "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property

interest in the income of a spouse.
Income also includes an outstanding loan.

....

(b) "Income" also does not include:

...

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) Used to purchase, refinance the purchase of, or for improvements to, the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars (\$10,000).

(9) Any loan from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan from any such person shall be considered income if the lender is acting as an agent or intermediary for any person not covered by this paragraph.
(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the

public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars (\$10,000).

California Government Code, section 82030 Emphasis added.

As you can readily see, loans are reportable as income unless they qualify under the exemption of Section 82030(b)(8) i.e. a loan from a commercial lending institution made in the regular course of business and at the prevailing rate. Since your loan was from a private lender, it does not qualify for this exemption and hence if reportable it would be included in "income."

However, Category 2 requires you to report "income from any firm or entity that supplies goods or services to the City of San Diego." In keeping with the spirit and substance of local, particularized conflict of interest codes, Section 87300 does not require all income to be reported but rather the income from sources over which the designated official may "foreseeably have

a material effect." Section 87302.

This limitation was carefully crystallized by the Fair Political Practices Commission when it said:

IV. Extent of Disclosure

The amount of disclosure required of any employee in a Conflict of Interest Code is based upon the responsibilities and resultant capacity to materially affect a financial interest of the employee occupying the designated position. For example, a person involved solely in acquisition of heavy equipment on behalf of his or her agency may be required to disclose interests in heavy equipment dealers and/or manufacturers, but would not be required to disclose interests in real property. In addition, disclosure in most circumstances may be limited to financial interests in the jurisdiction, and/or financial interests doing business or planning to do business in the jurisdiction, or having done business within the jurisdiction at any time during the two years prior to the time a statement is required to be filed under the Code.

Conflict of Interest Codes; Their
Purpose and Preparation, Fair Political
Practices Commission (August, 1976)
Emphasis added.

While the loan received from Mr. Vaus was income since it was not from a commercial institution, we have found absolutely no facts to indicate that Mr. Vaus or any entity he controls "supplies goods or services to the City of San Diego." Youth Development, Inc. does receive runaways at a shelter in Clairemont, however, it receives no compensation from the City of San Diego. Hence you could never use your position to increase their revenue and likewise no action of theirs could have any material financial effect on you. Since the loan arises from a relationship in which no foreseeable economic benefit flows from your public decisions, it need not be reported.

That you need not report income from every source is not only entirely in keeping with the requirements of Section 87300, it is indeed in keeping with the entire purpose of conflict of interest disclosure requirements. Disclosure is a light designed to illuminate sources that may be financially benefited by a public decision, not a glare designed to destroy personal privacy.

Since you have no foreseeable influence over decisions involving Mr. Vaus, the local conflict of interest code does not require disclosure.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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