State of California
Fair Political Practices Commission
P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814
Technical Assistance (916) 322-5662 •• Administration 322-5660 •• Executive/Legal 322-5901 •• Enforcement 322-6441

October 24, 1984

CONFIDENTIAL

Charles D. Haughton
City Attorney
City of Beverly Hills
450 North Crescent Drive
Beverly Hills, CA 90210

Re: Your Request for Advice - Disclosure; Our No. A-84-256

Dear Mr. Haughton:

You have written requesting our advice on whether you must report on your Annual Statement of Economic Interests a loan which you received from the City of Beverly Hills. The terms and conditions of that loan are set forth in the City's resolution approving your contract of employment with the City. That contract is a public record and provides for a loan of up to $100,000 to facilitate your purchase of a home in Los Angeles County. It further sets forth the terms of the loan, in detail. The issue is whether the loan is reportable income.

Generally, loans are reportable income. Government Code Sections 87207(1)(a), (2) and (5), 87302(b). However, specific types of loans are excluded from being considered income at all and, hence, are not reportable. Government Code Section 82030(b)(8), (9) and (10). Your loan from the City does not fit within any of these exceptions. However, Section 82030(b)(2) does exempt "salary and reimbursement for expenses or per diem received from a state, local, or federal government agency" from being considered as income.

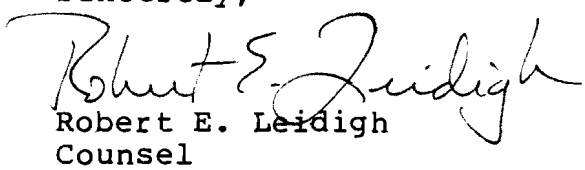
This exemption is based upon two reasons. First, the possibilities of a conflict between the official's duties and the interests of an employing governmental agency are rather limited. Second, the salary, etc. of a public official is normally a matter of public record and so need not be separately disclosed on the official's Statement of Economic Interests.

Here, the loan would appear to be a part of your compensation package and, hence, within the meaning of "salary" as we have interpreted it in the past (to include various employee benefits and official "perks"). In addition, its existence has been disclosed by your employment contract, adopted by an official Council resolution. Therefore, the existence of the loan need not be disclosed on your annual Statement of Economic Interests.

Because we have rendered advice that you need not disclose this loan, this letter will be kept confidential by this agency unless you elect to have it made public.

Should you have any questions, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh

Office of the City Attorney
CHARLES D. HAUGHTON
City Attorney

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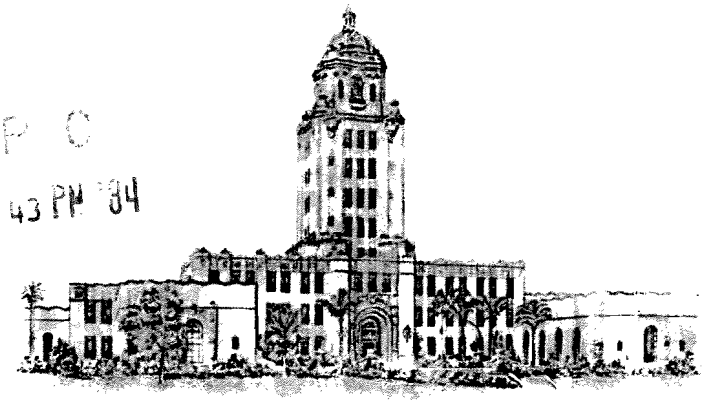

Assistant City Attorneys
JACK ALLEN
JOHN J. O'CONNOR

Deputy City Attorneys
TINA POST
SETH WEISBORD

CITY OF BEVERLY HILLS
450 NORTH CRESCENT DRIVE
BEVERLY HILLS, CALIFORNIA 90210
(213) 550-4877

October 5, 1984

Ms. Barbara Milman, General Counsel
Fair Political Practices Commission
110 "K" Street
Sacramento, California 95814

Re: Disclosure Requirement - City Attorney

Dear Ms. Milman:

This is to request advise as to whether the Political Reform Act of 1974 would require the disclosure, on the Annual Statement of Economic Interests, of a loan which I received from the City as more specifically described in the attached employment agreement between the City and myself.

The issue essentially boils down to whether the aforementioned loan falls within the definition of income as used in Government Code Section 82030 and would therefore be required to be disclosed under Government Section 87103(c) or whether it is exempt as "salary" and therefore excluded from the meaning of income pursuant to Government Code § 82030(b)(2).

This request is presented since there does not appear to be a specific Commission opinion which would be determinative of the definition of salary in the context of the subject loan. While the California courts have opined on whether other salary fringe benefits such as pension or retirement contributions are salary, the type of loan at issue has not been specifically addressed.

While the attached agreement should provide all of the relevant details of the nature of the loan, I note that the loan was extended in connection with and as a part of a pre-employment offer for the position of City Attorney together with salary terms and all other relevant terms of employment.

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The loan arose from the fact that in 1981 I was offered and accepted the position of City Attorney at a time when I resided at a location in Northern California; the acceptance of the City Attorney position necessitated a re-location of my residence in an entirely different housing market. The loan was extended in the same manner as was my original salary conditions as part of an offer for future employment.

Although it appears to me that under the subject circumstances, the loan is akin to salary and therefore excluded from the income disclosure requirement, given the lack of a definitive opinion on this issue and since I wish to honor both the letter and spirit of the law, I respectfully request your advice so that any filings previously made may if necessary be amended and future filings will comply with your office's interpretation.

Very truly yours,

Charles D. Haughton

CHARLES D. HAUGHTON
City Attorney

CDH:TP:ch
Attachment

RESOLUTION NO. 81-R-6311

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS APPROVING AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND CHARLES D. HAUGHTON

The Council of the City of Beverly Hills does hereby resolve as follows:

Section 1. That certain agreement, a copy of which is on file in the office of the City Clerk, between the City of Beverly Hills and Charles D. Haughton relating to appointment of Charles D. Haughton as City attorney is hereby approved.

Section 2. The Mayor is authorized and directed to execute said agreement on behalf of the City and the City Clerk is directed to attest thereto.

Section 3. The City Clerk shall furnish a copy of said agreement after it has been approved and fully executed by the City, along with a copy of this resolution to Charles D. Haughton, Post Office Box 247, Lakeport, California 95453.

Section 4. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and her certification to be entered in the Book of Resolutions of the Council of this City.

Adopted April 14, 1981

Mayor of the City of Beverly Hills, California

ATTEST:

(SEAL)
City Clerk

Approved as to content:

City Manager

Approved as to form for the Acting City Attorney

Assistant City Attorney

CONTRACT NO.
25-81

A G R E E M E N T

This Agreement is entered into this 14th day of April, 1981, by and between the City of Beverly Hills, California, hereinafter called "City" and Charles D. Haughton, hereinafter called "Haughton".

W I T N E S S E T H

WHEREAS, City has appointed Haughton as its City Attorney effective April 13, 1981; and

WHEREAS, Haughton is currently employed as Lake County Counsel and must devote his full time and effort to performing such duties up to and including April 12, 1981; and

WHEREAS, Haughton is presently buying a house in Lake County with attendant costs and financial obligations, which said house, given the current market conditions, cannot be disposed of readily for its fair market value; and

WHEREAS, Lake County is a rural community where housing costs are substantially lower than in the urban Los Angeles area;

NOW, THEREFORE, it is agreed that Haughton accepts the appointment of City Attorney upon the following terms and conditions:

1. City shall pay Haughton an annual compensation of not less than $55,000, payable at the same time as other city officers are paid.

2. Haughton shall receive no less favorable employment fringe benefits than those received by other city department heads, excluding, however, special fringe benefits payable to

Fire and Safety Personnel.

3. City shall pay Haughton his actual moving expenses to move his personal and household goods and furnishings from Lakeport, California, to the Los Angeles area, said sum shall not exceed $1,000.00.

4. City shall pay to Haughton a hardship housing allowance of $500.00 per month for a period of not to exceed 6 months. The first such payment shall be payable on May 1, 1981, and continuing on the 1st day of each month thereafter with the final payment therefor on October 1, 1981, or until Haughton sells his house in Lake County, whichever occurs first.

5. City agrees to assist Haughton in the purchase of a residence in Los Angeles County by making a loan to him of up to $100,000.00, providing, however, that City determines that the residence Haughton selects in Los Angeles County will provide City with adequate security for a Deed of Trust to be placed thereon for the full amount of any such loan, and provided further that Haughton shall use his best efforts to sell his house in Lake County and apply all of the net proceeds from such sale to the reduction of any such loan to him from City. Said loan will be secured by a Deed of Trust on the residence selected by Haughton and approved by City. The promissory note and Deed of Trust shall be on the usual Title Insurance and Trust Company forms. The promissory note shall bear interest at the rate of 9% per annum. Interest on said promissory note shall, at Haughton's election, either be payable to City annually or may accrue and be payable to City one year after termination of Haughton's employment by the City, or upon the sale of the said residence, whichever first

first occurs.

Said promissory note shall be due and payable at City's election either (a) upon sale of said residence, or (b) one year after termination of Haughton's employment by the City.

If said residence is sold and the appreciation in price upon a sale is not sufficient to cover in full the unpaid amount of accrued interest due to City at the time of sale, the accrued interest due to City by Haughton shall be forgiven to the extent of such insufficiency. If Haughton's employment by City is terminated for any reason whatsoever, and said residence is not sold within one year from such termination, the principal balance and the unpaid amount of the interest shall become due and payable at the expiration of said one year.

Haughton shall, until repayment of said promissory note, maintain fire and extended insurance coverage on said residence in an amount not less than the balance due to City and to any senior encumbrancer, and shall name City as a loss payee thereunder.

Should Haughton, for a period of 30 days after they become due, fail to pay any principal or interest payments on the promissory note due to City, or on a promissory note secured by a Deed of Trust on said residence that is either senior or junior to City's, or permit any Deed of Trust on the said residence to go into default, City may, but is not obligated, to pay any sums due or cure any such default and deduct such sums paid or expenses incurred from moneys due or to become due to Haughton from City, or City may, at its election, take possession of said residence and foreclose upon its Deed of Trust.

EXECUTED at Beverly Hills, California, on the day and year first above written.

CITY OF BEVERLY HILLS

BY _____
EDWARD I. BROWN
Mayor

_____
CHARLES D. HAUGHTON

A T T E S T :

BY _____
JEAN M. USHIJIMA
City Clerk

State of California
Fair Political Practices Commission
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October 15, 1984

Charles D. Haughton
City Attorney
450 N. Crescent Drive
Beverly Hills, CA 90210

Re: A-84-256

Dear Mr. Haughton:

Your letter requesting advice under the Political Reform Act has been referred to Robert E. Leidigh, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

Barbara A. Milman

Barbara A. Milman
General Counsel

BAM:plh