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June 24, 2002

Alex Ruiz
City Manager and City Clerk
City of San Luis, Arizona

Re: Complaint of Eddie Jenkins

Dear Mr. Ruiz:

This letter will serve as an opinion of the Office of City Attorney of the City of San Luis regarding the accuracy of certain filings made by Mayor Alex Joe Harper during calendar years 2001 and 2002 at the Office of City Clerk of the City of San Luis pursuant to the provisions of Chapter 3.1 of Title 38 of the Arizona Revised Statutes.

On May 24, 2002, Mr. Michael Edward "Eddie" Jenkins made a complaint at the San Luis Police Department concerning certain financial disclosure statements filed by Alex Joe Harper. The particular financial disclosure statement which was the subject of complaint was the statement filed on December 12, 2001 required by the provisions of ARS §§38-543 and 38-545. ARS §16-924 gives authority for enforcement for violations of elections laws during a municipal election to the Office of City Attorney. Civil penalties for violations of Chapter 3.1 of Title 38 of the Arizona Revised Statutes are to be processed as a matter under ARS §16-924. Therefore, the questions raised by Mr. Jenkins were given to this office to review.

ARS §38-545 mandates that local governments such as cities and towns adopt financial disclosure requirements consistent with Chapter 3.1 of Title 38 of the Arizona Revised Statutes of local public elected officers. ARS §38-543 requires candidates for office to file a disclosure statement covering the preceding 12 months in accordance with the provisions of ARS §38-542. ARS §38-542 requires elected officers to file financial disclosure statements covering the preceding 12 months every year that they hold office. While the same exact form is used for both kinds of statements, the required filings are different. One is a requirement of those seeking elected office and the other is of those holding elected office. Mr. Jenkins, in his form of complaint, while unclear on this point, appears to cover both kinds of filings. The complaint itself is factually inaccurate. Therefore, research had to be conducted to get the correct information. In so doing all such statements for Mr. Harper as filed during the last five (5) years were reviewed.

Alex Joe Harper has been both a member of City Council and Mayor of the City of San Luis. He is presently holding the Office of Mayor. Because the complaint of Mr. Jenkins was factually indistinct, this opinion will cover the period of the last five calendar years. On January 9, 1998, Mr. Harper filed the annual disclosure statement required of elected officials for the period of

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January 1, 1997 to December 31, 1997. No questions have been raised with respect to this filing. On October 9, 2001, Mr. Harper filed statements for the calendar years 1998, 1999, and 2000. These statements were untimely filed. On December 12, 2001, Mr. Harper filed the statement required of those seeking elected office since he decided to run for the Office of Mayor in the 2002 municipal elections. On January 29, 2002, he filed the annual statement for calendar year 2001 as required of those holding office since he held the office of Mayor during calendar year 2001. While the same information is disclosed in both filings, the filings are for two different purposes and must be viewed as two different documents. The statement by Mr. Jenkins that the January filing was an attempt to correct the December filing is factually inaccurate since each filing was for a different purpose under the law.

The major complaint of Mr. Jenkins is that the filing of December 12, 2001 was false because certain liens of the Internal Revenue Service have been filed against Mr. Harper and those alleged debts were not disclosed. It is true that these liens are not disclosed. They were also not disclosed for the filings as an elected official for calendar years 1998, 1999, 2000, and 2001 as well. The issue turns on whether these liens were required to be disclosed in the first place.

ARS §§38-542 and 38-543 make it clear that the period of time to be covered in a filing is the preceding 12 month period only. The subsections of ARS §38-542 provide that the sources of compensation as well as the debts incurred are those that were incurred in the preceding calendar year. The liens of the IRS arise from a failed business that Mr. Harper had an interest in prior to calendar year 1997. The best information that is available is that this business was or is in bankruptcy and has been inactive for quite some time. The liens cited by Mr. Jenkins were for nonpayment of taxes by this business and were incurred prior to January 1, 1997.

In reading the form of disclosure statement, it appears that the information provided by Mr. Harper in each of the filings covered by this opinion is accurate. The form itself, on personal debts, states that one need not disclose debts resulting from the ordinary conduct of business. Those are to be listed in Section C of the form. In Section C only those debts incurred by a controlled business in the preceding calendar year are to be disclosed. The business which incurred the indebtedness with IRS did not have any true business activity since a time well prior to January 1, 1997. The debts of that business were incurred long before that date. When one looks at the form, there really is no place to list or disclose the debts for which Mr. Jenkins makes complaint¹.

As the debts were incurred prior to January 1, 1997, they were not covered by the requirements of ARS §§38-542, 38-543 or 38-545. Therefore, the filings would appear to be

¹ It is to be noted that the assessments made by IRS are being appealed by Mr. Harper, and that IRS has not yet ruled on his appeals. Mr. Harper disputes that he owes these debts. This author offers no opinion on whether these debts are owed by Mr. Harper or not.

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accurate and the failure to disclose the liens of IRS was not an error. The only failure is that the filings for calendar years 1998, 1999, and 2000 appear to be untimely.

The complaint of Mr. Jenkins also would appear to suggest that it is the duty of City officials to look behind a filing and conduct an investigation as to accuracy. No such duty appears in Chapter 3.1 of Title 38 of the Arizona Revised Statutes. The requirement is of the one making the filing to comply with the law. There is no affirmative duty of municipal officers to search other public records or to otherwise investigate these filings for accuracy. Therefore, the complaints of Mr. Jenkins in this area are misplaced as well. If it were such a duty, since these filings are made by every person seeking office and holding office, the City would be investigating approximately 26 such filings by at least 14 persons during calendar year 2001 alone, including one by Mr. Jenkins.

Finally, the complaint attaches some form letters which are in English, and appear to be the same letter, prepared by the same person, yet signed by different people. Information has been received that at least some of these letters were circulated by Ms. Guillermena Fuentes who may have misled those signing as to the contents of the letters. At least one written complaint to that effect has been received from one of the persons signing such a letter. Therefore, once again, the veracity of Mr. Jenkins complaint is called into question.

Recently a complaint was made in the Superior Court sounding in election contest seeking to have Mr. Harper removed from public office. This was filed by Mr. Daniel Gamboa, Delores Concha, and Charles Page. Each of these persons, like Mr. Jenkins, ran in the 2002 municipal elections of the City of San Luis and was not elected. This complaint, in part, makes the same complaint of Mr. Jenkins. In the Superior Court filing there is mention of the failure of one person in a County election to file proper campaign finance reports as required by A.R.S. §16-913, and that failure led to disqualification to run for office. The disclosure statements required by Title 38 are different from, and not connected with, the campaign finance reports required by A.R.S. §16-913. The penalties provided by A.R.S. §38-544 for a violation of the requirements of A.R.S. §§38-542 and 38-545 do not include the loss of public office. Therefore, such relief is not provided by law.

Title 16 requirements are separate and distinct from Title 38. It is true that failure to file proper campaign finance reports can lead to the penalty of disqualification from public office for a period of five years. See ARS §16-918. However, this penalty is reserved for candidate campaign finance reports only, and is not a penalty which can be imposed retroactively as has been sought. The ARS §16-918 penalty is imposed by a filing officer refusing to accept nomination papers in future elections. Therefore, one does not lose an office that one currently holds, even if one violates ARS §16-913.

A separate question is raised concerning whether a civil fine is to be imposed. The matter of whether a fine is to be imposed, and if so, in what amount, will be made at a later date. This decision will be made in the next two weeks.

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Very truly yours,

Glenn Gimbut
Assistant City Attorney