

# MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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## OPINION UNIT

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The Attorney General's Opinion Unit is responsible for researching and drafting the formal opinions of the Attorney General. This Monthly Opinion Report lists all of the questions that are currently under consideration for formal opinions.

If you would like to give us your input on any of these questions, the Opinion Unit would be delighted to hear from you. The Attorney General welcomes and solicits the views of all interested persons concerning the legal issues raised in any question submitted for an opinion. Views should be in writing and directed to the deputy assigned to prepare the opinion. All views submitted before publication will be considered, but early submissions are greatly preferred. All submissions will be treated as public records subject to disclosure under the Public Records Act.

For more information about the Opinion Unit, or to retrieve a copy of a published opinion, please see our website at <http://oag.ca.gov/opinions>.

## QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED DURING APRIL 2018

No matters were assigned in April.

**OPINIONS PENDING**

- 18-304** Are the positions of offices of county supervisor, member of a local transportation commission, and/or member of a multi-agency joint powers agency established to provide public transportation services incompatible public offices? (Daniels)
- 18-303** How is recordation of maps and surveys to be treated under SB 2? (Binsacca)
- 18-302** *Quo Warranto Application:* Is the defendant lawfully residing in the city on whose city council he is serving? (Binsacca)
- 18-301** *Quo Warranto Application:* Are the offices of Vineland School District Board member and Lamont Public Utilities District Board member compatible? (Bidart)
- 18-202** *Quo Warranto Application:* Are defendants lawfully serving on the Fresno County Employees Retirement Board? (Daniels)
- 18-201** Is it a Brown Act violation for joint powers authority members to consult appointing authority in open session? (Bidart)
- 18-103** Does Penal Code section 919(b) require the civil grand jury to annually investigate local detention centers as “public prisons”? (Bidart)
- 17-1201** *Quo Warranto Application:* Does school district trustee lawfully reside in the area she was elected to represent? (Daniels)
- 17-1101** Are the offices of Riverbank City Mayor and Stanislaus Consolidated Fire District Director compatible? (Eisenberg)
- 17-1001** May the same person simultaneously serve as Concord City Council member and as Contra Costa Superintendent of Schools? (Eisenberg)
- 17-903** May a member of a hospital district board of directors simultaneously serve as a member of the city council, or on the planning and development commission, for the city in which the hospital district is located? (Medeiros)
- 17-701** What are the proper uses of civil enforcement penalty funds collected under the Unfair Competition Law? (*On hold pending litigation.*) (Medeiros)
- 17-603** *Quo Warranto Application:* Are Deanna Jackson and Matthew Hurley eligible to hold seats on the Atwell Island Water District Board of Directors? (*On hold pending litigation.*) (Daniels)
- 17-602** May a city condition its grant of a land developer’s application for a “density bonus” (see Gov. Code, section 65915) on the developer’s payment of a public benefit fee?
- 17-202** Does state law preempt the enforcement of a county ordinance that declares “intentionally killed and left standing trees” to be a public nuisance? (Bidart)

- 17-101** May a city validly set health and welfare benefits for its city council members at a dollar amount equal to a set percentage of the benefits provided to the city's highest-income employee group, and, if not, what are the consequences of overpayment? (Bidart)
- 16-702** Does Elections Code section 10515(a) require a county Board of Supervisors to appoint water district directors under circumstances where incompatible office holding would result? (Medeiros)
- 16-402** Must specified prior offenders receive a formal pardon from the Governor in order to obtain a “certificate of rehabilitation and pardon” and qualify for a classified employment position at a school or community college district? (Eisenberg)
- 16-301** May a water district provide retirement contributions to members of its governing board without violating statutory compensation limits? (Medeiros)
- 16-201** May a local jurisdiction require a subdivision applicant to eliminate the designation of a remainder parcel on a tentative parcel map, or require an applicant to provide additional analysis of a remainder parcel that has already been approved for development? (Eisenberg)
- 16-102** When calculating the “maximum allowable residential density” number under the Density Bonus Law, must fractional numbers be rounded up to the next whole number, or may they be rounded up or down consistent with the local jurisdiction’s zoning ordinances and/or general plan? (*On hold pending litigation.*) (Eisenberg)
- 15-1102** Request for advice on the jurisdictional authority of a local housing authority and an out-of-state housing authority under state law. (Binsacca)
- 15-301** Is the time for filing the report required under Business and Professions Code section 805 tolled when a healing arts licentiate requests a hearing on the action that triggered the filing requirement? (Binsacca)
- 14-403** What is the scope of intergovernmental immunity (Gov. Code §§ 53090-53091) where a city owns and leases real property in an unincorporated area of a county? (Nolan)
- 14-202** May the “premium” generated from a school district bond sale be used to pay for expenses of issuance and other transaction costs? (Medeiros)
- 11-705** May a court impose a probation condition on a DUI defendant to make a specified payment to the DUIRR Program? (Eisenberg)
- 11-201** Is a California charter school and its board of directors subject to: a) the Ralph M. Brown Act; or b) the California Public Records Act; or c) the Political Reform Act of 1974; or d) Government Code section 1090; or e) the

review and inspection of books and records, by a Grand Jury formed pursuant to Penal Code section 888? (Most notably, the Grand Jury whose function it is to investigate and inquire into county functions of civil concern, *see also* Penal Code section 933.6.) (Medeiros)

### **CONCLUSIONS OF OPINIONS ISSUED IN APRIL 2018**

**14-301—April 3, 2018**—1. A city council member who is also an attorney may not advocate on behalf of a client’s interests when those interests are adverse to the city.

2. A city council member who is also a practicing attorney may not participate in a governmental decision concerning a client’s interests when those interests are adverse to the city.

**17-601—April 11, 2018**—Proposed relator does not raise a substantial question of law or fact that warrants initiating a judicial proceeding, and allowing the proposed quo warranto action to proceed would not serve the public interest. Proposed relator’s application for leave to sue in quo warranto is therefore DENIED.

**17-902—April 24, 2018**—Whether proposed relator’s nominee was “a representative of a city” and was therefore improperly excluded from consideration for appointment—thereby requiring proposed defendant’s removal from office so that a new appointment process may be conducted—presents substantial questions of law and fact warranting judicial resolution. Further, allowing the action to proceed would serve the public interest. Therefore, leave to sue in quo warranto is GRANTED.

**17-702—April 27, 2018**—The City of Hollister’s resolution approving the execution of an agreement to sell real property for development, pursuant to an approved plan for disposing a dissolved redevelopment agency’s property, is not subject to referendum.

### **OPINIONS CONCLUDED IN APRIL 2018** *(Answered by Letter, Withdrawn or Cancelled)*

18-104 Withdrawn 4/19/18

17-108 Cancelled 4/23/18

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