

# MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



ROB BONTA  
Attorney General  
VENUS D. JOHNSON  
Chief Deputy Attorney General  
MICHAEL J. MONGAN  
Solicitor General

OPINION UNIT  
Mollie Lee, Senior Assistant Attorney General  
Marc J. Nolan, Acting Senior Assistant Attorney General  
Catherine Bidart, Deputy Attorney General  
Karim J. Kentfield, Deputy Attorney General  
Susan Duncan Lee, Deputy Attorney General  
Ryan B. McCarroll, Deputy Attorney General  
Manuel M. Medeiros, Deputy Attorney General  
Heather Thomas, Deputy Attorney General  
Stephanie Grimes, Associate Governmental Program Analyst



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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.

The Attorney General welcomes and solicits the views of all interested persons concerning the issues raised in any question submitted for an opinion. Views should be in writing and directed to the deputy assigned to prepare the opinion. Contact information for deputies is included at the end of this report. 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>.

## NEW QUESTIONS ASSIGNED DURING APRIL 2023

### **23-401 requested by El Dorado County District Attorney Vern Pierson**

Is it permissible for prosecutors to issue criminal grand jury subpoenas for a future date when the Penal Code section 904.6 criminal grand jury has not yet been empaneled, but which will be empaneled by the witness appearance date?

(Assigned to Deputy Attorney General Susan Duncan Lee.)

### **23-402 Quo Warranto Application**

Was the Lodi City Council seat now occupied by Ramon Yepez lawfully vacated so as to permit Mr. Yepez's appointment to that seat?

(Assigned to Deputy Attorney General Catherine Bidart.)

## OPINIONS ISSUED OR CONCLUDED DURING APRIL 2023

No opinions were issued or concluded during this period.

### OPINIONS PENDING

#### Opinion Requests

- 23-401** Is it permissible for prosecutors to issue criminal grand jury subpoenas for a future date when the Penal Code section 904.6 criminal grand jury has not yet been empaneled, but which will be empaneled by the witness appearance date? (Duncan Lee)
- 23-302** May an appointed public member of the City of San Diego Audit Committee concurrently serve in certain other capacities within San Diego municipal government without violating the incompatible public office prohibition of Government Code section 1099 (or other applicable state law)? If so, would the San Diego City Council violate state law by appointing the same individual to these positions? (Kentfield)
- 23-201** 1. Does the probable cause standard for a grand jury criminal indictment state a lower standard of proof than preponderance of the evidence? 2. Must the word “shall” as used in Penal Code section 939.8, pertaining to the grand jury’s issuance of a criminal indictment, be construed as “should” in order to avoid possible constitutional infirmity? (McCarroll)
- 23-103** Whether state law authorization, under an agreement pursuant to Chapter 25 of Division 10 of the Business and Professions Code, for medicinal or adult-use commercial cannabis activity, or both, between out-of-state licensees and California licensees, will result in significant legal risk to the State of California under the federal Controlled Substances Act. (Kentfield)
- 23-102** 1. Is it a violation of the Brown Act for a mayor to deliver a “State of the City” address to attendees at a fee-only private event specifically held to facilitate the address, where all or a quorum of fellow council members are in attendance? 2. Does the “conference exception” of the Brown Act apply? 3. Does the “community meetings exception” of the Brown Act apply? (McCarroll)
- 23-101** Do the disclosure and recusal provisions of SB 1439 apply to political contributions made before January 1, 2023? (Thomas)
- 22-1201** Given that California wineries applying for a direct shipper license in another state are often asked to provide a criminal record check in connection with that application, if a California winery owner or manager obtains a criminal record check from the California Department of Justice, would furnishing that criminal record check—or notification no such record exists—to another state’s alcohol

- control agency constitute a violation of California Penal Code sections 11121, 11125, 11142, or 11143? (Duncan Lee)
- 22-701** 1. Does Penal Code section 904.6 require a court to impanel a grand jury at the district attorney's request? 2. Do the prosecution's discovery obligations under *Brady* and Penal Code section 1054.1 include criminal grand jury materials? (Bidart)
- 22-602** Does the State Bar of California have the jurisdiction to regulate non-attorney legal document assistants who are not engaged in the practice of law? (Kentfield)
- 22-402** Is the governing body of the San Bernardino County District Advocates for Better Schools (SANDABS), a lobbying association within the meaning of Government Code section 53060.5, a "legislative body" within the meaning of the Brown Act, Government Code section 54952? (Medeiros)
- 21-1001** 1. May a county adopt policies to address the environmental impacts of pesticides in a Local Coastal Program without violating Food and Agricultural Code section 11501.1? 2. May a county adopt ordinances to regulate pesticides in the coastal zone to implement Local Coastal Program requirements? (Duncan Lee)

Quo Warranto Matters

- 23-402** Was the Lodi City Council seat now occupied by Ramon Yepez lawfully vacated so as to permit Mr. Yepez's appointment to that seat? (Bidart)
- 23-203** May Karen Macedonio serve simultaneously as a member of both the City Council of California City and the East Kern Health Care District Board of Directors? (Bidart)
- 22-1002** Has David Marquez vacated his seat on the Moreno Valley City Council due to unexcused absences from council meetings for the time periods specified in Government Code section 36513? (Duncan Lee)
- 22-802** May Paul Keefer serve simultaneously as a member of the Sacramento County Board of Education and as the President, Chief Executive Officer, and Executive Director of the Pacific Charter Institute, a charter management organization which operates charter schools in Sacramento and other California counties? (Medeiros)

## CONTACT US

The Opinion Unit invites comments on the questions posed in pending opinion requests. To share your views, please contact the deputy assigned to prepare the opinion. Deputies can be reached at the following email addresses and telephone numbers:

Catherine Bidart, Deputy Attorney General:

[Catherine.Bidart@doj.ca.gov](mailto:Catherine.Bidart@doj.ca.gov); (213) 269-6384.

Karim J. Kentfield, Deputy Attorney General:

[Karim.Kentfield@doj.ca.gov](mailto:Karim.Kentfield@doj.ca.gov); (415) 510-3833.

Susan Duncan Lee, Deputy Attorney General:

[Susan.Lee@doj.ca.gov](mailto:Susan.Lee@doj.ca.gov); (415) 510-3815.

Ryan B. McCarroll, Deputy Attorney General:

[Ryan.McCarroll@doj.ca.gov](mailto:Ryan.McCarroll@doj.ca.gov); (916) 210-7668.

Manuel M. Medeiros, Deputy Attorney General:

[Manuel.Medeiros@doj.ca.gov](mailto:Manuel.Medeiros@doj.ca.gov); (916) 210-6004.

Heather Thomas, Deputy Attorney General:

[Heather.Thomas@doj.ca.gov](mailto:Heather.Thomas@doj.ca.gov); (916) 210-6269.

To submit an opinion request, please contact Marc J. Nolan, Acting Senior Assistant Attorney General, at [Marc.Nolan@doj.ca.gov](mailto:Marc.Nolan@doj.ca.gov) or (213) 269-6392.

To submit a quo warranto application, please contact Marc J. Nolan, Acting Senior Assistant Attorney General, at [Marc.Nolan@doj.ca.gov](mailto:Marc.Nolan@doj.ca.gov) or (213) 269-6392.

For all other inquiries, please contact Stephanie Grimes, Associate Governmental Program Analyst, at [Stephanie.Grimes@doj.ca.gov](mailto:Stephanie.Grimes@doj.ca.gov) or (916) 210-6005.

You may also contact the Opinion Unit at the following address:

Office of the Attorney General  
Opinion Unit, Department of Justice  
Attn: Stephanie Grimes, AGPA  
P. O. Box 944255  
Sacramento, CA 94244-2550.