

# MONTHLY OPINION REPORT

## CALIFORNIA ATTORNEY GENERAL'S OFFICE



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**May 1, 2024**

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 2024**

#### **24-401 requested by Senator Brian Dahle**

Asks for an interpretation of Public Utilities Code section 12820—pertaining to municipal utility districts and the “security forces” they may choose to employ—specifically whether such districts are “legally obligated to conform” to the statute’s provisions regarding the recruitment, training, authority, and powers of those designated as security officers.

(Assigned to Deputy Attorney General Catherine Bidart.)

**24-402 requested by Tom Welsh, as California Earthquake Authority's Interim Chief Executive Officer and on behalf of California Earthquake Authority's Governing Board**

When a state body is required by statute to consider and deliberate on privileged, proprietary, or other confidential information related to the conduct of a privately-funded business activity (in this case, the transaction of residential earthquake insurance in the state), does the Bagley-Keene Open Meeting Act require such discussion to occur in an open session of a public meeting?

(Assigned to Deputy Attorney General Manuel M. Medeiros.)

**24-403 requested by Assemblymember Eduardo Garcia**

May federally recognized Indian tribes which are located exclusively within the exterior boundaries of the State of California, and who have adopted laws that impose comprehensive requirements substantially comparable to the California Cannabis Regulatory Framework, lawfully conduct intrastate commercial cannabis activity solely within the State of California with California state cannabis licensees without obtaining such a license themselves?

(Assigned to Deputy Attorney General Heather Thomas.)

**24-405 requested by Jennifer Lucchesi, Executive Officer, California State Lands Commission**

Has the United States acquired legislative jurisdiction at San Clemente Island, Los Angeles County, pursuant to Chapter 56, Statutes of 1897?

(Assigned to Deputy Attorney General Ryan B. McCarroll.)

**OPINIONS ISSUED OR CONCLUDED DURING APRIL 2024**

**Opinion No. 23-102 (issued April 18, 2024)**

*Questions Presented and Conclusions:*

The Ventura Chamber of Commerce hosted an annual breakfast at which the mayor, who is a member of the city council, delivered a "State of the City" address. Members of the public could attend the event in person, but only if they purchased a ticket from the

chamber of commerce. There was no other way for the public to watch the address in real time. Given this context, the questions presented are:

1. If a majority of the members of the city council were to attend the event described above, would that event constitute a “meeting” of the city council within the scope of the Brown Act under Government Code section 54952.2(a)?

Yes. If a majority of the members of the city council were to attend the event described above, that event would constitute a congregation of a majority of the councilmembers at the same time and location to hear—and potentially discuss—an item within their subject matter jurisdiction. As such, the event would constitute a “meeting” of the city council within the meaning of Government Code section 54952.2(a), and the meeting would have to comply with the open-meeting requirements of the Brown Act, unless a statutory exception applies.

2. Would the Brown Act exception for conferences or similar gatherings set forth in Government Code section 54952.2(c)(2) apply to such an event?

No. The event as described consisted of a single speech by a single official regarding the state of a single city. As such, it would not satisfy the Brown Act exception for conferences and similar gatherings set forth in Government Code section 54952.2(c)(2) because that exception involves a discussion of issues of general interest to the public or to public agencies of the type represented by the city council.

3. Would the Brown Act's exception for “community meetings” set forth in Government Code section 54952.2(c)(3) apply to such an event?

No. The Brown Act exception for community meetings set forth in Government Code section 54952.2(c)(3) requires, among other things, that the event must be open to the public. The event in question would not satisfy that element because members of the public could only attend by purchasing a ticket from the chamber of commerce.

**Opinion No. 23-902 (issued April 25, 2024)**

*Question Presented and Conclusion:*

Under California's Local Control Funding Formula, or “LCFF,” established by the Education Code, school districts and other local educational agencies receive supplemental funding based on the number of students they serve who qualify as “unduplicated pupils” under sections 42238.02 and 2574. May the Legislature expand the statutory definition of

“unduplicated pupil” to provide supplemental funding for all members of the pupil subgroup that had the lowest performance on the most recently available statewide assessment exams? The pupil subgroups that would be eligible for this supplemental funding would be only those subgroups identified in Education Code section 52052(a)(2) that do not already receive supplemental funding through the LCFF or other state or federal resources.

No, the Legislature may not amend the LCFF statute in the specified manner. The only pupil subgroups listed in section 52052(a)(2) that do not already receive supplemental state or federal funding are what the statute calls the “ethnic subgroups”—which consist of students identifying as Black or African American, American Indian or Alaska Native, Asian, Filipino, Hispanic or Latino, Native Hawaiian or Pacific Islander, White, or two or more races. The purpose and effect of the legislative proposal is therefore to identify the ethnic subgroup of students with the lowest average performance on the most recent statewide exams, and then provide supplemental funding for all students in that ethnic subgroup, including students with high individual test scores. By conditioning state education funding on student ethnicity, regardless of individual performance, the proposal would violate the federal Constitution.

## OPINIONS PENDING

### Opinion Requests

- 24-405** Has the United States acquired legislative jurisdiction at San Clemente Island, Los Angeles County, pursuant to Chapter 56, Statutes of 1897? (McCarroll)
- 24-403** May federally recognized Indian tribes which are located exclusively within the exterior boundaries of the State of California, and who have adopted laws that impose comprehensive requirements substantially comparable to the California Cannabis Regulatory Framework, lawfully conduct intrastate commercial cannabis activity solely within the State of California with California state cannabis licensees without obtaining such a license themselves? (Thomas)
- 24-402** When a state body is required by statute to consider and deliberate on privileged, proprietary, or other confidential information related to the conduct of a privately-funded business activity (in this case, the transaction of residential earthquake insurance in the state), does the Bagley-Keene Open Meeting Act require such discussion to occur in an open session of a public meeting? (Medeiros)

- 24-401** Asks for an interpretation of Public Utilities Code section 12820—pertaining to municipal utility districts and the “security forces” they may choose to employ—specifically whether such districts are “legally obligated to conform” to the statute’s provisions regarding the recruitment, training, authority, and powers of those designated as security officers. (Bidart)
- 24-201** Does the term “voluntary carbon offset,” as used in Assembly Bill No. 1305 (Stats. 2023, ch. 365), include the use of Renewable Energy Certificates, also known as renewable energy credits, when used outside of California’s Renewable Portfolio Standard program? (Kentfield)
- 24-102** Is Madera County’s Regional Water Management Group subject to the Brown Act? (Thomas)
- 24-101** Under the terms of Water Code Appendix section 121-408, may the Fox Canyon Groundwater Management Agency hire its own staff or contract with an entity other than the County of Ventura or the United Water Conservation District for staff services? (Duncan Lee)
- 23-1101** Does the doctrine of incompatible public offices preclude the same individual from simultaneously serving on both the San Benito County Planning Commission and San Benito County Board of Education? (Thomas)
- 23-1002** Are public entities required to offer remote participation as a reasonable accommodation under the Americans with Disabilities Act (ADA) to members of boards and commissions regulated by the Brown Act open meetings law? (Bidart)
- 23-1001** Does California law prohibit the offering and operation of daily fantasy sports betting platforms with players physically located within the State of California, regardless of whether the operators and associated technology are located within or outside of the State? (Kentfield)
- 23-701** Does the California Office of Tax Appeals have the legal authority and jurisdiction to issue a written opinion declaring a provision in the California Code of Regulations, which was promulgated by a different state agency and approved by the Office of Administrative Law, to be invalid and refuse to enforce the regulation on that basis? (Kentfield)
- 23-601** 1. May the California State Teacher’s Retirement System (CalSTRS) assess a penalty against a county office of education (COE) for errors in the CalSTRS reporting and contributions of a charter school that operates within the county

- and submits its CalSTRS payments through the COE? 2. If so, how may the COE defend against an assessment it believes to be incorrect? 3. Could CalSTRS issue a warrant that would allow the COE to withdraw funds directly from an agency that provides its CalSTRS reporting and contributions through the COE if that agency refuses to submit its penalty assessments to the COE voluntarily? (Medeiros)
- 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)
- 23-201** 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)

#### Quo Warranto Matters

- 24-301** Was Mark Skvarna lawfully appointed as Interim Superintendent of the Montebello Unified School District? (McCarroll)
- 23-901** Were Pablo Bryan and Jeffrey McClenahan validly appointed to the Temecula-Elsinore Anza Murrieta Resource Conservation District Board of Directors? (Duncan Lee)

### 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:

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To submit an opinion request, please contact Marc J. Nolan, 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, 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:

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