

# MONTHLY OPINION REPORT

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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.

### QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED DURING APRIL 2015

**15-201** requested by Assemblymember Cristina Garcia concerning the following question:

What are the reporting requirements under the Child Abuse and Neglect Reporting Act for consensual acts between minors of a like age? (Assigned to Deputy Attorney General Diane E. Eisenberg)

**15-301** requested by Medical Board of California Executive Director Kimberly Kirchmeyer concerning the following question:

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? (Assigned to Deputy Attorney General Anya M. Binsacca )

**15-401** requested by Relator Los Angeles County District Attorney Jackie Lacey concerning the following question:

Quo warranto matter: May the same person simultaneously serve as a Director of the Water Replenishment District of Southern California and member of the Carson city council? (Assigned to Deputy Attorney General Lawrence M. Daniels)

**15-402** requested by Senator Jerry Hill concerning the following question:

What state oversight mechanisms may constitute "active state supervision" for purposes of the state action immunity doctrine in antitrust actions? (Assigned to Supervising Deputy Attorney General Susan Duncan Lee)

### OPINIONS PENDING

- 11-201** Is a California charter school and its board or 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, *also see* Penal Code section 933.6.) (Medeiros)
- 11-705** May a court impose a probation condition on a DUI defendant to make a specified payment to the DUIRR Program? (Eisenberg)
- 12-401** To facilitate compliance with *Brady v. Maryland*, may the California Highway Patrol lawfully release to the district attorney's office the names of officers who have sustained complaints of dishonesty or moral turpitude conduct, with no information other than the officer's name and date of earliest conduct, so that the district attorney may bring a *Pitchess/Brady* motion for in camera review of the officers' personnel files? Does Penal Code section 832.7, subdivision (a), authorize the district attorney to routinely review the personnel files of peace officers who will be prosecution witnesses? (Lee)
- 12-409** Whether a private attorney acting as a contract city attorney can also act as "bond counsel" for the same municipality and be paid based on a percentage of the bond sale without violating Government Code section 1090? (Binsacca)

- 12-1203** May a former local agency employee serve on that same public agency's elected Board of Directors while still being carried on that agency's employee payroll solely for purposes of utilizing unused vacation leave remaining from his/her time as an active employee? (Eisenberg)
- 13-304** In connection with a school or community college bond measure, does a district violate state law by contracting with a bond underwriter for both pre-election campaign services and post-election underwriting services? (Medeiros)
- 13-403** Does Proposition 26 require that prior to a County Board of Supervisors enacting an ordinance requiring a cable television company to pay to the County a PEG (public, educational, and governmental access) fee equal to one percent (1%) of the gross revenues under the Digital Infrastructure and Video Competition Act ("DIVCA"), the voters must first approve the imposition of such a fee? (Binsacca)
- 13-901** Are reverse cellular phone kiosks "secondhand dealers" within the meaning of Business and Professions Code section 21626? (Binsacca)
- 13-903** Does Government Code section 1090 prohibit a city agency from utilizing the services of a public relations firm that occasionally retains the services of a city council member for its non-city clients? (Nolan)
- 13-904** Does state law preempt a local ordinance that would require dentists in that jurisdiction to provide their patients with a Dental Materials Fact Sheet and Statement of Rights before performing specified procedures? (Eisenberg)
- 13-1101** May a county clerk charge the district attorney's office for certified court records? (Medeiros)
- 13-1202** Are medical assistants legally permitted to perform basic pulmonary function testing, such as spirometry? (Daniels)
- 13-1203** May health care professionals offer online discounts for their services through a third-party internet marketer? (Medeiros)
- 14-101** 1. May non-attorneys represent parties in (1) administrative proceedings conducted before the Office of Administrative Hearings, or (2) "due process hearings" conducted under the Education Code? (Medeiros)
- 14-202** May the "premium" generated from a school district bond sale be used to pay for expenses of issuance and other transaction costs? (Nolan)
- 14-301** May an attorney who sits on a city council represent clients with interests adverse to that city? (Daniels)
- 14-302** Under the Brown Act open meetings law, may a community college board of trustees meet in closed session to discuss and negotiate the terms of a project labor agreement? (Daniels)

- 14-304** Under state law, may local authorities restrict parking on public streets to those persons issued residential parking permits? (Russell)
- 14-307** May an automated photographic enforcement system (AES) be used to detect and enforce violations of the anti-gridlock law (Veh. Code section 22526) at intersections where an AES is otherwise authorized? (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? (Russell)
- 14-603** Are the City of Fortuna's dog licensing ordinances authorized under state law? (Daniels)
- 14-901** If a school superintendent's employment contract allows the superintendent to receive cash in lieu of medical benefits, may the school board members receive an equivalent sum in a whole life insurance policy in lieu of medical benefits? (Daniels)
- 14-902** Must licensed subcontractors "pre-qualify" for school district projects under Public Contracts Code section 20111.6? (Medeiros)
- 14-1203** Do technical failures in local agencies' websites violate online agenda posting requirements subject to the Brown Act open meeting laws? (Gov. Code § 54954.2) (Binsacca)
- 14-1206** Must Caltrans pay fees imposed by county to cover county's costs for inspecting and reporting on Caltrans surface mining operations within the county? (Russell)
- 15-101** May Prison Industry Authority deposit funds in a commercial bank account not subject to immediate access or control by other state agencies? (Binsacca)
- 15-201** What are the reporting requirements under the Child Abuse and Neglect Reporting Act for consensual acts between minors of a like age? (Eisenberg)
- 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)
- 15-401** Quo warranto matter: May the same person simultaneously serve as a Director of the Water Replenishment District of Southern California and member of the Carson city council? (Daniels)
- 15-402** What state oversight mechanisms may constitute "active state supervision" for purposes of the state action immunity doctrine in antitrust actions? (Lee)

### CONCLUSIONS OF OPINIONS ISSUED IN APRIL 2015

**13-202—April 8, 2015—**1. The law that prescribes the development and issuance of uniform standards for healing arts boards to use in dealing with their “substance-abusing licensees” is not invalid either (a) for vagueness or (b) as an improper delegation of legislative authority to the committee charged with formulating the standards.

2. The uniform standards need not be adopted as regulations under the Administrative Procedure Act in order to be effective. Individual healing arts boards may, but are not required to, adopt regulations incorporating the uniform standards for the purpose of administering their own programs.

3. Individual healing arts boards may adopt regulations defining the term “substance-abusing licensees” for purposes of determining which of their licensees are subject to the uniform standards, so long as such regulations are consistent with the legislation directing the formulation and issuance of the uniform standards and reasonably necessary to effectuate the purposes of that legislation.

4. To the extent practicable, individual healing arts boards must use the uniform standards as written in all cases in which they are found to apply, but the boards retain discretion in applying the uniform standards to particular circumstances and in deciding individual cases.

### OPINIONS CANCELLED IN APRIL 2015

09-301 Withdrawn 4/15/15

The deputies assigned to the questions submitted can be reached at the following addresses and telephone numbers:

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