

MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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September 1, 2023

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 AUGUST 2023

No opinion requests were assigned during this period.

OPINIONS ISSUED OR CONCLUDED DURING AUGUST 2023

Opinion No. 22-701 (issued August 24, 2023)

Questions Presented and Conclusions:

1. Does Penal Code section 904.6 require a court to impanel a grand jury upon a district attorney's request?

No. Penal Code section 904.6 provides that a court *may* impanel a grand jury upon a district attorney's request, but does not require it.

2. Do prosecutors' disclosure obligations under *Brady v. Maryland* (1963) 373 U.S. 83 and Penal Code section 1054.1 encompass materials from criminal grand jury proceedings, despite the fact that those proceedings are conducted in secret?

Yes. Prosecutors' disclosure obligations under *Brady* and Penal Code section 1054.1 encompass materials from criminal grand jury proceedings, despite the fact that those proceedings are conducted in secret.

OPINIONS PENDING

Opinion Requests

- 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)
- 23-501** Do federally recognized Indian tribes located within California, who have adopted laws that impose requirements similar to the standards imposed on state licensees by California's regulatory framework, qualify as a "contracting state" as that term is defined in Business and Professions Code section 26300(b), relating to interstate cannabis agreements? (Thomas)
- 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** Would it violate the incompatible public office prohibition of Government Code section 1099 (or other applicable state law) for an appointed public member of the City of San Diego Audit Committee to concurrently serve in any of the following capacities: (1) as an appointed public member of the San Diego Association of Governments Audit Policy Advisory Committee; (2) as an appointed public member of the San Diego Association of Governments TransNet Independent Taxpayer Oversight Committee; or (3) as the Internal Auditor of the San Diego Metropolitan Transit System? 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** Could 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, 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)

- 22-402** 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

- 23-602** May Kathleen Garcia serve simultaneously as a board member of the Board of Trustees for both the San Joaquin Delta Community College District and the Eastside Rural Fire Protection District? (Bidart)
- 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)
- 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 that 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:

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To submit an opinion request, please contact Marc J. Nolan, Senior Assistant Attorney General, at 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 or (213) 269-6392.

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

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

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