

MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



XAVIER BECERRA
Attorney General

SEAN McCLUSKIE
Chief Deputy
to the Attorney General

ANTONETTE CORDERO
Chief, Div. of Legal Affairs

OPINION UNIT

Susan Duncan Lee, Sr. Asst. AG
Marc J. Nolan, Lead Deputy AG
Catherine Bidart, Deputy
Anya M. Binsacca, Deputy
Lawrence M. Daniels, Deputy
Diane E. Eisenberg, Deputy
Manuel M. Medeiros, Deputy
Stephanie Grimes, SSA



OPINION UNIT

P. O. Box 944255

Sacramento, CA 94244-2550

(916) 210-6005

January 2, 2018

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 DECEMBER 2017

17-1201 requested by Relator Klamath-Trinity Unified School District concerning the following question:

Quo Warranto Application: Does school district trustee lawfully reside in the area she was elected to represent? (Assigned to Deputy Attorney General Lawrence M. Daniels)

OPINIONS PENDING

- 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)
- 17-902** *Quo Warranto Application:* Was John Oskoui properly appointed to Central Basin Water District? (Daniels)
- 17-702** Is a development agreement, entered into by a successor agency pursuant to an approved long-range plan, subject to referendum under Article II Section 9 of the California Constitution? (Bidart)
- 17-701** What are the proper uses of civil enforcement penalty funds collected under the Unfair Competition Law? (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? (*Suspended due to pending litigation.*) (Daniels)
- 17-601** *Quo Warranto Application:* Did Dixon City Council member Devon Minnema satisfy the district residency requirement for the council seat he now holds? (Bidart)
- 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)
- 17-108** Does the ban on state-funded travel set forth in Government Code section 11139.8 apply to University of California and California State University athletic team staffs? (Eisenberg)
- 17-103** Does the county procurement process pose a conflict of interest or violate anti-competition laws? (Binsacca)
- 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 due to 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)
- 15-101** May the Prison Industry Authority deposit funds in a commercial bank account not subject to immediate access or control by other state agencies? (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)
- 14-301** May an attorney who sits on a city council represent clients with interests adverse to that city? (Daniels)
- 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)
- 12-1203** May a former local agency employee serve on that 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)
- 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 DECEMBER 2017

17-301—December 12, 2017—1. Leave to sue in quo warranto is GRANTED to determine whether Sandra Meraz is unlawfully serving as a board trustee of the Deer Creek Storm Water District because she was appointed to fill a vacancy by the remaining members of the district board, rather than by the Tulare County Board of Supervisors.

2. Leave to sue in quo warranto is DENIED to determine whether Kayode Kadara is unlawfully serving as a board trustee of the Deer Creek Storm Water District because he is not a “freeholder” of land within the district.

OPINIONS CONCLUDED IN DECEMBER 2017

(Answered by Letter, Withdrawn or Cancelled)

17-602 Withdrawn 12/4/17

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

Susan Duncan Lee, Senior Assistant Attorney General:

Susan.Lee@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-5876.

Marc J. Nolan, Lead Deputy Attorney General:

Marc.Nolan@doj.ca.gov; 300 S. Spring Street, Los Angeles, CA 90013; (213) 269-6392.

Catherine Bidart, Deputy Attorney General:

Catherine.Bidart@doj.ca.gov; 300 S. Spring Street, Los Angeles, CA 90013; (213) 269-6384.

Anya M. Binsacca, Deputy Attorney General:

Anya.Binsacca@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-5713.

Lawrence M. Daniels, Deputy Attorney General:

Larry.Daniels@doj.ca.gov; 300 S. Spring Street, Los Angeles, CA 90013; (213) 269-6388.

Diane E. Eisenberg, Deputy Attorney General:

Diane.Eisenberg@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000,
San Francisco, CA 94102; (415) 703-1821.

Manuel M. Medeiros, Deputy Attorney General:

Manuel.Medeiros@doj.ca.gov; P. O. Box 944255, Sacramento, CA
94244-2550; (916) 210-6004.