

# MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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**January 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 DECEMBER 2023

### 23-1201 Quo Warranto Application

Has Bellevue Elementary School District board member Jason Vassar become "physically or mentally incapacitated" such that there is reasonable cause to believe he will be unable to perform the duties of his office for the remainder of his term within the meaning of Government Code section 1770(b)?

(Assigned to Deputy Attorney General Karim J. Kentfield.)

## **OPINIONS ISSUED OR CONCLUDED DURING DECEMBER 2023**

### **Opinion No. 23-103 (issued December 19, 2023)**

*Question Presented and Conclusion:*

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” within the meaning of Business and Professions Code section 26308(a)(4)?

Yes. State-law authorization for commercial cannabis activity between out-of-state licensees and California licensees could “result in significant legal risk to the State of California under the federal Controlled Substances Act” within the meaning of section 26308(a)(4) due to the risks of federal preemption of state law and criminal prosecution of state employees. Courts have disagreed about the scope of federal preemption in the cannabis context, and no court has ever considered a preemption challenge to a state law authorizing *interstate* cannabis sales. The law is also unsettled as to whether state officials could be federally prosecuted for implementing state law in this area.

### **Opinion No. 23-1201 (issued December 29, 2023)**

*Question Presented and Conclusion:*

The BELLEVIEW ELEMENTARY SCHOOL DISTRICT has applied to this office for leave to sue JASON VASSAR in quo warranto to remove him from his seat on the School District's Board. The application asserts that Vassar is subject to removal under Government Code section 1770(b) because he is mentally incapacitated and unable to perform his job duties.

We conclude that there are substantial issues of law and fact as to whether the requirements of section 1770(b) are satisfied. We further conclude that the public interest will be served by allowing the proposed quo warranto action to proceed. Consequently, the application for leave to sue is GRANTED.

## OPINIONS PENDING

### Opinion Requests

- 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)
- 23-902** May the Legislature amend the definition of “unduplicated pupil” in California Education Code sections 42238.02 and 2574 (relating to the Local Control Funding Formula, or “LCFF”) to also include all members of the pupil subgroup that had the lowest performance on the most recently available statewide assessment exams? For these purposes, the relevant pupil subgroups are those defined in Education Code section 52052(a)(2), except for those subgroups already receiving LCFF funding or supplemental funding through other state or federal resources. (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)

- 23-501** 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)
- 23-201** 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)
- 23-102** 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)
- 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

- 23-901** Were Pablo Bryan and Jeffrey McClenahan validly appointed to the Temecula-Elsinore Anza Murrieta Resource Conservation District Board of Directors? (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 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](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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