

MONTHLY OPINION REPORT

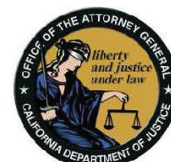
CALIFORNIA ATTORNEY GENERAL'S OFFICE



XAVIER BECERRA
Attorney General

SEAN McCLUSKIE
Chief Deputy
to the Attorney General

OPINION UNIT
Susan Duncan Lee, Sr. Asst. AG
Marc J. Nolan, Deputy
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

March 1, 2020

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>.

NEW QUESTIONS ASSIGNED DURING FEBRUARY 2020

20-201 requested by Santa Monica City Attorney Lane Dilg concerning the following question:

Does the common law doctrine against conflicts of interest require a city councilmember to recuse oneself from labor negotiations involving health and retirement benefits where the councilmember's adult, non-dependent child is a member of the relevant bargaining group? (Assigned to Deputy Attorney General Catherine Bidart.)

20-202 requested by Assemblymember Lorena Gonzalez concerning the following question:

Under Government Code section 12519, does a county board of supervisors have jurisdiction to hear PACE assessment appeals, and, if so, what is the administrative procedure? (Assigned to Deputy Attorney General Marc J. Nolan.)

OPINIONS PENDING
Opinion Requests

- 20-202** Under Government Code section 12519, does a county board of supervisors have jurisdiction to hear PACE assessment appeals, and, if so, what is the administrative procedure? (Nolan)
- 20-201** Does the common law doctrine against conflicts of interest require a city councilmember to recuse oneself from labor negotiations involving health and retirement benefits where the councilmember's adult, non-dependent child is a member of the relevant bargaining group? (Bidart)
- 20-102** Are the offices of executive director of a charter school (or similar title) and member of the county board of education in the same county incompatible offices? (Binsacca)
- 20-101** 1) May an elected county recorder, whose operations are solely funded by recording fees collected as directed by Government Code section 27361, subdivision (a), re-claim from the county those fees diverted to the county's general fund and utilized for supporting other county departments? 2) In the alternative, may the county recorder recoup the diverted funds by means of an offset? (Daniels)
- 19-1001** Does Government Code section 83105 prohibit a Fair Political Practices Commission member from making a campaign contribution to a federal candidate for (1) President; and/or (2) Congress? (Bidart)
- 19-901** Under the "remote interest" exception set forth in Government Code section 1091(b)(17), may a member of the South Coast Air Quality Management District (District) apply for and obtain District grants for their import/export logistics business without violating Government Code section 1090's prohibition against public officials holding a personal financial interest in public contracts? (Medeiros)
- 19-405** Does Government Code section 1090 permit a County Superintendent of Education to negotiate in collective bargaining with their represented employment unit? (Nolan)
- 19-401** May a county enter into a joint contract with a local military installation? (Bidart)

- 19-301** Is a paid victim advocate for sexually exploited youth a mandated reporter under the Child Abuse and Neglect Reporting Act (CANRA)? (Eisenberg)
- 19-203** Is there a statutory or constitutional exception for non-profit religious organizations conducting employee criminal background checks under Labor Code section 432.7(a)? (*On hold per requestor.*) (Binsacca)
- 18-1001** Is a county animal shelter permitted to refuse to relinquish an owner-surrendered dog to a nonprofit no-kill shelter? (Medeiros)
- 18-902** When a subdivider owns one parcel and subdivides that parcel pursuant to a parcel map, then sells off the resulting new subdivided parcels, and subsequently acquires a contiguous parcel and seeks to divide that parcel pursuant to a parcel map, should the local agency count the previously subdivided contiguous parcels as part of the application? (Medeiros)
- 18-901** 1. Is the Bagley-Keene Act violated if the Commission votes on an agenda item where the agenda states only that the matter will be discussed, not specifically that the Commission would take any action on the item, but the top of the agenda contains a general statement that the Commission may act on any item listed on the agenda? 2. Is the Bagley-Keene Act violated if a majority FPPC Commissioners meet outside a public meeting (e.g., over lunch) and talk about how the Bagley-Keene Act applies to the FPPC? 3. Is the Bagley-Keene Act violated if one member of the public sends an email to five FPPC Commissioners and other members of the public and one Commissioner responds by email, but only to the members of the public? (Daniels)
- 18-603** Does a county superintendent of education's "stay and rescind" authority permit the stay of sale or issuance of bonds by a school district with a qualified or negative certification? (Ed. Code sec. 42127.6.) 2. May such a stay remain in place pending resolution of a related investigation by the District Attorney? (Binsacca)
- 18-502** Do nuisance abatement liens expire after 10 years; if so, what is the procedure and effective date for renewal? (Bidart)
- 18-201** Is it a Brown Act violation for joint powers authority members to consult appointing authority in open session? (Bidart)
- 18-103** Does Penal Code section 919(b) require the civil grand jury to annually investigate local detention centers as "public prisons"? (Bidart)
- 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)

- 16-402** 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)
- 16-201** 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)
- 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)
- 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)

Quo Warranto Matters

- 19-1201** Was Hesperia city council member lawfully installed to a vacant seat? (Medeiros)
- 17-603** Are Deanna Jackson and Matthew Hurley eligible to hold seats on the Atwell Island Water District Board of Directors? (*On hold pending litigation.*) (Daniels)

OPINIONS ISSUED IN FEBRUARY 2020

19-701—February 7, 2020

Question: Should the repeal of the Palo Alto city charter’s binding arbitration provision, which governed disputes with public safety employee unions, be invalidated on the ground that the City of Palo Alto failed to consult in good faith with Local 1319 before placing the repeal measure on the ballot?

Conclusion: Leave to sue is GRANTED to determine whether to invalidate the repeal of the Palo Alto city charter’s binding arbitration provision on the ground that the City of Palo Alto failed to consult in good faith with Local 1319 before placing the repeal measure on the ballot.

OPINIONS CONCLUDED IN FEBRUARY 2020
(Answered by Letter, Withdrawn or Cancelled)

No matters were concluded in February.

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) 510-3815.

Marc J. Nolan, 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) 510-4417.

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) 510-3789.

Manuel M. Medeiros, Deputy Attorney General:

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