

# MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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**March 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 FEBRUARY 2024

### **24-201 requested by Senator Steven Bradford and Assemblymember Cottie Petrie-Norris**

Does the term "voluntary carbon offset," as used in Assembly Bill No. 1305 (Stats. 2023, ch. 365), include the use of Renewable Energy Certificates, also known as renewable energy credits, when used outside of California's Renewable Portfolio Standard program?

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

## **OPINIONS ISSUED OR CONCLUDED DURING FEBRUARY 2024**

### **Opinion No. 22-402 (issued February 29, 2024)**

#### *Question Presented and Conclusion:*

Is the Executive Committee of the San Bernardino County District Advocates for Better Schools a “legislative body” within the meaning of the Brown Act?

Yes, as the governing body of an entity created by local school districts to engage in legislative advocacy on their behalf, the Executive Committee of the San Bernardino County District Advocates for Better Schools is a legislative body within the meaning of the Brown Act.

### **Opinion No. 22-802 (issued February 29, 2024)**

#### *Question Presented and Conclusion:*

The application alleges that Keefer’s service on the County Board violates (1) Government Code section 1099, which prohibits holding incompatible public offices, and (2) Education Code section 1006, which makes school district employees ineligible to serve on a county board of education with jurisdiction over their district.

We conclude that there are substantial issues of fact or law as to whether Keefer is (1) simultaneously holding incompatible public offices in violation of Government Code section 1099, and (2) serving on the County Board while an employee of a school district within the Board’s jurisdiction in violation of Education Code section 1006. Consequently, and because the public interest will be served by allowing the proposed quo warranto action to proceed, the application for leave to sue is GRANTED.

### **Opinion No. 23-501 (withdrawn February 28, 2024)**

## **OPINIONS PENDING**

### Opinion Requests

**24-201** Does the term “voluntary carbon offset,” as used in Assembly Bill No. 1305 (Stats. 2023, ch. 365), include the use of Renewable Energy Certificates, also known as renewable energy credits, when used outside of California’s Renewable Portfolio Standard program? (Kentfield)

- 24-102** Is Madera County's Regional Water Management Group subject to the Brown Act? (Thomas)
- 24-101** Under the terms of Water Code Appendix section 121-408, may the Fox Canyon Groundwater Management Agency hire its own staff or contract with an entity other than the County of Ventura or the United Water Conservation District for staff services? (Duncan Lee)
- 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)

- 23-401** 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)
- 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)

## 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 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.

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