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

August 1, 2019

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 JULY 2019

19-701 requested by Relator International Association of Firefighters Local 1319, AFL-CIO, concerning the following question:

Was the city required to meet and confer with the city firefighters union before repealing city charter procedures for binding interest arbitration of collective bargaining impasses? (Assigned to Deputy Attorney General Lawrence M. Daniels.)

OPINIONS PENDING
Opinion Requests

19-405 Does Government Code section 1090 permit a County Superintendent of Education to negotiate in collective bargaining with his 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)? (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)

18-501 Are public benefit corporations exempt from the document transfer tax? (Binsacca)

18-303 How is recordation of maps and surveys to be treated under SB 2? (Binsacca)

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)

17-701 What are the proper uses of civil enforcement penalty funds collected under the Unfair Competition Law? (Medeiros)

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)

17-101 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

19-701 Was the city required to meet and confer with the city firefighters union before repealing city charter procedures for binding interest arbitration of collective bargaining impasses? (Daniels)

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 JULY 2019

18-304—July 25, 2019

Questions: 1. May a member of a county board of supervisors also serve as one of its appointed representatives to the county's local transportation commission, which allocates transportation funds to the county?

2. May a member of a joint powers agency, established by the county as a transit operator, also serve as the appointed representative of the transit operators to the local transportation commission, which allocates transportation funds to the joint powers agency?

3. May a member of the county board of supervisors also serve as one of its appointed representatives to a joint powers agency established by the county as a transit operator?

4. May a member of the county board of supervisors who is serving as one of its appointed representatives to the local transportation commission (see question one) also serve as one of the board's appointed representatives to a joint powers agency established by the county as a transit operator (see question three)?

Conclusions: 1. A member of a county board of supervisors may also serve as one of its appointed representatives to the county's local transportation commission because the Legislature has expressly authorized such simultaneous service.

2. A member of a joint powers agency, established by the county as a transit operator, may also serve as the transit operators' appointed representative to the local transportation commission because the Legislature has expressly authorized such simultaneous service.

3. A member of the county board of supervisors may also serve as one of its appointed representatives to the joint powers agency established by the county as a transit operator because the Legislature has expressly authorized such simultaneous service.

4. Because the Legislature has not limited these express authorizations, the same member of the board of supervisors who is serving as one of its appointed representatives to the local transportation commission may also serve as one of the board of supervisors' appointed representatives to a joint powers agency established by the county as a transit operator.

OPINIONS CONCLUDED IN JULY 2019

(Answered by Letter, Withdrawn or Cancelled)

No matters were concluded in July.

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.