

MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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August 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 JULY 2024

24-701 Quo Warranto Application

May Michael Sullivan lawfully serve on both the Board of Directors of the Tulare Lake Basin Water Storage District and the Board of Trustees for Tulare Lake Basin Reclamation District No. 761?

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

24-702 requested by Christopher Beck, Mono County Counsel

May the same individual serve simultaneously on the Board of Commissioners for the White Mountain Fire Protection District and the Board of Directors for the Tri Valley Groundwater Management District?

(Assigned to Deputy Attorney General Ryan B. McCarroll.)

OPINIONS ISSUED OR CONCLUDED DURING JULY 2024

Opinion No. 24-201 (issued July 23, 2024)

Question Presented and Conclusion:

Does the term “voluntary carbon offset” in Assembly Bill 1305 include renewable energy credits (RECs) used outside of the State’s regulatory programs?

No, the term “voluntary carbon offset” does not include RECs used outside of the State’s regulatory programs because RECs do not claim to reduce greenhouse gases in the atmosphere or prevent greenhouse gas emissions that would otherwise have occurred.

Opinion No. 23-1002 (issued July 24, 2024)

Question Presented and Conclusion:

Under the Ralph M. Brown Act, a local agency’s legislative body must generally conduct its meetings in person at locations open to the public. Does the Americans with Disabilities Act (ADA) nonetheless require that a local agency’s legislative body allow remote participation for a member with a qualifying disability that precludes their in-person attendance at meetings of the body?

Yes. The ADA generally requires a local agency’s legislative body to allow remote participation as a reasonable accommodation for a member with a qualifying disability that precludes their in-person attendance at meetings of the body. This duty to reasonably accommodate is subject, however, to the Brown Act’s requirement that the remote participation must be conducted in a manner that simulates in-person attendance at meetings held in person at a location open to the public. To accomplish this, the Act requires that individual members who participate remotely (1) use two-way video and audio streaming in real time and (2) disclose the identity of any adults who are present with the member at the remote location. These two requirements should be applied to members who attend meetings remotely due to a qualifying disability.

OPINIONS PENDING

Opinion Requests

- 24-702** May the same individual serve simultaneously on the Board of Commissioners for the White Mountain Fire Protection District and the Board of Directors for the Tri Valley Groundwater Management District? (McCarroll)
- 24-502** Does Public Utilities Code section 11865 require an appointed district board member to step down between the date of the general election following their appointment and the date that the secretary of the district certifies the election results? (Medeiros)
- 24-501** Does the State Density Bonus Law (Government Code sections 65915-65918) allow a local government to impose local affordable housing requirements on the entire number of residential units proposed in a project—that is, including those units resulting from a density bonus under the state law? (Bidart)
- 24-405** Has the United States acquired legislative jurisdiction at San Clemente Island, Los Angeles County, pursuant to Chapter 56, Statutes of 1897? (McCarroll)
- 24-404** Does the California Citizens Compensation Commission have the authority to adjust the base pay of the members of the State Board of Equalization in light of the reduction in their duties, powers and responsibilities following passage of Assembly Bill 102, The Taxpayer Transparency and Fairness Act of 2017? (Duncan Lee)
- 24-403** May federally recognized Indian tribes which are located exclusively within the exterior boundaries of the State of California, and who have adopted laws that impose comprehensive requirements substantially comparable to the California Cannabis Regulatory Framework, lawfully conduct intrastate commercial cannabis activity solely within the State of California with California state cannabis licensees without obtaining such a license themselves? (Thomas)
- 24-402** When a state body is required by statute to consider and deliberate on privileged, proprietary, or other confidential information related to the conduct of a privately-funded business activity (in this case, the transaction of residential earthquake insurance in the state), does the Bagley-Keene Open Meeting Act require such discussion to occur in an open session of a public meeting? (Medeiros)

- 24-401** Does Public Utilities Code section 12820 require all members of a municipal utility district's "suitable security force" to have the peace officer authority and powers specified in that statute, including its related requirement to comply with the applicable standards of the Commission on Peace Officer Standards and Training (POST)? (Bidart)
- 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)
- 23-1001** 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)
- 23-701** 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)

Quo Warranto Matters

24-701 May Michael Sullivan lawfully serve on both the Board of Directors of the Tulare Lake Basin Water Storage District and the Board of Trustees for Tulare Lake Basin Reclamation District No. 761? (Kentfield)

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:

Catherine Bidart, Deputy Attorney General:
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To submit an opinion request, please contact Marc J. Nolan, Senior Assistant Attorney General, at 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 or (213) 269-6392.

For all other inquiries, please contact Stephanie Grimes, Associate Governmental Program Analyst, at Stephanie.Grimes@doj.ca.gov or (916) 210-6005.

You may also contact the Opinion Unit at the following address:

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