

MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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July 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 JUNE 2024

24-502 requested by Assemblymember Rebecca Bauer-Kahan

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?

(Assigned to Deputy Attorney General Manuel M. Medeiros.)

OPINIONS ISSUED OR CONCLUDED DURING JUNE 2024

Opinion No. 23-201 (issued June 26, 2024)

Questions Presented and Conclusions:

1. Does the probable cause standard for a grand jury criminal indictment state a lesser standard of proof than preponderance of the evidence?

Yes. The probable cause standard for a grand jury criminal indictment, which requires the prosecution to present evidence that warrants a strong suspicion of guilt, states a lesser standard of proof than preponderance of the evidence, which requires proof that a particular fact is more likely than not to be true.

2. Must the word “shall” as used in Penal Code section 939.8—which states that the grand jury “shall find an indictment” upon a determination of probable cause—be construed and stated as “should” when the statutory language is used to instruct a grand jury?

No. Penal Code section 939.8 requires a grand jury to return an indictment if the grand jury concludes that there is probable cause, and a grand jury may be instructed to that effect.

OPINIONS PENDING

Opinion Requests

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** Asks for an interpretation of Public Utilities Code section 12820—pertaining to municipal utility districts and the “security forces” they may choose to employ—specifically whether such districts are “legally obligated to conform” to the statute’s provisions regarding the recruitment, training, authority, and powers of those designated as security officers. (Bidart)
- 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)

- 23-1002** 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)
- 23-701** 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)

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 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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