

MONTHLY OPINION REPORT

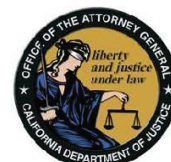
CALIFORNIA ATTORNEY GENERAL'S OFFICE



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

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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 MARCH 2020

20-301 requested by Senator Thomas J. Umberg concerning the following question:

Is a homeless encampment a "scene of an emergency" for purposes of the "Good Samaritan" law set forth in Health & Safety Code section 1799.102? (Assigned to Deputy Attorney General Catherine Bidart.)

20-302 requested by Relator Sergiu Anca concerning the following question:

Quo Warranto Application: Did the Orange County Counsel usurp the office or powers of the Orange County District Attorney by specially appearing in traffic violation matters on behalf of the Orange County Sheriff? (Assigned to Deputy Attorney General Lawrence M. Daniels.)

OPINIONS PENDING
Opinion Requests

- 20-301** Is a homeless encampment a “scene of an emergency” for purposes of the “Good Samaritan” law set forth in Health & Safety Code section 1799.102? (Bidart)
- 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)
- 20-102** 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)
- 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)
- 15-301** 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

- 20-302** Did the Orange County Counsel usurp the office or powers of the Orange County District Attorney by specially appearing in traffic violation matters on behalf of the Orange County Sheriff? (Daniels)
- 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 MARCH 2020

17-101—March 3, 2020

Questions: 1. Under Government Code sections 53200–53210, may a city council lawfully provide its members with health and welfare benefits through a plan into which the city pays a flat rate plus a percentage of the average of the salaries of selected managerial employees, where the extra percentage is not made available to other city officers and employees?

2. May an unintentional violation of Government Code sections 53200–53210 lead to criminal penalties?

3. If a city council provides its own members with health and welfare benefits that exceed what is allowed under Government Code sections 53200–53210, what recourse does the city have to recoup its overpayment, including interest on that overpayment?

4. May a city council approve a settlement agreement between the city and a current city council member to repay the city for the excessive health and welfare benefits received—including an agreement that waives some or all of the city’s overpayment—if that member is recused from voting on the agreement?

Conclusions: 1. No, under Government Code sections 53200–53210, a city may not lawfully provide its city council members with health and welfare benefits through a plan into which the city pays a flat rate plus a percentage of the average of the salaries of selected managerial employees, where the extra percentage is not made available to other city officers and employees.

2. A violation of Government Code sections 53200–53210 that is unintentional could lead to criminal penalties only if it resulted from a failure to ascertain the relevant legal obligations that was so unreasonable as to constitute criminal negligence.

3. The city may seek to recoup its overpayment of city council members' health and welfare benefits, including interest, in a civil action against those who received or approved the excessive benefits.

4. A city council may approve a settlement agreement between the city and a current city council member to repay the city for the excessive health and welfare benefits received if that member is recused from voting on the agreement and the other "remote interest" requirements of Government Code section 1091, subdivision (b)(15) are met. Although a city has discretion to waive a claim in part or in full if doubt or a dispute exists as to the claim's validity or amount, a city may not waive a valid claim of an indisputable amount because doing so would result in an unconstitutional gift of public funds.

15-1102—March 17, 2020

Questions: 1. Under California's Housing Authorities Law (Health & Saf. Code, § 34200 et seq.), may a local housing authority operate throughout the entire state?

2. May a corporation or other instrumentality formed by a local housing authority exercise the statutory powers of a local housing authority throughout the entire state?

3. May a local housing authority accept a federal grant for a housing project that is outside its territorial jurisdiction?

4. May an out-of-state housing authority, or a corporation formed by an out-of-state housing authority, exercise the statutory powers of a housing authority in California?

Conclusions: 1. Under California's Housing Authorities Law (Health & Saf. Code, § 34200 et seq.), a local housing authority may not operate generally throughout the entire state; it may operate outside its defined geographic boundaries as specifically allowed or contemplated by statute.

2. A local housing authority may not delegate a statutory power it does not have. Because a local housing authority may not operate generally throughout the entire state under state law, it may not delegate such power to a corporation or other instrumentality.

3. State law does not allow a local housing authority to accept a federal grant for a housing project outside its territorial jurisdiction.

4. An out-of-state housing authority, or a corporation formed by an out-of-state housing authority, may not exercise the statutory powers of a housing authority in California.

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

20-201 Cancelled 3/4/20

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