

# MONTHLY OPINION REPORT

## CALIFORNIA ATTORNEY GENERAL'S OFFICE



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**April 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 MARCH 2024**

#### **24-301 Quo Warranto Application**

Was Mark Skvarna lawfully appointed as Interim Superintendent of the Montebello Unified School District?

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

## OPINIONS ISSUED OR CONCLUDED DURING MARCH 2024

### Opinion No. 21-1001 (issued March 20, 2024)

#### *Questions Presented and Conclusions:*

1. May a county adopt ordinances to regulate the use of pesticides in the coastal zone to implement Local Coastal Program requirements?

No. Food and Agricultural Code section 11501.1 expressly preempts local ordinances regulating “the registration, sale, transportation, or use of pesticides.” Ordinances violating this restriction are “void and of no force or effect.” Given this broad preemption, a county may not adopt ordinances or other laws of general application to regulate the use of pesticides, even to implement Local Coastal Program requirements, unless it obtains approval from the Department of Pesticide Regulation under Agricultural Code section 11503.

2. May a county take other actions—legislative, regulatory or otherwise—to address the environmental impacts of pesticide use in a Local Coastal Program without violating Food and Agricultural Code section 11501.1?

Yes. Although a county may not adopt ordinances or other laws of general application that purport to regulate the use of pesticides in the coastal zone absent approval from the Department of Pesticide Regulation, it may take certain other actions—legislative, regulatory or otherwise—to address the environmental impacts of pesticide use in the coastal zone without violating section 11501.1. For example:

- In deciding whether to grant an individual land-use development permit for a particular site, a county may condition the permit on site-specific restrictions on pesticide use.
- A county may adopt policies or regulations aimed at reducing the need for pesticide use in the first instance, such as sanitary rules for the reduction of rodents and other pests.
- A county may adopt policies or regulations that mitigate the local post-use effects of pesticides, such as by requiring training and certification in methods of cleaning that minimize the leaching of pesticides after they have been used.

- Similarly, a county may publish recommendations or advisory policies encouraging best practices regarding pesticide use or alternatives to pesticide use.
- And a county may restrict the use of pesticides by its own employees in the course of their work, or on property owned by the county, so long as those restrictions apply only to county operations and do not purport to impose generally applicable restrictions throughout the county.

## 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)

Quo Warranto Matters

- 24-301** Was Mark Skvarna lawfully appointed as Interim Superintendent of the Montebello Unified School District? (McCarroll)
- 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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