

MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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June 1, 2022

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 MAY 2022

22-501 requested by Senators Thomas J. Umberg, Dave Min, and Josh Newman, and by Assemblymembers Cottie Petrie-Norris, Tom Daly, and Sharon Quirk-Silva

May the Orange County Board of Supervisors enact new supervisorial district boundaries that become effective before the next regularly scheduled election, such that supervisors are assigned to represent different constituents than those who elected them?

(Assigned to Deputy Attorney General Lawrence M. Daniels.)

22-502 requested by Assemblymember Marc Berman

1. Where a school district governing board has adopted by-trustee area elections and a vacancy is created in a seat held by a member elected at-large prior to the adoption of by-trustee area elections, must an individual live within a specific trustee area in order to be appointed or elected to fill the vacancy, and if so, how is the trustee area determined?

2. Where a school district governing board has revised the boundaries of its trustee areas following the decennial census, do the revised boundaries apply where a vacancy occurs during the term of a governing board member elected prior to revision of the boundaries or would the boundaries in effect at the time of the previous election be used to determine eligibility to fill the vacancy?

(Assigned to Deputy Attorney General Susan Duncan Lee.)

OPINIONS ISSUED OR CONCLUDED DURING MAY 2022

Opinion No. 22-302 (issued May 5, 2022)

Question Presented and Conclusion:

MARK TARDIF, a registered voter and resident of the Orange County Department of Education's First Trustee District, has applied to this office for leave to sue REBECCA "BECKIE" GOMEZ in quo warranto to remove her from her public office as a member of the Orange County Board of Education representing the Department of Education's First Trustee District. The application asserts that Gomez, while serving her term on the County Board of Education, assumed a second and incompatible public office as a member of the Tustin City Council, in violation of Government Code section 1099, and by doing so forfeited her seat on the Board of Education.

We conclude that there is a substantial legal issue as to whether Gomez is simultaneously holding incompatible public offices as a member of both the Orange County Board of Education and the Tustin City Council. Consequently, and because the public interest will be served by allowing the proposed quo warranto action to proceed, the application for leave to sue is GRANTED.

Opinion No. 21-1101 (issued May 12, 2022)

Question Presented and Conclusion:

May a person lawfully purchase California State Lottery tickets from an authorized retailer on behalf of another person and charge a fee for doing so?

No, a person may not lawfully purchase California State Lottery tickets from an authorized retailer on behalf of another person and charge a fee for doing so.

Opinion No. 14-202 (issued May 19, 2022)

Questions Presented and Conclusions:

1. Must "premium" from the sale of school general obligation bonds be deposited in a school or community college district's interest and sinking fund, also known as a debt service fund?

Yes, all premium from the sale of school general obligation bonds must be deposited in the district's interest and sinking fund.

2. May premium be used to pay bond-related expenses such as bond issuance costs listed in Education Code section 15145(a), an underwriter's discount, or interest on previously issued securities?

No, bond premium may not be diverted to another purpose, such as to pay bond issuance costs, an underwriter's discount, or interest on previously issued securities.

Opinion No. 21-1102 (issued May 26, 2022)

Questions Presented and Conclusions:

1. Under the Ralph M. Brown Act, may legislative support staff of individual city councilmembers attend a closed session to assist and advise their individual members in the performance of the members' duties?

No, as a general matter, legislative support staff of individual city councilmembers may not attend closed sessions. If a person on such staff has an official or essential role to play in a particular closed session, however, then that person may attend for that purpose.

2. If legislative support staff of individual city councilmembers are not permitted to attend a closed session as described in Question 1, may the members share information obtained in closed session with their individual support staff to assist the members in performing their legislative duties?

No. City councilmembers may not share with their individual support staff, who were not permitted to attend a closed session, information obtained in that closed session unless the city council has authorized the disclosure of such information.

3. Would it violate the Ralph M. Brown Act for a city council acting as the city's housing authority to meet jointly in closed session with a board of housing commissioners, which the housing authority oversees, provided that statutory authorization exists for both entities to go into closed session?

No. The Act does not prohibit a joint closed session of two local agencies, if each agency is authorized to meet in closed session based on the same exception and same set of facts. Such agencies may together meet in closed session under that exception.

Opinion No. 22-101 (reissued May 26, 2022)

Question Presented and Conclusion:

MICHAEL SCHLESINGER, a resident of the City of Mission Viejo, requests leave to sue ED SACHS, WENDY BUCKNUM, and GREG RATHS in quo warranto to oust them from their public offices as members of the Mission Viejo City Council. The quo warranto application alleges that ouster is required on the ground that the elected terms of Councilmembers Sachs, Bucknum, and Rath have expired.

We conclude that whether the terms of Councilmembers Sachs, Bucknum, and Rath have expired presents substantial questions of law and fact that warrant a judicial resolution. Because we further conclude that it would be in the public interest to allow Schlesinger to initiate a lawsuit in quo warranto, leave to sue is GRANTED.

OPINIONS PENDING

Opinion Requests

- 22-502** 1. Where a school district governing board has adopted by-trustee area elections and a vacancy is created in a seat held by a member elected at-large prior to the adoption of by-trustee area elections, must an individual live within a specific trustee area in order to be appointed or elected to fill the vacancy, and if so, how is the trustee area determined? 2. Where a school district governing board has revised the boundaries of its trustee areas following the decennial census, do the revised boundaries apply where a vacancy occurs during the term of a governing board member elected prior to revision of the boundaries or would the boundaries in effect at the time of the previous election be used to determine eligibility to fill the vacancy? (Duncan Lee)
- 22-501** May the Orange County Board of Supervisors enact new supervisorial district boundaries that become effective before the next regularly scheduled election, such that supervisors are assigned to represent different constituents than those who elected them? (Daniels)
- 22-403** May a member of the Nevada County Board of Supervisors concurrently serve as general manager for the Truckee Tahoe Airport District? (Duncan Lee)
- 22-402** Is the governing body of an entity that employs a lobbyist and advocates on behalf of member school districts, and whose membership consists of substantially all the school districts in the county, a "legislative body" under the Brown Act when: 1) the administrators of the school districts created the entity consistent with standing school board policies; 2) the school boards have delegated their statutorily-authorized lobbying duties to the entity; and 3) the school boards authorize their districts to enter into yearly membership agreements with the entity, which provide that the entity will lobby state and federal policymakers collectively on the districts' behalf, preclude the districts from taking lobbying positions adverse to or in conflict with the entity, and require the school districts to pay yearly dues? (Medeiros)
- 21-1001** 1. May a county adopt policies to address the environmental impacts of pesticides in a Local Coastal Program without violating Food and Agricultural Code section 11501.1? 2. May a county adopt ordinances to regulate pesticides in the coastal zone to implement Local Coastal Program requirements? (Daniels)
- 21-401** May a district attorney provide criminal defense counsel or a self-represented criminal defendant an unredacted copy of a witness's or victim's state summary criminal history information during the criminal discovery process? (Medeiros)

20-1001 May a district attorney provide criminal defense counsel the defendant's unredacted state summary criminal history information during the criminal discovery process? (Medeiros)

19-301 Is a paid victim advocate for sexually exploited youth a mandated reporter under the Child Abuse and Neglect Reporting Act (CANRA)?

Quo Warranto Matters

22-304 May a person who has served three previous four-year terms on the Los Angeles City Council be appointed to fill a temporary vacancy in the District 10 seat on the council? (Daniels)

22-303 Is the person appointed to fill a vacancy on the Alameda County Board of Supervisors, District 3 seat, eligible to hold this office? (Bidart and Nolan)

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 an opinion request, please contact Mollie Lee, Senior Assistant Attorney General, at Mollie.Lee@doj.ca.gov or (415) 510-4439.

For all other inquiries, please contact Stephanie Grimes, Staff Services 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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