

MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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June 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 MAY 2024

24-404 requested by Michael Sweet, Chair, California Citizens Compensation Committee

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?

(Assigned to Deputy Attorney General Susan Duncan Lee.)

24-501 requested by Senator Monique Limón

May a city or county lawfully impose local inclusionary and additional affordable housing requirements on the complete number of residential units being developed in a project (including the units created as a result of a density bonus allowed pursuant to state or local law)?

(Assigned to Deputy Attorney General Catherine Bidart.)

OPINIONS ISSUED OR CONCLUDED DURING MAY 2024

Opinion No. 23-1101 (issued May 1, 2024)

Question Presented and Conclusion:

May the same individual lawfully serve as a member of both the San Benito County Planning Commission and San Benito County Board of Education?

No. Under Government Code section 1099, which prohibits the same individual from holding incompatible public offices, the same individual may not lawfully serve as a member of both the San Benito County Planning Commission and the San Benito County Board of Education.

Opinion No. 23-901 (issued May 22, 2024)

Question Presented and Conclusion:

Government Watchdogs, a California non-profit public benefit corporation, has applied to this office for leave to sue proposed defendant Pablo Bryant in quo warranto to remove him from his seat on the Temecula-Elsinore-Anza-Murrieta Resource Conservation District's Board of Directors.

We conclude that there is no substantial issue of law or fact as to whether Director Bryant is lawfully holding office. We further conclude that the public interest would not be served by allowing the proposed quo warranto action to proceed. Consequently, the application for leave to sue is DENIED.

Opinion No. 24-301 (withdrawn May 9, 2024)

Question presented:

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

OPINIONS PENDING

Opinion Requests

- 24-501** May a city or county lawfully impose local inclusionary and additional affordable housing requirements on the complete number of residential units being developed in a project (including the units created as a result of a density bonus allowed pursuant to state or local 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)
- 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)

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 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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