

# MONTHLY OPINION REPORT

## CALIFORNIA ATTORNEY GENERAL'S OFFICE



**KAMALA D. HARRIS**  
Attorney General

**NATHAN R. BARANKIN**  
Chief Deputy Attorney General

**SUSAN DUNCAN LEE**  
Supervising Deputy Attorney General

**OPINION UNIT**  
Anya M. Binsacca, Deputy  
Lawrence M. Daniels, Deputy  
Diane E. Eisenberg, Deputy  
Manuel M. Medeiros, Deputy  
Marc J. Nolan, Deputy  
Sara J. Russell, Deputy  
Stephanie Grimes, SSA



**OPINION UNIT**  
**P. O. Box 944255**  
**Sacramento, CA 94244-2550**  
**(916) 324-5172**

**November 1, 2015**

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.

### **QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED DURING OCTOBER 2015**

No matters were assigned in October.

### **OPINIONS PENDING**

**11-201** Is a California charter school and its board of directors subject to: a) the Ralph M. Brown Act; or b) the California Public Records Act; or c) the Political Reform Act of 1974; or d) Government Code section 1090; or e) the review and inspection of books and records, by a Grand Jury formed pursuant to Penal Code section 888? (Most notably, the Grand Jury whose

- function it is to investigate and inquire into county functions of civil concern, *see also* Penal Code section 933.6.) (Medeiros)
- 11-705** May a court impose a probation condition on a DUI defendant to make a specified payment to the DUIRR Program? (Eisenberg)
- 12-409** May a private attorney acting as a contract city attorney also act as “bond counsel” for the same municipality and be paid based on a percentage of the bond sale without violating Government Code section 1090? (Binsacca)
- 12-1203** May a former local agency employee serve on that public agency’s elected Board of Directors while still being carried on that agency’s employee payroll solely for purposes of utilizing unused vacation leave remaining from his/her time as an active employee? (Eisenberg)
- 13-304** In connection with a school or community college bond measure, does a district violate state law by contracting with a bond underwriter for both pre-election campaign services and post-election underwriting services? (Medeiros)
- 13-403** Does Proposition 26 require that, prior to a County Board of Supervisors enacting an ordinance requiring a cable television company to pay to the County a PEG (public, educational, and governmental access) fee equal to one percent (1%) of the gross revenues under the Digital Infrastructure and Video Competition Act (“DIVCA”), the voters must first approve the imposition of such a fee? (Binsacca)
- 13-903** Does Government Code section 1090 prohibit a city agency from utilizing the services of a public relations firm that occasionally retains the services of a city council member for its non-city clients? (Nolan)
- 13-1203** May health care professionals offer online discounts for their services through a third-party internet marketer? (Medeiros)
- 14-101** May non-attorneys represent parties in (1) administrative proceedings conducted before the Office of Administrative Hearings, or (2) “due process hearings” conducted under the Education Code? (Medeiros)
- 14-202** May the “premium” generated from a school district bond sale be used to pay for expenses of issuance and other transaction costs? (Nolan)
- 14-301** May an attorney who sits on a city council represent clients with interests adverse to that city? (Daniels)
- 14-304** Under state law, may local authorities restrict parking on public streets to those persons issued residential parking permits? (Russell)
- 14-403** What is the scope of intergovernmental immunity (Gov. Code §§ 53090-53091) where a city owns and leases real property in an unincorporated area of a county? (Russell)

- 14-901** If a school superintendent's employment contract allows the superintendent to receive cash in lieu of medical benefits, may the school board members receive an equivalent sum in a whole life insurance policy in lieu of medical benefits? (Daniels)
- 14-1203** Do technical failures in local agencies' websites violate online agenda posting requirements subject to the Brown Act open meeting laws? (Gov. Code § 54954.2) (Binsacca)
- 14-1206** Must Caltrans pay fees imposed by a county to cover the county's costs for inspecting and reporting on Caltrans surface mining operations within the county? (Russell)
- 15-101** May the Prison Industry Authority deposit funds in a commercial bank account not subject to immediate access or control by other state agencies? (Binsacca)
- 15-201** What are the reporting requirements under the Child Abuse and Neglect Reporting Act for consensual sexual acts between minors of a like age? (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)
- 15-401** Quo warranto matter: May the same person simultaneously serve as a Director of the Water Replenishment District of Southern California and a member of the Carson City Council? (Daniels)
- 15-801** How do legally required recusals affect voting allocations among board members of the Metropolitan Water District of Southern California? (Reassigned to Medeiros)

### CONCLUSIONS OF OPINIONS ISSUED IN OCTOBER 2015

**12-401—October 13, 2015—1.** Penal Code section 832.7, subdivision (a), does not authorize a district attorney, for the purpose of complying with the United States Supreme Court's ruling in *Brady v. Maryland*, to directly review the personnel files of peace officers who will or are expected to be prosecution witnesses.

2. To facilitate compliance with *Brady v. Maryland*, the California Highway Patrol may lawfully release to the district attorney's office the names of officers against whom findings of dishonesty, moral turpitude, or bias have been sustained, and the dates of the earliest such conduct.

**14-603—October 21, 2015—1.** State law authorizes the City of Fortuna to adopt a comprehensive program that requires dogs within the city to be licensed and charges

license fees to cover the cost of the program. Indeed, the Rabies Control Act requires the City of Fortuna to adopt and implement such a program.

2. Food and Agriculture Code section 30951 does not prevent the City of Fortuna from enforcing its dog licensing program or exempt a dog owner from complying with its licensing requirements.

**13-1202—October 22, 2015**—A medical assistant may lawfully perform spirometric pulmonary function testing if the test is a usual and customary part of the medical practice where the medical assistant is employed, and the requirements for training, competency, authorization, and supervision are satisfied.

**15-501—October 27, 2015**—Whether proposed defendant Argumedo's conviction for obstruction of justice constitutes "malfeasance in office," and therefore precludes him from serving as a city council member, presents substantial questions of law and fact warranting judicial resolution, and allowing the action to proceed would serve the public interest. Therefore, leave to sue in quo warranto is GRANTED.

### OPINIONS CANCELLED IN OCTOBER 2015

No matters were cancelled in October.

The deputies assigned to the questions submitted can be reached at the following addresses and telephone numbers:

Anya M. Binsacca: Anya.Binsacca@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-5713.

Lawrence M. Daniels: Larry.Daniels@doj.ca.gov; 300 S. Spring Street, Los Angeles, CA 90013; (213) 897-2288.

Diane E. Eisenberg: Diane.Eisenberg@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-1821.

Susan Duncan Lee: Susan.Lee@doj.ca.gov; 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102; (415) 703-5876.

Manuel M. Medeiros: Manuel.Medeiros@doj.ca.gov; P. O. Box 944255, Sacramento, CA 94244-2550; (916) 323-1996.

Marc J. Nolan: Marc.Nolan@doj.ca.gov; 300 S. Spring Street, Los Angeles, CA 90013; (213) 897-2255.

Sara J. Russell: Sara.Russell@doj.ca.gov; P. O. Box 944255, Sacramento, CA 94244-2550; (916) 323-5166.