

# MONTHLY OPINION REPORT

## CALIFORNIA ATTORNEY GENERAL'S OFFICE



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### OPINION UNIT

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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.

### QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED DURING DECEMBER 2014

**14-1203** requested by Assemblymember Kevin Mullin concerning the following questions:

1. Would a local agency be in violation of online agenda posting requirements (pursuant to Gov. Code section 54954.2) if the agency website has a technical difficulty that results in the agenda becoming inaccessible to the public for a portion of the 72-hour mandated posting period prior to the regular meeting—for instance due to power failure, cyber attack, or other third-party interference?

2. If those technical difficulties prevent an agency from posting the agenda to its website 72 hours prior to its regular meeting, but the agency meets all other

requirements of the Brown Act and the agency posts the agenda to its website once the technical difficulties are resolved, may the agency lawfully continue with the meeting as regularly scheduled? (Assigned to Deputy Attorney General Anya M. Binsacca)

### OPINIONS PENDING

- 09-301** May a county collect unpaid property taxes where, due to an error in the tax collection software, property owners who owe such taxes have not been notified of a delinquency, and, if so, how? (Lee)
- 11-201** Is a California charter school and its board or 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, *also see* 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)
- 12-401** To facilitate compliance with *Brady v. Maryland*, may the California Highway Patrol lawfully release to the district attorney's office the names of officers who have sustained complaints of dishonesty or moral turpitude conduct, with no information other than the officer's name and date of earliest conduct, so that the district attorney may bring a *Pitchess/Brady* motion for in camera review of the officers' personnel files? Does Penal Code section 832.7, subdivision (a), authorize the district attorney to routinely review the personnel files of peace officers who will be prosecution witnesses? (Lee)
- 12-409** Whether a private attorney acting as a contract city attorney can 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 same 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)
- 13-202** Are the uniform standards developed by the Substance Abuse Coordination Committee for use by healing arts boards in dealing with their substance-abusing licensees valid, enforceable, and mandatory? (Lee)

- 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)
- 13-901** Are reverse cellular phone kiosks "secondhand dealers" within the meaning of Business and Professions Code section 21626? (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)
- 13-904** Does state law preempt a local ordinance that would require dentists in that jurisdiction to provide their patients with a Dental Materials Fact Sheet and Statement of Rights before performing specified procedures? (Eisenberg)
- 13-1101** May a county clerk charge the district attorney's office for certified court records? (Medeiros)
- 13-1202** Are medical assistants legally permitted to perform basic pulmonary function testing, such as spirometry? (Daniels)
- 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 before the Office of Administrative Hearings? (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? (Lee)
- 14-302** Under the Brown Act open meetings law, may a community college board of trustees meet in closed session to discuss and negotiate the terms of a project labor agreement? (Daniels)
- 14-304** Under state law, may local authorities restrict parking on public streets to those persons issued residential parking permits? (Russell)
- 14-307** May an automated photographic enforcement system (AES) be used to detect and enforce violations of the anti-gridlock law (Veh. Code section 22526) at intersections where an AES is otherwise authorized? (Binsacca)

- 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? (Eisenberg)
- 14-601** May the same person serve as Inyo County Assessor and Bishop City Council member? (Nolan)
- 14-603** Are the City of Fortuna's dog licensing ordinances authorized under state law? (Daniels)
- 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)
- 14-902** Must licensed subcontractors "pre-qualify" for school district projects under Public Contracts Code section 20111.6? (Medeiros)
- 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)

#### **CONCLUSIONS OF OPINIONS ISSUED IN DECEMBER 2014**

**11-707—December 16, 2014—**1. Cities and fire districts that have been providing prehospital emergency medical services since June 1, 1980, as specified in Health and Safety Code section 1797.201 (i.e., ".201 providers"), are not required by state regulation to have a written agreement with a Local Emergency Medical Services Agency in order "to participate in the EMS system" as specified in that regulation.

2. A contract between a county or Local Emergency Medical Services Agency and a .201 provider for county-supplied emergency medical equipment does not extinguish the .201 provider's rights to continue providing prehospital emergency medical services.

3. A contract between a county or Local Emergency Medical Services Agency and a .201 provider for medical control and oversight of the .201 provider does not extinguish the .201 provider's rights to continue providing prehospital emergency medical services.

#### **OPINIONS CANCELLED IN DECEMBER 2014**

No opinions were cancelled in December 2014

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

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