



State of California
Office of the Attorney General

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ATTORNEY GENERAL

January 2017

**ATTORNEY GENERAL'S GUIDELINES FOR
ISSUING OPINIONS ON QUESTIONS OF LAW**

The Attorney General's authority to issue legal opinions is set out in Government Code section 12519:

“The Attorney General shall give his or her opinion in writing to any Member of the Legislature, the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, Insurance Commissioner, any state agency, and any county counsel, district attorney, or sheriff when requested, upon any question of law relating to their respective offices.

“The Attorney General shall give his or her opinion in writing to a city prosecuting attorney when requested, upon any question of law relating to criminal matters.”

RECIPIENTS

Under section 12519, the Attorney General may give opinions only to the specified public officials, and not to private citizens or to public officials who are not listed in the statute.

Constitutional Officers. The Attorney General may provide an opinion to any state constitutional officer: the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commissioner, Superintendent of Public Instruction, and Insurance Commissioner.

Legislators. The Attorney General may provide an opinion to “any Member of the Legislature.” This refers to the State Senate and the State Assembly, but not to local legislative bodies such as city councils or county boards of supervisors. Requests may be made by individual state legislators, but not by legislative committees or consultants.



State Agencies. The Attorney General may provide an opinion to “any state agency.” The Attorney General interprets this as permitting opinions to be provided to state-level departments, agencies, boards, and commissions. This does not include local agencies, even though the local agency has been organized under state statutes. A request by a state agency or department should be made by or on behalf of the head of the state agency or department, not by individual employees of the agency. A request by a state board or commission must be authorized by a majority vote of the board or commission.

The California Supreme Court and Court of Appeal are state agencies authorized to request opinions. Requests should come from the chief justice or a presiding justice of the court or, as is usually the case, be submitted by the Administrative Office of the Courts.

County Counsel, District Attorneys, and Sheriffs. The Attorney General may issue an opinion to “any county counsel, district attorney, or sheriff.” The request should be made by or on behalf of the elected or appointed district attorney, county counsel, or sheriff, not by individual deputies or employees.

City Prosecuting Attorneys. The Attorney General may issue an opinion to “a city prosecuting attorney when requested, upon any question of law relating to criminal matters.” Opinions may not be given to city attorneys who do not prosecute criminal cases. Whether or not a city attorney prosecutes criminal cases, an opinion may not be given to a city attorney on a question of civil law.

QUESTIONS PRESENTED

Government Code section 12519 states that opinions will be provided on “questions of law.” Requests that require factual investigations or that would require the resolution of a factual dispute are declined. Requests for advice, or for policy determinations, are also declined.

Section 12519 also states that opinions will be given to specified officers on questions “relating to their respective offices.” Requests for opinions posed on behalf of others, or on questions unrelated to the office, are declined.

For policy reasons, the Attorney General also declines to give opinions on legal questions under special circumstances. The limitations include:

Conflicts of Interest under the Political Reform Act. The Attorney General normally recommends that questions concerning conflicts of interest arising under the Political Reform Act of 1974 (California Government Code §§ 81000-91015) be directed to the Fair Political Practices Commission, which administers the Act. A public official may rely on the Commission's opinion as a defense in enforcement actions regarding the requirements of the Political Reform Act.

Local Laws. The Attorney General declines opinion requests calling for interpretation of local charters, ordinances, resolutions, regulations, or rules. Responsibility for interpreting and enforcing local laws rests with local government lawyers.

Pending Legislation. The Attorney General declines opinion requests regarding the validity or interpretation of legislation prior to its enactment. Responsibility for providing opinions on pending bills rests with the Office of Legislative Counsel.

Litigation. The Attorney General declines opinion requests involving legal issues that are pending in a judicial or administrative proceeding. Issuing an opinion on a question that is at issue in litigation might be perceived as an attempt to influence the litigation. When the Attorney General's Opinion Unit becomes aware that a question raised in an existing request has become the subject of litigation, the assignment to prepare the opinion is cancelled.

Conflict of Interest. Occasionally, the Attorney General declines a request because it presents a conflict of interest with respect to other legal matters with which the Attorney General's Office may be involved.

PROCESS

Contents of Request. An opinion request should be submitted in writing, and signed by the public official or head of the agency authorized to make the request.

The request should set out the question to be answered as clearly as possible, along with enough description of the background and context of the question to allow a precise legal analysis to be prepared.

Any request that is made by a department or officer that employs legal counsel must be accompanied by a legal analysis prepared by the department or officer's legal counsel. Requests from a sheriff must be accompanied by the legal analysis of the district attorney or county counsel.

A Deputy Attorney General in the Opinion Unit may contact the requester for additional background information, or to discuss whether revisions to the question are desirable.

Comments by Interested Persons. After a request for an opinion has been accepted, the matter will be assigned to a Deputy Attorney General in the Opinion Unit for research and drafting. During the preparation period, the Attorney General's Office welcomes any interested person or entity to submit its comments on the issues under consideration.

The Attorney General's Opinion Unit makes substantial efforts to solicit comments from persons or entities who may have knowledge of the issues, but we realize that we cannot expect to reach everyone, and we encourage all those with an interest to make themselves

and their views known to us. All comments submitted before a draft is prepared will be considered, but early comments are strongly preferred.

Drafting and Internal Review. The Deputy Attorney General assigned to the matter is primarily responsible for directing research into the question, and for drafting the opinion.

After a draft opinion has been prepared, it is circulated internally within the Attorney General's Office for extensive review and revision. This process is crucial to ensuring the quality and value of a written opinion, and the process can be protracted. Due to many variables, it is often not possible to accurately predict when a particular opinion will be issued.

Proposed analyses and conclusions of pending opinions are not discussed outside of the Attorney General's Office.

Publication. Once the Attorney General has formally approved an opinion, it is provided first to the requester, and then to the public. Published opinions are available on the Attorney General's website, through online legal research services, and in law libraries.

Public Information. All written requests for Attorney General's opinions, as well as all written views submitted on questions under consideration, are public documents and may be disclosed to third parties under the Public Records Act.