

MONTHLY OPINION REPORT

CALIFORNIA ATTORNEY GENERAL'S OFFICE



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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.

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 APRIL 2019

19-401 requested by the Office of the Adjutant General, Judge Advocate Monica Murphy, concerning the following question:

May a county enter into a joint contract with a local military installation? (Assigned to Deputy Attorney General Catherine Bidart.)

19-405 requested by Amador County District Attorney Todd D. Riebe concerning the following question:

Does Government Code section 1090 permit a County Superintendent of Education to negotiate in collective bargaining with his represented employment unit? (Assigned to Deputy Attorney General Marc J. Nolan.)

OPINIONS PENDING
Opinion Requests

- 19-405** Does Government Code section 1090 permit a County Superintendent of Education to negotiate in collective bargaining with his represented employment unit? (Nolan)
- 19-401** May a county enter into a joint contract with a local military installation? (Bidart)
- 19-301** Is a paid victim advocate for sexually exploited youth a mandated reporter under the Child Abuse and Neglect Reporting Act (CANRA)? (Eisenberg)
- 19-203** Is there a statutory or constitutional exception for non-profit religious organizations conducting employee criminal background checks under Labor Code section 432.7(a)? (Binsacca)
- 19-201** Should a 1997 Attorney General Opinion reportedly being used to limit trespass enforcement on Indian lands be reconsidered? (Binsacca)
- 18-1001** Is a county animal shelter permitted to refuse to relinquish an owner-surrendered dog to a nonprofit no-kill shelter? (Medeiros)
- 18-902** When a subdivider owns one parcel and subdivides that parcel pursuant to a parcel map, then sells off the resulting new subdivided parcels, and subsequently acquires a contiguous parcel and seeks to divide that parcel pursuant to a parcel map, should the local agency count the previously subdivided contiguous parcels as part of the application? (Medeiros)
- 18-901** 1. Is the Bagley-Keene Act violated if the Commission votes on an agenda item where the agenda states only that the matter will be discussed, not specifically that the Commission would take any action on the item, but the top of the agenda contains a general statement that the Commission may act on any item listed on the agenda? 2. Is the Bagley-Keene Act violated if a majority FPPC Commissioners meet outside a public meeting (e.g., over lunch) and talk about how the Bagley-Keene Act applies to the FPPC? 3. Is the Bagley-Keene Act violated if one member of the public sends an email to five FPPC Commissioners and other members of the public and one Commissioner responds by email, but only to the members of the public? (Daniels)
- 18-603** Does a county superintendent of education's "stay and rescind" authority permit the stay of sale or issuance of bonds by a school district with a qualified or negative certification? (Ed. Code sec. 42127.6.) 2. May such a stay remain in place pending resolution of a related investigation by the District Attorney? (Binsacca)
- 18-502** Do nuisance abatement liens expire after 10 years; if so, what is the procedure and effective date for renewal? (Bidart)
- 18-501** Are public benefit corporations exempt from the document transfer tax? (Binsacca)
- 18-304** Are the positions of offices of county supervisor, member of a local transportation commission, and/or member of a multi-agency joint powers agency established to provide public transportation services incompatible public offices? (Daniels)
- 18-303** How is recordation of maps and surveys to be treated under SB 2? (Binsacca)

- 18-201** Is it a Brown Act violation for joint powers authority members to consult appointing authority in open session? (Bidart)
- 18-103** Does Penal Code section 919(b) require the civil grand jury to annually investigate local detention centers as “public prisons”? (Bidart)
- 17-701** What are the proper uses of civil enforcement penalty funds collected under the Unfair Competition Law? (Medeiros)
- 17-202** Does state law preempt the enforcement of a county ordinance that declares “intentionally killed and left standing trees” to be a public nuisance? (Bidart)
- 17-101** May a city validly set health and welfare benefits for its city council members at a dollar amount equal to a set percentage of the benefits provided to the city's highest-income employee group, and, if not, what are the consequences of overpayment? (Bidart)
- 16-402** Must specified prior offenders receive a formal pardon from the Governor in order to obtain a “certificate of rehabilitation and pardon” and qualify for a classified employment position at a school or community college district? (Eisenberg)
- 16-201** May a local jurisdiction require a subdivision applicant to eliminate the designation of a remainder parcel on a tentative parcel map, or require an applicant to provide additional analysis of a remainder parcel that has already been approved for development? (Eisenberg)
- 15-1102** Request for advice on the jurisdictional authority of a local housing authority and an out-of-state housing authority under state law. (Binsacca)
- 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)
- 14-202** May the “premium” generated from a school district bond sale be used to pay for expenses of issuance and other transaction costs? (Medeiros)

Quo Warranto Matters

- 18-1103** Does Ridgecrest city council member reside within city boundaries? (Daniels.)
- 17-603** Are Deanna Jackson and Matthew Hurley eligible to hold seats on the Atwell Island Water District Board of Directors? (*On hold pending litigation.*) (Daniels)

CONCLUSIONS OF OPINIONS ISSUED IN APRIL 2019

16-301—April 4, 2019

Question: May a California water district make employer-paid retirement plan or pension contributions on behalf of its governing board members (“directors”), where such plans or pensions are otherwise authorized by the district’s enabling statutes, without violating Water Code sections 20201 or 20202 regarding the compensation that water districts may pay to their directors?

Conclusion: A California water district may make employer-paid retirement plan or pension contributions on behalf of its directors, where such plans or pensions are otherwise authorized by the district's enabling statutes, without violating Water Code sections 20201 or 20202 regarding the compensation that water districts may pay to their directors.

17-602—April 9, 2019

Question: The Density Bonus Law (Gov. Code, §§ 65915-65918) rewards real estate developers who provide affordable housing by permitting them to build additional units, called "density-bonus units." May a city or county condition its grant of a developer's application for a density bonus upon the developer's payment of a "public benefit fee" that is imposed only on the density-bonus units?

Conclusion: No. A city or county may not condition its grant of a developer's application for a density bonus under the state Density Bonus Law upon the developer's payment of a public benefit fee imposed only on the density-bonus units.

18-203—April 11, 2019

Question: Proposed Relator James Fenkner has requested leave to sue proposed defendant Cathy Murillo, the Mayor of Santa Barbara, in quo warranto, to remove her as the representative for the City of Santa Barbara on the governing board of the Santa Barbara County Association of Governments (SBCAG), and to reinstall Councilmember Jason Dominguez into that position, on the ground that the city council's removal of Dominguez and appointment of Murillo were actions taken in violation of the council's rules of order.

Conclusion: Proposed relator has failed to raise a substantial legal or factual question as to whether (1) the Santa Barbara City Council violated its own rules of order in removing Councilmember Dominguez and appointing Mayor Murillo as the city's representative on the SBCAG governing board, or (2) any such procedural violation would invalidate the actions taken. Nor would the public interest be served by allowing a quo warranto action to proceed under these circumstances. Accordingly, the application is denied.

18-202—April 19, 2019

Question: Proposed relators Eulalio Gomez, Thomas Trester, Monica Diaz, and Jeri Nowak have requested leave to sue proposed defendants Riley Talford, John Robinson, and John Adams in quo warranto to remove them as trustees of the Board of Retirement of the Fresno County Employee Retirement Association on the ground that their elections resulted from violations of election procedures.

Conclusion: Leave to sue in quo warranto is granted to determine whether the elections of proposed defendants Riley Talford and John Robinson as trustees of the Board of Retirement of the Fresno County Employee Retirement Association resulted from violations of election procedures. Leave to sue in quo warranto is denied as to proposed defendant John Adams because his challenged term of office has expired.

18-301—April 19, 2019

Question: Proposed relator, Miguel Sanchez, requests leave to sue proposed defendant Leticia Prado in quo warranto to remove her from the public office of member of the Governing Board of the Vineland School District (School District trustee) on the ground that she has assumed

a second, incompatible public office as a director of the Lamont Public Utility District (Utility District trustee), in violation of the ban on simultaneously holding incompatible offices set forth in Government Code section 1099.

Conclusion: Leave to sue is granted because we find that a substantial issue of fact or law exists as to whether the offices of School District trustee and Utility District trustee are incompatible and cannot be held at the same time under Government Code section 1099, and therefore whether proposed defendant Leticia Prado has forfeited and must vacate her office of School District trustee.

17-1101—April 26, 2019

Question: May the Mayor of the City of Riverbank simultaneously serve as a member of the Board of Directors of the Stanislaus Consolidated Fire Protection District?

Conclusion: The Mayor of the City of Riverbank may simultaneously serve as a member of the Board of Directors of the Stanislaus Consolidated Fire Protection District if the mayor has been selected by the City of Riverbank to be its designated appointee to the board, but may not simultaneously serve in both positions if the mayor is selected to the board in some other capacity, such as that of a public member.

OPINIONS CONCLUDED IN APRIL 2019

(Answered by Letter, Withdrawn or Cancelled)

No matters were concluded in April.

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

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