

# MONTHLY OPINION REPORT

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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 AUGUST 2018

No matters were assigned in August.

### OPINIONS PENDING

#### Opinion Requests

- 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.) 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)
- 17-1101** Are the offices of Riverbank City Mayor and Stanislaus Consolidated Fire District Director compatible? (Eisenberg)
- 17-903** May a member of a hospital district board of directors simultaneously serve as a member of the city council, or on the planning and development commission, for the city in which the hospital district is located? (Medeiros)
- 17-701** What are the proper uses of civil enforcement penalty funds collected under the Unfair Competition Law? (Medeiros)
- 17-602** May a city condition its grant of a land developer’s application for a “density bonus” (see Gov. Code, section 65915) on the developer’s payment of a public benefit fee? (Binsacca)
- 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)
- 16-301** May a water district provide retirement contributions to members of its governing board without violating statutory compensation limits? (Medeiros)
- 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)
- 14-403** 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? (Nolan)

- 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)
- 11-705** May a court impose a probation condition on a DUI defendant to make a specified payment to the DUIRR Program? (Eisenberg)
- 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)

### **Quo Warranto Matters**

- 18-301** Are the offices of Vineland School District Board member and Lamont Public Utilities District Board member compatible? (Bidart)
- 18-203** Is the defendant properly serving on the Santa Barbara County Association of Governments governing board? (Medeiros)
- 18-202** Are defendants lawfully serving on the Fresno County Employees Retirement Board? (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 AUGUST 2018**

**16-702—August 23, 2018**—Elections Code section 10515, subdivision (a), requires a board of supervisors to appoint a director to a water district without regard to whether the appointment might result in the holding of incompatible offices under Government Code section 1099. Nonetheless, an individual so appointed may not lawfully hold incompatible public offices; thus, if the particular offices are incompatible, the appointee and would-be dual officeholder will be deemed to have forfeited the first-held office upon accepting appointment to the second.

**17-1001—August 23, 2018**—A person may not simultaneously serve as a member of the Concord City Council and as the Contra Costa County Superintendent of Schools.

**17-1201—August 23, 2018**—Leave to sue is GRANTED to determine whether proposed defendant PATRICIA KELLEY meets the legal residency requirements for holding the public office of school district trustee.

**18-601—August 28, 2018**—Proposed relator does not raise a substantial question of law or fact that warrants initiating a judicial proceeding, and allowing the proposed quo warranto action to proceed would not serve the public interest. Proposed relator's application for leave to sue in quo warranto is, therefore, DENIED.

**OPINIONS CONCLUDED IN AUGUST 2018**

*(Answered by Letter, Withdrawn or Cancelled)*

16-102 Cancelled 8/8/18

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