

# MONTHLY OPINION REPORT

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### OPINION UNIT

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**January 1, 2017**

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>.

### QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED DURING DECEMBER 2016

No matters were assigned in December.

**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)
- 12-1203** 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)
- 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)
- 14-403** 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)
- 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)
- 15-301** 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)
- 15-1102** Request for advice on the jurisdictional authority of a local housing authority and an out-of-state housing authority under state law. (Binsacca)
- 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)

- 16-301** May a water district provide retirement contributions to members of its governing board without violating statutory compensation limits? (Medeiros)
- 16-401** Under Proposition 26, may a “new fee” fund an “old service” of reporting pawn and secondhand dealer licensee information? (Binsacca)
- 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)
- 16-603** Does the Voter Participation Rights Act apply to charter cities and school districts? (Daniels)
- 16-702** Does Elections Code section 10515(a) require a county Board of Supervisors to appoint water district directors under circumstances where incompatible office holding would result? (Daniels)
- 16-801** May a fire protection district chief enforce regulations of the State Fire Marshal? (Bidart)
- 16-1001** Is there a public right of access to the levees along the Sacramento River? (Medeiros).

### CONCLUSIONS OF OPINIONS ISSUED IN DECEMBER 2016

**14-1206—December 30, 2016—**The California Department of Transportation (1) must pay fees to cover Mono County's costs for inspecting, and preparing a report on, the Department's surface mining operations as required by the Surface Mining and Reclamation Act, but (2) is exempt from paying fees for the other duties Mono County is required to perform under the Act.

**15-1202—December 30, 2016—**1. When the office of county sheriff becomes vacant because of the sheriff's death, the next election to fill the office of sheriff must coincide with the next state gubernatorial election. The board of supervisors may not call a special election to fill the office before that time.

2. When the office of county sheriff becomes vacant because of the sheriff's death, the county board of supervisors must, within a reasonable time, appoint a person to fill out the remainder of the incumbent sheriff's term. The board may not, through inaction, allow the person temporarily performing the sheriff's duties under Government Code section 24105 to continue performing those duties for a protracted period.

3. When a county board of supervisors appoints someone to fill a vacancy in the office of county sheriff, the appointee must meet all the qualifications of the elected position, including county residency. The board does not have the authority to waive those requirements.

**OPINIONS CANCELLED IN DECEMBER 2016**

No matters were cancelled in December.

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