

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.

QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED DURING JANUARY 2016

15-1202 requested by Calaveras County Counsel Megan K. Stedtfeld concerning the following question:

What are the procedural requirements for filling the vacant office of County Sheriff upon the death of the incumbent sheriff? (Assigned to Deputy Attorney General Lawrence M. Daniels)

16-101 requested by Relator City of Patterson concerning the following question:

Quo Warranto Matter: Does a misdemeanor conviction for passing a bad check qualify as forgery for purposes of disqualification from office holding? (Assigned to Deputy Attorney General Anya M. Binsacca)

16-102 requested by Senator Patricia C. Bates concerning the following question:

When calculating the "maximum allowable residential density" number under the Density Bonus Law, must fractional numbers be rounded up to the next whole number, or may they be rounded up or down consistent with the local jurisdiction's zoning ordinances and/or general plan? (Assigned to Deputy Attorney General Diane E. Eisenberg)

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)
- 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 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)
- 14-304** Under state law, may local authorities restrict parking on public streets to those persons issued residential parking permits? (Russell)

- 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? (Russell)
- 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)
- 14-1206** Must Caltrans pay fees imposed by a county to cover the county's costs for inspecting and reporting on Caltrans surface mining operations within the county? (Russell)
- 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)
- 15-201** What are the reporting requirements under the Child Abuse and Neglect Reporting Act for consensual sexual acts between minors of a like age? (Eisenberg)
- 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)
- 15-801** How do legally required recusals affect voting allocations among board members of the Metropolitan Water District of Southern California? (Medeiros)
- 15-1101** Quo warranto matter: Does a Rialto city council member reside within city limits? (Daniels)
- 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)
- 15-1103** May a city council member, who is also a member of the city's redevelopment successor agency board, purchase commercial property located within a former redevelopment area under circumstances where the member is currently leasing that property under a lease agreement, originally created before the member took office with the city, that contains an option to purchase the leased property? (Daniels)
- 15-1201** Which California state statute governs the filling of vacancies on the Banning Library District Board of Trustees? (Medeiros)
- 15-1202** What are the procedural requirements for filling the vacant office of County Sheriff upon the death of the incumbent sheriff? (Daniels)
- 16-101** Quo Warranto Matter: Does a misdemeanor conviction for passing a bad check qualify as forgery for purposes of disqualification from office holding? (Binsacca)

16-102 When calculating the "maximum allowable residential density" number under the Density Bonus Law, must fractional numbers be rounded up to the next whole number, or may they be rounded up or down consistent with the local jurisdiction's zoning ordinances and/or general plan? (Eisenberg)

CONCLUSIONS OF OPINIONS ISSUED IN JANUARY 2016

13-403—January 15, 2016— Proposition 26 does not require voter approval before a county board of supervisors may enact an ordinance that would require a cable television franchise holder providing service in the county to pay a “public, educational, and governmental access fee,” equal to one percent of the “holder’s gross revenues,” to the county as authorized under California’s Digital Infrastructure and Video Competition Act.

14-1203—January 19, 2016—1. The Ralph M. Brown Act’s regular meeting online agenda-posting provision is not necessarily violated whenever the local agency’s website experiences technical difficulties that cause the agenda to become inaccessible to the public for a portion of the 72 hours that precede the scheduled meeting.

2. If technical difficulties prevent a local agency’s legislative body from posting a regular meeting agenda on the local agency’s website for a continuous 72-hour period before the scheduled regular meeting, but the legislative body has otherwise substantially complied with the Brown Act’s agenda-posting requirements, the legislative body may lawfully hold its regular meeting as scheduled. Whether an agency has substantially complied in a given case would require an analysis of the particular circumstances to determine whether the Brown Act’s statutory objectives of ensuring open meetings and public awareness are satisfied.

13-304—January 26, 2016—1. A school or community college district violates California constitutional and statutory prohibitions against using public funds to advocate passage of a bond measure by contracting with a person or entity for services related to a bond election campaign if the pre-election services may be fairly characterized as campaign activity.

2. A school or community college district violates prohibitions against using public funds to advocate passage of a bond measure if the district enters into an agreement with a municipal finance firm under which the district obtains pre-election services (of any sort) in return for guaranteeing the firm an exclusive contract to provide bond-sale services if the election is successful, *under circumstances where* (a) the district enters into the agreement for the purpose (sole or partial) of inducing the firm to support the contemplated bond-election campaign *or* (b) the firm’s fee for the bond-sale services

is inflated to account for the firm's campaign contributions and the district fails to take reasonable steps to ensure the fee was not inflated.

3. In the case of an agreement as described in Question 2, a school or community college district violates California law concerning the use of bond proceeds if the district reimburses the municipal finance firm for the cost of providing pre-election services from the proceeds raised from the bond sale.

4. In the scenario described in Question 3, a school or community college district violates California law concerning the use of bond proceeds if the district reimburses the municipal finance firm for the cost of providing pre-election services from the fees the district pays to the firm in connection with the bond sale, whether or not the reimbursement is evident as a component of the fees the district pays to the firm in connection with the bond sale made on an itemized service-by-service basis.

5. Where an entity provides campaign services to a bond-measure committee in exchange for an exclusive agreement with the district to sell the bonds, the entity has an obligation to report the value of its services as a contribution to the bond-measure campaign in accordance with state law.

12-409—January 28, 2016— Government Code section 1090 prohibits an arrangement under which a contract city attorney's compensation for providing the city with additional "bond counsel" services is based on a percentage of the city's bond issuances.

OPINIONS CANCELLED IN JANUARY 2016

No matters were cancelled in January.

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

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