

# 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>.

### QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED DURING JULY 2017

**17-701** requested by Los Angeles County District Attorney Jackie Lacey concerning the following question:

What are the proper uses of civil enforcement penalty funds collected under the Unfair Competition Law? (Assigned to Deputy Attorney General Manuel M. Medeiros)

**17-702** requested by Assemblymember Anna M. Caballero concerning the following question:

Is a development agreement, entered into by a successor agency pursuant to an approved long-range plan, subject to referendum under Article II Section 9 of the California Constitution? (Assigned to Senior Assistant Attorney General Susan Duncan Lee)

### 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? (Medeiros)
- 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)
- 16-102** 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? (On hold due to pending litigation.) (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)
- 16-301** May a water district provide retirement contributions to members of its governing board without violating statutory compensation limits? (Medeiros)
- 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)
- 16-702** 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)
- 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)
- 17-103** Does the county procurement process pose a conflict of interest or violate anti-competition laws? (Daniels)
- 17-108** Does the ban on state-funded travel set forth in Government Code section 11139.8 apply to University of California and California State University athletic team staffs? (Eisenberg)
- 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)
- 17-301** Quo warranto matter: Must a trustee of Deer Creek Storm Water District be a “freeholder of land within the district,” and, were correct procedures followed in filling a vacancy on the District’s board of trustees? (Daniels)
- 17-305** Quo warranto matter: Has Bell Gardens City Council member vacated her office due to excessive absences from council meetings? (Binsacca)
- 17-601** Quo warranto matter: Did Dixon City Council member Devon Minnema satisfy the district residency requirement for the council seat he now holds? (Bidart)

- 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)
- 17-603** Quo warranto matter: Are Deanna Jackson and Matthew Hurley eligible to hold seats on the Atwell Island Water District Board of Directors? (Daniels)
- 17-701** What are the proper uses of civil enforcement penalty funds collected under the Unfair Competition Law? (Medeiros)
- 17-702** Is a development agreement, entered into by a successor agency pursuant to an approved long-range plan, subject to referendum under Article II Section 9 of the California Constitution? (Lee)

### CONCLUSIONS OF OPINIONS ISSUED IN JULY 2017

**17-302—July 6, 2017**—“Sex” as used in Penal Code section 4030, subdivision (k) refers to the searched person’s gender, including the person’s gender identity and gender expression.

**16-603—July 11, 2017**—The California Voter Participation Rights Act applies to charter cities, and to local school districts whose elections are governed by city charters.

**16-801—July 26, 2017**—Health and Safety Code section 13146 does not prohibit fire protection district chiefs from enforcing the State Fire Marshal building standards and regulations as they relate to R-3 dwellings.

### OPINIONS CONCLUDED IN JULY 2017

(Answered by Letter, Withdrawn or Cancelled)

17-102 Answered by Letter (*Unpublished*) 7/6/17

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

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