

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 SEPTEMBER 2015

No matters were assigned in September.

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)
- 12-401** To facilitate compliance with *Brady v. Maryland*, may the California Highway Patrol lawfully release to the district attorney's office the names of officers who have sustained complaints of dishonesty or moral turpitude conduct, with no information other than the officer's name and date of earliest conduct, so that the district attorney may bring a *Pitchess/Brady* motion for in camera review of the officers' personnel files? Does Penal Code section 832.7, subdivision (a), authorize the district attorney to directly review the personnel files of peace officers who will be prosecution witnesses? (Lee)
- 12-409** May a private attorney acting as a contract city attorney also act as "bond counsel" for the same municipality and be paid based on a percentage of the bond sale without violating Government Code section 1090? (Binsacca)
- 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)
- 13-304** In connection with a school or community college bond measure, does a district violate state law by contracting with a bond underwriter for both pre-election campaign services and post-election underwriting services? (Medeiros)
- 13-403** Does Proposition 26 require that, prior to a County Board of Supervisors enacting an ordinance requiring a cable television company to pay to the County a PEG (public, educational, and governmental access) fee equal to one percent (1%) of the gross revenues under the Digital Infrastructure and Video Competition Act ("DIVCA"), the voters must first approve the imposition of such a fee? (Binsacca)
- 13-903** Does Government Code section 1090 prohibit a city agency from utilizing the services of a public relations firm that occasionally retains the services of a city council member for its non-city clients? (Nolan)
- 13-1202** Are medical assistants legally permitted to perform basic pulmonary function testing, such as spirometry? (Daniels)
- 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)
- 14-603** Are the City of Fortuna’s dog licensing ordinances authorized under state law? (Daniels)
- 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)
- 14-1203** Do technical failures in local agencies’ websites violate online agenda posting requirements subject to the Brown Act open meeting laws? (Gov. Code § 54954.2) (Binsacca)
- 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)
- 15-401** Quo warranto matter: May the same person simultaneously serve as a Director of the Water Replenishment District of Southern California and a member of the Carson City Council? (Daniels)
- 15-501** Quo warranto matter: Is a councilmember ineligible to serve on a city council for criminal conduct that occurred during an earlier term on the council? (Binsacca)

- 15-801** How do legally required recusals affect voting allocations among board members of the Metropolitan Water District of Southern California? (Reassigned to Medeiros)

CONCLUSIONS OF OPINIONS ISSUED IN SEPTEMBER 2015

15-402—September 10, 2015—“Active state supervision” requires a state official to review the substance of a regulatory decision made by a state licensing board, in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated, and must have and exercise the power to approve, modify, or disapprove the decision.

Measures that might be taken to guard against antitrust liability for board members include changing the composition of boards, adding lines of supervision by state officials, and providing board members with legal indemnification and antitrust training.

13-904—September 16, 2015—State law preempts a local ordinance that would require dentists to provide a patient with a Dental Materials Fact Sheet developed by the Dental Board of California, and to obtain from the patient a signed acknowledgment of receipt of the Fact Sheet, prior to every procedure in which dental restorative materials are used.

14-307—September 17, 2015—An automated photographic enforcement system may not be used to detect and enforce violations of the anti-gridlock law.

14-302—September 18, 2015—The labor negotiations exception to the open-meeting requirements of the Ralph M. Brown Act does not permit a community college district's governing board to meet in closed session with its designated representative to discuss the negotiation of a project labor agreement because the contractors and laborers covered by such an agreement are not district employees.

13-1101—September 22, 2015—A superior court clerk may, but is not required to, charge a county district attorney's office the specified statutory fee for providing that office with certified copies of court records for use in a criminal action.

OPINIONS CANCELLED IN SEPTEMBER 2015

No matters were cancelled in September.

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