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To: Chair Remke, Commissioners Audero, Cardenas, Hatch, and Hayward
From: John M. Feser Jr., Senior Commission Counsel
Subject: Process for Requesting and Obtaining an Attorney General Opinion
Date: January 8, 2018

ISSUE PRESENTED

What is the process for requesting and obtaining an opinion from the Attorney General's Office?

DISCUSSION

The Attorney General's authority to issue legal opinions is in Government Code section 12519: "The Attorney General shall give his or her opinion in writing to any . . . state agency . . . upon any question of law relating to [it's office]." This includes the FPPC. (See *id.*)

Questions Presented for AG Opinions.

Government Code section 12519 states that opinions will be provided on "questions of law." Requests that are declined include requests that: (1) require factual investigations; (2) would require the resolution of a factual dispute; and (3) seek policy determinations.

Section 12519 also states that opinions will be given to specified officers on questions "relating to their respective offices." Requests for opinions posed on behalf of others, or on questions unrelated to the office, are declined.

For policy reasons, the Attorney General also declines to give opinions on legal questions under special circumstances. The limitations include: (1) Conflicts of interest under the Political Reform Act; (2) local laws; (3) pending legislation; (4) issues pending in judicial or administrative proceedings; and (5) issues that present a conflict of interest for the AG's Office.

Process for Requesting and Obtaining an AG Opinion.

Contents of an AG opinion request.

An opinion request should be submitted in writing, and signed by the public official or head of the agency authorized to make the request. The request should set out the question to be answered as clearly as possible, along with enough description of the background and context of the question to allow a precise legal analysis to be prepared.

Any request that is made by a department or officer that employs legal counsel must be accompanied by a legal analysis prepared by the department or officer's legal counsel.

A Deputy Attorney General in the Opinion Unit may contact the requester for additional background information, or to discuss whether revisions to the question are desirable.

Comments by Interested Persons.

After a request for an opinion is accepted, the matter is assigned to a Deputy AG in the Opinion Unit for research and drafting. During the preparation period, the AG's Office allows any interested person or entity to submit its comments on the issues under consideration. The AG's Opinion Unit solicits comments from persons or entities who may have knowledge of the issues. All comments submitted before a draft is prepared will be considered.

Drafting and Internal Review.

The Deputy AG assigned to the matter is primarily responsible for directing research into the question, and for drafting the opinion. After a draft opinion is prepared, it is circulated internally within the AG's Office for review and revision. This process, which can be lengthy, ensures the quality and value of a written opinion. The AG's Office often cannot accurately predict when a particular opinion will be issued. Proposed analyses and conclusions of pending opinions are not discussed outside of the AG's Office.

Publication.

Upon formal AG approval, the opinion is provided first to the requester, and then to the public. Published opinions are available on the AG's website, online legal research services, and in law libraries.

The AG opinion process is public information.

All written requests for AG opinions, as well as all written views submitted on questions under consideration, are public documents and may be disclosed to third parties under the Public Records Act.