

1 Amend 2 Cal. Code Regs. Section 18704 to read:

2 **§ 18704. Making, Participating in Making, or Using or Attempting to Use Official Position**
3 **to Influence a Decision, Defined.**

4 ~~(a) To determine if a public official is making, participating in making, or using or~~
5 ~~attempting to use his or her official position to influence a governmental decision, apply~~
6 ~~Regulations 18704.1 through 18704.4, respectively.~~

7 ~~(b) Notwithstanding subdivision (a) of this regulation, to determine if a public official~~
8 ~~who holds an office specified in Section 87200 is making, participating in making, or using or~~
9 ~~attempting to use his or her official position to influence a governmental decision relating to an~~
10 ~~agenda item which is noticed for a meeting subject to the provisions of the Bagley Keene Act~~
11 ~~(Sections 11120 et seq.) or the Brown Act (Sections 54950 et seq.) apply Regulations~~
12 ~~18704.1(a)(1) (a)(4), 18704.2, 18704.3, 18704.4, 18704.5.~~

13 (a) Making a Decision. A public official makes a governmental decision if the official
14 authorizes or directs any action, including voting, appointing a person, obligating or committing
15 his or her agency to any course of action, or entering into any contractual agreement on behalf of
16 his or her agency.

17 (b) Participating in a Decision. A public official participates in a governmental decision if
18 the official provides information, an opinion, or a recommendation for the purpose of affecting
19 the decision without significant intervening substantive review.

20 (c) Using Official Position to Attempt to Influence a Decision. A public official uses his
21 or her official position to influence a governmental decision if he or she:

22 (1) Contacts or appears before any official in his or her agency or in an agency subject to
23 the authority or budgetary control of his or her agency for the purpose of affecting a decision; or

24 (2) Contacts or appears before any official in any other government agency for the
25 purpose of affecting a decision, and the public official acts or purports to act within his or her
26 authority or on behalf of his or her agency in making the contact.

27 (d) Exceptions. Making, participating in, or influencing a governmental decision does not
28 include:

1 (1) Ministerial. Actions by a public official that are solely ministerial, secretarial, or
2 clerical.

3 (2) Appearances as a Member of the General Public. An appearance by a public official
4 as a member of the general public before an agency in the course of its prescribed governmental
5 function if the official is appearing on matters related solely to his or her personal interests,
6 including interests in:

7 (A) Real property owned entirely by the official or members of his or her immediate
8 family;

9 (B) A business entity owned entirely by the official or members of his or her immediate
10 family; or

11 (C) A business entity over which the official exercises sole direction and control, or over
12 which the official and his or her spouse jointly exercise sole direction and control.

13 (3) Terms of Employment. Actions by a public official relating to his or her compensation
14 or the terms or conditions of his or her employment or consulting contract.

15 (4) Public Speaking. Communications by a public official to the general public or media.

16 (5) Academic Decisions.

17 (A) Teaching decisions, including an instructor's selection of books or other educational
18 materials at his or her own school or institution, or other similar decisions incidental to teaching; or

19 (B) Decisions by a public official who has teaching or research responsibilities at an
20 institution of higher education relating to his or her professional responsibilities, including
21 applying for funds, allocating resources, and all decisions relating to the manner or methodology
22 with which his or her academic study or research will be conducted. This exception does not
23 apply to a public official who has institution-wide administrative responsibilities as to the
24 approval or review of academic study or research at the institution unrelated to his or her own
25 work.

26 (6) Architectural Designs or Engineering Plans.

27 (A) An architectural design or engineering plan prepared by a public official for a client
28 to submit in a proceeding before the official's agency if:

1 (i) The work is performed pursuant to the official's profession; and

2 (ii) The official does not make any contact with the agency other than contact with agency
3 staff concerning the process or evaluation of the design or plan prepared by the official.

4 (B) An official's appearance before a design or architectural review committee or similar
5 body of which the official is a member to present a design or plan prepared for a client if:

6 (i) The review committee's sole function is to review architectural designs or engineering
7 plans and to make recommendations to a planning commission or other agency;

8 (ii) The review committee is required by law to include architects, engineers or persons in
9 related professions, and the official was appointed to the body to fulfill this requirement; and

10 (iii) The official is a sole practitioner.

11 (7) Additional Consulting Services: Recommendations by a consultant regarding
12 additional services for which the consultant or consultant's employer would receive additional
13 income if the agency has already contracted with the consultant, for an agreed upon price, to
14 make recommendations concerning services of the type offered by the consultant or consultant's
15 employer and the consultant does not have any other economic interest, other than in the firm,
16 that would be foreseeably and materially affected by the decision.

17 Note: Authority cited: Section 83112, Government Code. Reference: Sections ~~81002, 81003,~~
18 ~~87100, 87101-87105, and 87200~~ and 87302, Government Code.