

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

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

(a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency.

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

(c) Using Official Position to Attempt to Influence a Decision. A public official uses an official position to influence a governmental decision if the official:

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

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

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

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

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

(A) Real property owned entirely by the official, members of the official's immediate family, or the official and members of the official's immediate family;

(B) A business entity owned entirely by the official, members of the official's immediate family, or the official and members of the official's immediate family; or

(C) A business entity over which the official, members of the official's immediate family, or the official and members of the official's immediate family solely or jointly exercise full direction and control.

(3) Terms of Employment. Actions by a public official relating to compensation or the terms or conditions of the official's employment or consulting contract. However, an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or the official's immediate family, or set a salary for the official's or the official's immediate family different from salaries paid to other employees of the government agency in the same job classification or position.

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

(5) Academic Decisions.

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

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

(6) Architectural and Engineering Documents.

(A) Drawings or submissions of an architectural, engineering, or similar nature prepared by a public official for a client to submit in a proceeding before the official's agency if:

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

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

(B) An official's appearance before a design or architectural review committee or similar body of which the official is a member to present drawings or submissions of an architectural, engineering, or similar nature prepared for a client if:

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

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

(iii) The official is a sole practitioner.

(7) Additional Consulting Services: Recommendations by a consultant regarding additional services for which the consultant or consultant's employer would receive additional

income if the agency has already contracted with the consultant, for an agreed upon price, to make recommendations concerning services of the type offered by the consultant or consultant's employer and the consultant does not have any other economic interest, other than in the firm, that would be foreseeably and materially affected by the decision.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87101 and 87302, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 18702 to section 18704, including amendment of section heading and section, filed 4-27-2015. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 18). For prior history of section 18704, see Register 2015, No. 6.

2. Repealer and new section and amendment of Note filed 6-22-2015; operative 7-22-2015. Submitted to OAL for filing and printing only pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 26).

3. Amendment of subsections (a), (c)-(c)(2), (d)(2)-(d)(3) and (d)(5)(A)-(B) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil

C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 20).