

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

§ 18316.5. Application of Government Code Section 83116.5.

(a) The Commission will not apply Government Code Section 83116.5 to find a violation of this title¹ by a person who provides incorrect advice interpreting any provision of this title which causes the advisee to violate this title under any of the following circumstances:

(1) Government Employees or Contractors. If the person is an employee of or under contract to a state or local government agency and is giving advice interpreting the provisions of this title as part of the person's government contract or employment.

(2) Private Sector Filers. If the person is not exempted by subdivision (1), and the person has filing or reporting obligations under this title, if either of the following applies:

(A) There is no direct relationship between the advice given and the duties or activities of the position for which the person has filing or reporting obligations; or the client being advised is not the client for whom the filing occurs; or

(B) If the person's conduct in giving the advice was not grossly negligent. "Grossly negligent" means that the person giving an incorrect interpretation failed both to diligently research the subject related to the advice given and to use informed judgment in providing the advice, and the advice was clearly erroneous.

A person will be deemed to have "diligently researched" the subject related to the advice given if the person reviewed the applicable provisions of this title and the regulations, opinions, and manuals of the Commission, including the compilation of such documents contained on the agency website at www.fppc.ca.gov, as well as any applicable reported appellate court decisions and the California Code of Regulations.

(3) Attorneys in Private Capacity. If the person is not a government employee or contractor, as defined in subdivision (a)(1), or a private sector filer, as defined in subdivision (a)(2), and the person is an active member of the State Bar of California whose only service in connection with the violation was providing legal advice and who was not also engaged in the planning, organizing, or directing of an activity from which the violation occurred. “Legal advice” means the rendering of oral or written advice including the preparation of documents and reports incidental to the rendering of such advice, but shall not include the preparation of any report or document required to be filed under this title by the person providing the advice.

(b) This regulation is not applicable where a person renders advice which is intended to result in a violation of this title. Furthermore, nothing in this regulation shall be construed to exempt a person from liability for a violation of any other provision of this title.

¹ All references to “this title” are references to Title 9, Sections 81000-91015 of the Government Code.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83116 and 83116.5, Government Code.

HISTORY

1. New section filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
2. Amendment of subsection (a)(2)(B) filed 12-18-2006; operative 1-17-2007. 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) (Register 2006, No. 51).

3. Amendment of subsection (a)(2)(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).