

#44

8/25/66

First Supplement to Memorandum 66-52

Subject: Study 44 - The Fictitious Name Statute

After receiving letters from various representatives of the newspaper industry, we invited them to attend our August meeting. This was not possible, but we are advised that representatives of the California Newspaper Publishers Association will be present at our meeting on September 16 at approximately 10:30 a.m. when we will discuss the Fictitious Name Statute topic.

To provide you with background information concerning this matter, we attach a number of letters from and to representatives of the newspaper industry.

Respectfully submitted,

John H. DeMully  
Executive Secretary

# Los Angeles Newspaper Service Bureau

(INCORPORATED)

LEGAL ADVERTISING CLEARING HOUSE

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NEWSPAPERS OF LOS ANGELES CITY AND COUNTY

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July 28, 1966

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- HIGHLAND PARK NEWS-HERALD & JOURNAL
- (HOLLYWOOD) CITIZEN NEWS
- HUNTINGTON PARK DAILY SIGNAL
- INGLEWOOD DAILY NEWS
- (LANCASTER) ANTELOPE VALLEY  
LEDGER-GAZETTE
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- PASADENA STAR-NEWS
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- (TULUNGA) RECORD LEDGER OF  
THE VERDUGO HILLS
- THE VAN NUYS NEWS
- (VENICE) EVENING VANQUARD
- (WATER) LOS ANGELES STAR REVIEW
- WESTCHESTER NEWS-ADVERTISER
- WESTLAKE (LOS ANGELES) POST
- WEST LOS ANGELES INDEPENDENT
- WESTWOOD HILLS PRESS
- (WHITTIER) THE DAILY NEWS
- (WILMINGTON) PRESS-JOURNAL  
AND HARBOR MAIL
- THE WILSHIRE PRESS

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
30 Crothers Hall  
Stanford, California

Dear Mr. DeMouilly:

I was instructed by my Board of Directors to call on you personally for an exploratory session regarding the background of the commission's attack on the publication of fictitious firm name certificates in the newspapers of the state. As it will not be possible to do this within the immediate future, I am therefore writing you regarding the matter before the August 1 deadline, as suggested by you to me several weeks ago. Our board's concern regarding the commission's recommendation for repeal of the publication requirement, is based not so much on the possible loss to the public and to the newspapers of this particular publication, as it is on the evidence that the commission contemplates similar recommendations for the repeal of publication requirements on other types of notices, including those, we note in news accounts carried in the Sacramento newspapers, which relate to abandoned property, bank accounts, etc.

We feel that such a broad attack on public notice is being undertaken by the commission's research staff without sufficient study of the history and background of the newspaper notification procedure and its intimate intertwining with our whole American system of representative government and our philosophy of accountability of government officials and financial fiduciaries to the public for their acts. I presented a talk on this subject recently to the Nevada State Press Association at its annual convention in Elko. I have decided to print copies of the talk and when the job is published I will send you copies, the subject matter of which relates directly, of course, with "the right of the people to know," reinforced recently by Congressman Moss' public information legislation which was signed by President Johnson just two weeks ago.

It is the feeling of our board that if the Law Revision Commission feels that its responsibilities relate to such philosophic fundamentals in government and law as this matter of public information, your commission should at least approach

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THE ONLY LEGAL ADVERTISING WHICH IS JUSTIFIABLE FROM THE STANDPOINT OF TRUE ECONOMY AND THE PUBLIC INTEREST IS THAT WHICH REACHES THOSE WHO ARE AFFECTED BY "IT."

- Mr. John H. DeMouly

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the subject from a broad philosophic viewpoint, rather than singling out individual publication requirements which individual lawyers or bureaucrats dislike for some particular reason and persuade the commission, with its high prestige and influential personnel, to join in attacking public notices.

It is my hope to discuss these issues with you personally at some future date, but in the meantime please record our organization of 108 newspapers as irrevocably and unequivocally opposed to the repeal of the requirement of publication of fictitious firm name certificates.

Respectfully yours,

LOS ANGELES NEWSPAPER  
SERVICE BUREAU, INC.

By: 

Telford Work  
Secretary-Treasurer

August 3, 1966

Mr. Telford Work  
Los Angeles Newspaper Service  
Bureau, Inc.  
220-224 West First Street  
Los Angeles, California 90012

Dear Mr. Work:

Your letter of July 28 indicates your desire to discuss the Commission's tentative recommendation relating to the Fictitious Name Statute and states that your organization of 100 newspapers is opposed to the repeal of the requirement of publication of the Fictitious name certificates.

Your letter indicates concern that the Commission contemplates similar recommendations for the repeal of the publication requirements of other types of notices. You specifically mention the notices in connection with abandoned property, bank accounts, and so forth. The Commission is not engaged in any comprehensive study of the publication requirements in existing law. It is true that the Commission is studying the abandoned property act, but the staff's recommendation to the Commission is that the existing publication requirement be retained without change and that a new procedure be added to the existing law that would require another publication substantially equivalent to the one we have now. In other words, we contemplate twice as much publication as is now required.

The Commission's research staff is not making any broad attack on publication notices as you suggest in your letter. However, it is almost the unanimous agreement of all persons who use the fictitious name information that the publication requirement is, in effect, "an unfair burden on the small business man who cannot afford to incorporate." Your objections to the repeal of the publication requirement would have more influence on the Commission, I believe, if you would tell us exactly how the published certificates are being used. This is the kind of information that the Commission needs before it can determine what recommendation to make to the 1967 legislative session. It was

Mr. Work

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August 3, 1966

to obtain this type of information that we have distributed the tentative recommendation to more than 400 persons.

We received a letter from Mr. Ben D. Martin, General Manager, California Newspaper Publishers Association, and the chairman of the Commission invited Mr. Martin to attend the August meeting of the Law Revision Commission. He indicated that he was unable to attend that meeting because of a prior commitment and we have invited him to attend the September meeting, which will be held on September 15 and 17. We would be delighted to have you come to our September meeting, which will be held in San Francisco. It would probably be best if you and Mr. Martin could agree on a time when this matter could be discussed. We will set the matter as a special order of business at a time that is convenient to you and Mr. Martin, or, if you are unable to find a mutually convenient time, we can discuss the matter separately with each of you.

If you have any information indicating the purpose served by the publication requirement under the Fictitious Name Statute, we would be pleased to have it so that we can reproduce it and distribute it to the members of the Commission prior to the September meeting.

If you would like to discuss the matter informally with me I would be delighted to discuss it with you at any time that is mutually convenient. However, I think that it would be better if you discuss the matter directly with the Commission.

Very truly yours,

John H. Doherty  
Executive Secretary

JHD:lb

KENNETH G. MCGILVRAY  
E. L. MCGILVRAY  
W. AUSTIN COOPER  
WILLIAM B. BRODOVSKY

LAW OFFICES OF  
**McGILVRAY, COOPER & BRODOVSKY**  
SUITE 714 FORUM BUILDING  
1107 NINTH STREET  
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AREA CODE 916

July 26, 1966

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
30 Crothers Hall  
Stanford, California

Dear Mr. DeMouilly:

You have recently sent to Mr. R. C. Kopriva, the Chairman of the Legislative Committee of the Associated Credit Bureaus of California, a copy of your proposal regarding fictitious names. As Legislative Advocate of the Associated Credit Bureaus I received a copy of this from Mr. Kopriva. Since that time, as special counsel for legislative and administrative matters for the Sacramento Union, I have heard from its publisher, Mr. Carlyle Reed, who sent me a copy of Mr. Ben Martin's letter to you of July 15, 1966. Mr. Martin is the General Manager of the California Newspaper Publishers Association.

I have also talked with Mr. Kopriva regarding his reply to you and to other managers of credit bureaus in California and I am not at all sure that the credit managers would agree that publication of fictitious names serves no purpose. A manager of one of the larger firms in Northern California states that he feels the publication serves a very useful purpose in the credit granting field.

On behalf of the publisher of the Sacramento Union, which paper is operated by the Copley Press, I would like to state that I concur in Mr. Martin's views and feel that before any legislation is introduced that we should make a thorough analysis of this proposal. I will be discussing this matter with Mr. Martin, to whom a copy of this letter is going, so that the various newspaper interests in California can study the proposal and submit to your Commission their views.

I note with some interest that there is a suggestion made that the Secretary of State's office be used rather than county clerks. This is somewhat similar to our central filing system under the Uniform Commercial Code. I am quite familiar with this filing system as I was, and still am, Chairman of the

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Mr. John H. DeMouilly  
July 26, 1966  
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Advisory Committee to the Senate Judiciary Committee on the Uniform Commercial Code and as such have been familiar with legislation concerning the Code and with the adoption of the central filing system and the automated filing system in Mr. Jordan's office.

However, there may be some problem arise in legal circles as to a central filing at Sacramento and I believe that the Commission should study the problem from the legal standpoint. I would be most pleased to make our office available to whoever is working on this study and to assist you and confer with you in this matter.

Very truly yours,

McGILVRAY, COOPER & BRODOVSKY

By

  
Kenneth G. McGilvray

KGM:mm

August 8, 1966

Mr. Kenneth G. McGilvray  
Suite 714 Forum Building  
1107 Ninth Street  
Sacramento, California 95814

Dear Mr. McGilvray:

Your letter of July 26 indicated that you are willing to cooperate with the Law Revision Commission in its study of the Fictitious Name Statute. The Commission has determined that it will discuss this subject with other representatives of the newspaper publishers: Mr. Ben D. Martin of the California Newspaper Publishers Association, and Mr. Telford Work, of the Los Angeles Newspaper Service Bureau. This discussion is tentatively scheduled for the September meeting of the Commission, which will be held on September 16 and 17 at the State Bar Building, 601 McAllister Street, San Francisco. You might contact Mr. Martin and determine what time he is planning to be present to discuss this matter. Perhaps you would arrange to be present at the same time. If not, we can schedule your presentation at a time convenient to you. To bring you up to date on this matter, I am sending you copies of letters we received from Mr. Martin and Mr. Work and my replies to those letters.

We are also investigating the possibility of using automatic data processing in the Secretary of State's office to compile the fictitious name information and to provide it to interested persons in a convenient form.

If you have any additional comments concerning this matter that you would like to have sent to the Commissioners prior to the September meeting, please send them to me and I will see that they are sent out to the members of the Commission.

Very truly yours,

John H. DeBully  
Executive Secretary

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California

**Newspaper Publishers Association, Inc.**

LOS ANGELES: 615 S. Flower St. (90017)...TWX 213 683-0502...213 Madison 3-1184

SACRAMENTO: 1127 - 11th St. (95814)...TWX 916 444-2675...916 Hickory 7-1877

SEN D. MARTIN, General Manager

July 15, 1966

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
30 Crothers Hall  
Stanford, California

Dear Mr. DeMouilly:

When we recently became aware that the California Law Revision Commission was studying the Fictitious Name Statute, we contacted you for information.

You were prompt and cooperative in your response, but we were disappointed in what we learned.

If the Commission's responsibility is to study particular sections of law and make recommendations to the legislature on changes, it would seem the Commission would be interested in having a thorough study made before any recommendations are made.

You have requested our comments on this particular study, but not our comments so that they might be considered by the Commission in its study.

Rather, you have advised us the Commission has recommended some significant changes in law, and request we comment on those changes.

We will.

We are opposed to these changes.

We are more opposed to the method of arriving at such recommendations.

This is reminiscent of another Law Revision Commission recommendation which would have removed legal protection for a news reporter who accepts vital information with the understanding he will not publicly reveal his source of information.



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Mr. John H. DeMouilly  
July 15, 1966  
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The Commission recommended to the legislature that this law be abolished, and advised the legislature in an extensive and exhaustive written report that news media had been consulted during the course of the study leading up to this recommendation.

This proposal was quickly rejected by the legislature.

It was rejected, probably by many who were in agreement with it, because there were many facets of the argument which had not been considered before and because many legislators were appalled to learn that they had been misinformed when told news media had been consulted.

In the interest of good legislation, and to avoid future wastes of the Commission's time in making recommendations which meet quick deaths in the legislature after all the facts are made known, would it not be possible for the Commission to bring into these studies all groups which might have an interest -- before and not after the Commission recommendations are published?

We are not obstructionists, nor is this association ever guilty of clinging stubbornly to a cause or a law without frequent review and soul searching.

In the case of public notice laws, we often sponsor or support revision or deletion as time and business procedures make such revisions necessary.

We do not necessarily at this time say that there should be no changes made in the Fictitious Name Statute regarding publication of notice.

We are in the process of asking a responsible group of publishers comprising our Governmental Affairs Committee to review the statute, its historic reasons for being and the pro and con arguments about its continuing to be a vital and necessary law.

We cannot complete this task by your August 1 deadline.

Even if we did and should conclude that we are opposed to some or all of the Commission's recommendations, we again find ourselves in the uncomfortable and unpleasant and unnecessary position of offering comment after the decision has been reached.

Evidentially the Law Revision Commission plans a long series of studies into various sections of California Law.

We request consideration in the early stages whenever these lead into areas which might be of interest to us.

Mr. John H. DeMouilly  
July 15, 1966  
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This granted, we will pledge an objective review and recommendation at each step.

If the same procedures are followed in this instance and in the future as were followed in the confidential source legislation, we shall have no course but to withhold any information and comment we have until the matter can be presented to an objective legislative committee. If, as has happened in the past, this information ~~is withheld~~ facts not before considered, it will could lead ~~to a~~ legislative rejection of the Commission's long and ~~arduous work.~~

Sincerely yours,



Ben D. Martin  
General Manager

BDM:pas

## CALIFORNIA LAW REVISION COMMISSION

July 18, 1966



ROOM 30, CROTHERS HALL  
STANFORD UNIVERSITY  
STANFORD, CALIFORNIA 94305

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Ex Officio

Mr. Ben D. Martin  
California Newspaper Publishers  
Association, Inc.  
1127 11th Street  
Sacramento, California

Dear Mr. Martin:

Your letter of July 15, 1966, indicates that the California Newspaper Publishers Association is opposed to the changes tentatively recommended by the California Law Revision Commission with respect to the Fictitious Name Statute. You state, however, that your organization is making a further study of this matter.

I am concerned that you feel that you are in the "uncomfortable and unnecessary and unpleasant position of offering comments after the decision has been made." Unfortunately, I did not make it clear when I forwarded the tentative recommendation for comment that the Commission has made no decision on what recommendation it will make to the 1967 Legislature on this subject. The matter is still under study by the Commission. We are at this stage of the study seeking to obtain the views of all interested persons so that we will have that information available when we determine what recommendation we will make to the Legislature. We prepared a tentative recommendation and distributed it to interested persons because we have found from past experience that persons find it difficult to comment on a particular matter unless they have something specific to comment upon. To make clear that the Commission has not determined what recommendation it will make on this subject to the Legislature, we included the following on the cover page of the tentative recommendation:

**WARNING:** This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence,

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this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature. [Emphasis in original.]

In order to determine what changes should be made in the Fictitious Name Statute, the Commission solicits the comments of your organization. We also need the views of other persons and organizations and have requested comments from the public agencies that now administer the law and would administer the draft statute in the tentative recommendation, credit bureaus, state agencies and others that use the fictitious name information, lawyers, and others. Obtaining the views of these persons and organizations is an important step in the process of preparing legislation on this subject. Only after we have received and considered this information will the Commission determine what recommendation should be made to the 1967 Legislature.

The Commission's study and recommendation will cover only the Fictitious Name Statute and will not include a study of any other publication requirements of the California law. Because the study is so limited, we had thought that we had provided sufficient time so that interested persons and organizations could review the tentative recommendation and send us their views on what changes, if any, are needed in the existing law. Nevertheless, because it is so important that we have the views of your organization and because you have not had time to review the matter, we will defer considering the comments and suggestions on this subject until our October meeting. But we must have your comments not later than October 1, 1966. We will need to make revisions in our tentative recommendation or to prepare an entirely new recommendation, and we must have our printed report available for the Legislature and interested persons and organizations early in January 1967. (It will take several months to have our report set in type and printed.)

The Commission was not pleased with the situation (mentioned in your letter) that developed in the case of the recommendation on the newsman's right to keep his news source confidential. It was to avoid this kind of situation that we prepared and distributed the tentative recommendation to legal newspapers and other interested persons. We hope that all interested persons will have an opportunity to study the tentative recommendation long before the legislative session and send us their views so that the recommendation we prepare for the Legislature will be one that takes into account the views of all interested persons and organizations. I cannot emphasize

Mr. Martin

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too strongly that we solicit the views of your organization. I assure you that they will be given careful consideration by the Commission before its recommendation to the Legislature is prepared. In fact, we would be pleased to have you appear at a Commission meeting to state your views and to answer any questions the Commission may have before we determine what recommendation we will make to the Legislature. (Our meetings, however, are not "hearings"; they are work sessions. At the same time, various interested persons and organizations have sent representatives to our meetings to observe the Commission in action, to expand on their written comments where additional oral presentation is needed, and to provide the Commission with expert information where needed.)

If your organization concludes that the publication requirement serves a useful purpose or that some other form of publication would be useful, we would appreciate receiving your views on that. It would also be helpful if you would comment on the statutory scheme set out in the tentative recommendation, indicating what changes should be made and the reasons.

Sincerely,

John H. DeMouly  
Executive Secretary

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