

June 17, 1974

Time

Place

June 27 - 7:00 p.m. - 10:00 p.m. (Rm. 1232)	International Hotel
June 28 - 9:00 a.m. - 5:00 p.m. (VIP room)	Los Angeles Airport
June 29 - 9:00 a.m. - 1:00 p.m. (VIP room)	6211 W. Century Blvd. Los Angeles 90045

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

June 27-29, 1974

1. Minutes of May 23-24, 1974, Meeting (sent 6/11/74)
2. Administrative Matters
3. 1974 Legislative Program

Oral Report

4. Study 39.70 - Prejudgment Attachment } Special Order of Business
Memorandum 74-29 (sent 5/30/74) } 7:05 p.m., June 27

5. Study 77 - Nonprofit Corporations

Memorandum 74-33 (sent 6/13/74)

Draft of Statute (distributed for and considered at last meeting)

Additional provisions of draft statute (attached to Memorandum 74-33)

Memorandum 74-31 (distributed for and considered at last meeting--you may want to read chapter summaries for portions of statute not covered at last meeting)

Source and Comparable Provisions (sent 6/11/74)

Memorandum 74-28 (enclosed)

6. Study 63 - Evidence Code

Physician-Patient Privilege

Memorandum 74-34 (sent 5/30/74)

Draft of Tentative Recommendation (attached to Memorandum)

Business Records

Memorandum 74-35 (sent 6/6/74)

Draft of Tentative Recommendation (attached to Memorandum)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

JUNE 27, 28, AND 29, 1974

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on June 27, 28, and 29, 1974.

Present: Marc Sandstrom, Chairman (Friday & Saturday)
John N. McLaurin, Vice Chairman
John J. Balluff
John D. Miller
Thomas E. Stanton, Jr. (Thursday & Friday)
Howard R. Williams

Absent: Robert S. Stevens, Member of Senate
Alister McAlister, Member of Assembly
Noble K. Gregory
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, Stan G. Ulrich, and Rand McQuinn, members of the Commission's staff, also were present. Mr. G. Gervaise Davis III, Commission consultant on nonprofit corporations, was present on Friday and Saturday, June 28 and 29.

The following persons were present as observers on the days indicated:

Thursday, June 27

David Howard Battin, Staff Attorney, State Bar, Los Angeles
Lawrence H. Cassidy, President, California Association of Collectors,
Sacramento
Henry C. Hopkins, Attorney, Wilks & Hopkins, Santa Ana
Lawrence R. Tapper, Attorney General's Office, Los Angeles
Robert A. Wilks, Attorney, Wilks & Hopkins, Santa Ana
Kenneth L. Wolf, Van Nuys

Friday, June 28

Kenneth L. Wolf, Van Nuys

Saturday, June 29

Yeoryios C. Apallas, Attorney General's Office, Los Angeles
Lawrence R. Tapper, Attorney General's Office, Los Angeles
Kenneth L. Wolf, Van Nuys

ADMINISTRATIVE MATTERS

Minutes of May 23-24, 1974, Meeting

The Minutes of the May 23-24, 1974, Meeting were approved as submitted.

1974 Legislative Program

The Commission considered an oral report on the status of the 1974 legislative program.

Research Consultant--Eminent Domain

The Commission authorized and directed the Executive Secretary to execute on behalf of the Commission a contract with Professor Arvo Van Alstyne in the amount of \$2,000 (plus \$500 for travel expenses) to prepare a written report indicating the significant differences between the Uniform Eminent Domain Code (as approved at the August 1974 meeting of the National Conference of Commissioners on Uniform State Laws) and the California Law Revision Commission's tentative recommendation relating to the "Eminent Domain Law." This report shall indicate matters treated differently in the two proposed laws and matters covered in the Uniform Eminent Domain Code that are not covered in the Law Revision Commission's draft and shall indicate suggested changes in the Law Revision Commission's draft. Professor Van Alstyne shall attend at least one day of the September and October 1974 Law Revision Commission meetings to present his report and other related matters and to assist and advise the Commission in connection with its study of eminent domain law.

STUDY 39.70 - PREJUDGMENT ATTACHMENT

The Commission considered Memorandum 74-29 and the amendments proposed to be made to the latest amended version of the bill. The Commission directed the staff to have the bill amended as indicated below but to resist any further substantive changes when the bill is heard by the Senate Judiciary Committee in August.

AMENDMENTS TO ASSEMBLY BILL NO. 2948

AS AMENDED IN SENATE MAY 21, 1974

AMENDMENT 1

On page 12, line 5 of the printed bill as amended in Senate May 21, 1974, after "action", insert:
against a defendant engaged in a trade, business, or profession

AMENDMENT 2

On page 12, strike out lines 10 to 12, inclusive, and insert:
express or implied.

(b) An attachment may not be issued if the claim is secured by any interest in real or

AMENDMENT 3

On page 12, line 28, strike out "(b)", and insert:

(c) An attachment may not be issued where the claim is based on the sale or lease or a license to use property, the furnishing of services, or the loan of money and the property sold or leased, or licensed for use, the services furnished, or the money loaned was used primarily for personal, family, or household purposes.

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AMENDMENT 4

On page 16, line 33, after "exempt", insert:
and the plaintiff does not file and serve a notice of opposition as provided
in this subdivision

AMENDMENT 5

On page 21, line 20, after "exempt", insert:
and the plaintiff does not file and serve a notice of opposition as provided
in this section

AMENDMENT 6

On page 23, strike out lines 22 and 23, and insert:
would be concealed, substantially impaired in value, or otherwise made
unavailable to levy if issuance of the

AMENDMENT 7

On page 38, line 25, strike out "shall be" and insert:
is

AMENDMENT 8

On page 39, after line 21, insert:
(f) The fee for filing and indexing each notice of attachment, notice
of extension, or notice of release with the Department of Motor Vehicles is
three dollars (\$3). Upon the request of any person, the Department of Motor
Vehicles shall issue its certificate showing whether there is on file, on the
date and hour stated therein, any notice of attachment, naming a particular
person, and if a notice is on file, giving the date and hour of filing of

each notice and the name of the plaintiff. The fee for the certificate issued by the department is two dollars (\$2). Upon request, the department shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for a fee of one dollar (\$1) per page.

AMENDMENT 9

On page 40, line 37, strike out "filed" and insert:
recorded

AMENDMENT 10

On page 40, line 40, after the period, insert:
Where, on the date of recording, the land on which the crops are growing or on which the timber is standing stands in the name of a third person, either alone or together with the defendant, the recorder shall index such attachment when recorded in the names of both the defendant and such third person.

AMENDMENT 11

On page 41, line 1, after the period, insert:
The fee for filing and indexing each notice of attachment, notice of extension, or notice of release in the office of the Secretary of State is three dollars (\$3). Upon the request of any person, the Secretary of State shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of attachment, naming a particular person, and if a notice is on file, giving the date and hour of filing of each notice and the name of the plaintiff. The fee for the certificate issued by the Secretary of State is two dollars (\$2). A combined certificate may be issued pursuant to Section 7203 of the Government Code. Upon request,

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the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for a fee of one dollar (\$1) per page.

AMENDMENT 12

On page 57, strike out line 17, and insert:

authorized except that it is not a wrongful attachment if both of the following are established:

(1) The levy was not authorized solely because of the prohibition of subdivision (c) of Section 483.010.

(2) The person who sold or leased, or licensed for use, the property, furnished the services, or loaned the money reasonably believed that it would not be used primarily for personal, family, or household purposes.

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STUDY 63 - EVIDENCE

Evidence Code Section 999

The Commission considered Memorandum 74-34 and the attached tentative recommendation relating to the "good cause" exception to the physician-patient privilege and approved the tentative recommendation to be sent out for comment subject to suggested editorial changes.

Evidence Code Sections 1271 and 1561

The Commission considered Memorandum 74-35 and the attached tentative recommendation relating to admissibility of evidence of business records and approved the tentative recommendation to be sent out for comment subject to suggested editorial changes.

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STUDY 77 - NONPROFIT CORPORATIONS

The Commission resumed its consideration of Memorandum 74-31 and the attached staff draft regarding nonprofit corporations. This review commenced with page 100 of the staff draft; however, because Rand McQuinn, principal draftsman of the staff draft, was soon to leave the Commission's service and the Commission desired to get as much input from Mr. McQuinn as possible, the Commission determined that its order of the day would be to move quickly through the staff draft, indicating policy issues and problem areas which the staff should reconsider before submitting a new draft. The decisions of the Commission, therefore, were only preliminary determinations designed to help the staff in its revision of the initial draft. In connection with this review, the following general matters were discussed by the Commission:

State Bar Committee to Be Created

The Executive Secretary noted that a committee of the State Bar was to be formed to review the Commission's recommendation on nonprofit corporations. This committee will include attorneys familiar with the tax problems of nonprofit corporations and also some members who served on the State Bar committee charged with revising the General Corporation Law. Such a committee should help assure a workable nonprofit corporations law.

Creation of Nonprofit Corporations Code to Be Abandoned

The Executive Secretary noted that it is impractical to create a new code for nonprofit corporations and that the staff would renumber its revised draft to conform to the numbering of the Corporations Code sections which it

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will replace (Corp. Code §§ 9000-10700). He advised the Commission that, in connection with the revised draft, it would receive a memorandum outlining the disposition of all sections of the initial draft.

Revised Draft to Be Conformed Where Appropriate to New General Corporation Law

The Commission decided that, at some later stage, if and when the new proposed General Corporation Law is adopted, the staff's draft should be made to conform where appropriate to the new language of the General Corporation Law. Where a provision has been borrowed from the General Corporation Law, it should conform to the new language of that law unless a persuasive reason can be presented for different language.

Potential Need for Factual Study of Nonprofit Corporations Discussed

Commissioner Thomas E. Stanton wondered if there was not a need for a factual inquiry into the nature and forms of nonprofit corporations. He was concerned that the Commission might be making policy decisions without adequate knowledge regarding the various forms of nonprofit organizations which might desire to incorporate under the nonprofit corporation law. The Executive Secretary noted that the Secretary of State's office had been asked about this matter, and they stated that they do not keep their records so as to distinguish between profit and nonprofit corporations. Mr. Davis, the Commission's consultant on nonprofit corporations, stated that he knew of no available index of nonprofit corporations. Moreover, he felt that the present draft was flexible enough to accommodate any possible legitimate, nonprofit organization. The Commission decided that these problems could best be identified and a study undertaken by the Legislature after the Commission's recommendation is put into bill form.

Comments by the Attorney General's Office

Lawrence Tapper of the State Attorney General's Office--Charitable Trust Division--attended the Commission's Saturday meeting and explained the function of his division. He stated that he would be happy to review in detail the revised staff draft and submit to the Commission the comments of his office. In particular, Mr. Tapper wished to review Sections 1102, 1106(b), 1108, and 1512. He also stated that he was in general agreement with the conclusions of Memorandum 74-28 (Power of Attorney General in Nonprofit Corporation Area); he stated that his office would supplement the memorandum with additional cases where necessary. Mr. Tapper also made the following comments concerning matters discussed by the Commission:

A. Line between charitable and noncharitable corporations. From the point of view of the Charitable Trust Division, there are very few nonprofit, noncharitable corporations. As soon as an organization goes beyond service to its particular members--which must also be a fairly limited class--it becomes charitable in the eyes of his division and must comply with the regulations applicable to charitable trusts. A large organization with a vague purpose or purposes is a charity. Under this same line of reasoning, Mr. Tapper stated that a nonprofit clinic of doctors is viewed as a charity and comes within the jurisdiction of his office.

B. Regulation of unrelated business activity. A charitable corporation which engages in the active pursuit of a business activity runs into the danger of opening its trust assets up to potential liability and thus violates the prudent investment standard of Civil Code Section 2261.

C. Transfer of trust assets upon dissolution. Present Section 9801 of the Corporations Code requires a corporation holding assets upon a charitable

trust to petition the court to appoint a successor trustee during dissolution of the corporation. In practice, however, the Charitable Trust Division permits such a corporation to transfer its trust property with the division's consent before dissolution, thereby in most cases avoiding the necessity of an adversary court procedure. Mr. Tapper believes this consent system works well and generally opposes any change. In any case, he feels the Attorney General should receive notice of any dissolution or merger of nonprofit corporations that hold assets upon a charitable trust.

D. Expansion of supervision of Attorney General to all nonprofit corporations. Mr. Tapper sees no compelling reason to expand the Attorney General's powers of supervision beyond the present regulation of charitable trusts.

Commission's Analysis of Staff Draft

The Commission noted the following problems and issues in the staff draft on nonprofit corporations (the general decisions of the Commission are set forth prior to the list of those pertaining to specific sections or articles of the staff draft):

Study needed of nonprofit corporations engaging in profitmaking activity. The staff should carefully study the issue of whether there should be statutory limitations upon the profitmaking activities of nonprofit corporations. This question may be divided into two separate issues: (1) Should there be direct restrictions upon the purposes and activities of nonprofit corporations governed by Nonprofit Corporation Law--General Provisions (e.g., require that business activity be subordinate or incidental to the corporation's nonprofit purposes) and/or (2) should there be a requirement that all activity be related to the corporate purposes as stated in the

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articles (i.e., require a university formed for educational purposes to amend its articles if it wishes to engage in a macaroni factory).

In connection with this study, the staff should carefully isolate the dangers and problems which result if nonprofit corporations are permitted to engage in business without regulation (e.g., possible unfair competition with business corporations or circumvention of shareholder protections in the General Corporation Law).

Moreover, the staff should develop the possible approaches which might be used to protect against the dangers of unregulated business activity. Several possible approaches were suggested: (1) place a functional limitation upon the permissible purposes of nonprofit corporations (e.g., only nonpecuniary purposes permitted) and require that all business activity must be incidental to those purposes (in this regard, the staff should research the meaning of incidental as used in Section 9200 of the Corporations Code and in the tax law) or (2) regulate only the distribution of profits. Such regulation must also consider the problem of distribution of accumulated profits upon dissolution (i.e., problem of collapsible corporation).

Need savings clause. A savings clause validating bylaws adopted prior to the operative date of the new Nonprofit Corporation Law--General Provisions--should be drafted.

Only existing members may bring actions. The Nonprofit Corporation Law--General Provisions--should require a member to be a member at the time of the transaction about which he is complaining before he may initiate or join in any action permitted by this law. A person should not be permitted to purchase a membership for the purpose of bringing a law suit.

Effect on cooperatives. The Nonprofit Corporation Law--General Provisions--should expressly provide that it does not apply to cooperatives unless their governing statute expressly so provides.

Derivative Actions by Members (Sections 775-779 of Staff Draft)

In connection with its review of Article 3 of Chapter 3 of the staff draft (Members' Derivative Actions), the Commission made the following preliminary decisions:

(1) With appropriate limitations, the Nonprofit Corporation Law should contain a members' derivative action remedy. Prior to this decision, the Commission discussed the suggestion made by Robert Sullivan of the firm of Pillsbury, Madison, and Sutro that the entire article be deleted. Mr. Sullivan stated that the article represents an overly sophisticated solution to problems which do not exist for economic reasons in the context of nonprofit corporations. Moreover, the fear was expressed by several Commissioners that a statutory derivative suit procedure unnecessarily encourages litigation. Balanced against these arguments is the fact that present law provides that nonprofit corporations are governed by the Corporations Code derivative suit provisions (see Corp. Code §§ 9002 and 834). Also other modern statutes governing nonprofit corporations provide such a remedy (e.g., New York Not-for-Profit Corporation Law § 623). Given the broad range of nonprofit corporations which may incorporate under the new Nonprofit Corporation Law--General Provisions--the Commission decided that some statutory remedy should be available to redress ultra vires action by the board when such action damages the corporation rather than particular members.

(2) The staff is to undertake a more detailed background study of this area. The Commission determined that it lacked sufficient information to make a final decision regarding the proper limitations on derivative actions. In particular, the staff should study the common law gloss on the existing Corporations Code provision (Section 834) to discover:

(a) The scope of the derivative action. Does it cover actions brought to enforce a corporate right against third parties as well as actions to enforce the duties of officers and directors?

(b) The conditions which must be satisfied before the action may be brought. What demand for action must be made by the plaintiffs upon the directors of the corporation?

(c) What defenses are available to defendants in the action. If derivative actions may be brought against third parties, can they assert successfully that the lack of corporate action is within the discretion of the board or does the business judgment rule of Findley v. Garrett, 109 Cal. App.2d 166, 240 P.2d 421 (1952), apply only when directors or officers are defendants in the derivative action?

After studying these matters, the staff should then review its draft on derivative actions, adding more detail to the statute or the Comment where appropriate. Moreover, the Commission outlined a number of possible problems with the present staff draft which should be carefully considered. These are as follows:

(1) The requirement that 50 members or 10 percent of the membership join in such an action might deter meritorious claims. Furthermore, as drafted, does this requirement preclude class actions? How is the plaintiff's suit to be managed; for example, what happens if some but not all of the

plaintiffs wish to settle or drop out of the suit? It was noted in regard to the latter two problems that the Corporations Code contains numerous provisions requiring a certain number of shares (or members) to join before various actions may be brought (e.g., Section 811 (action for removal of director for cause)), and there apparently have not been any "management of the suit" or class action problems in these areas. Many of these numerical percentage provisions are continued in the new General Corporation Law-- Exposure Draft circulated by the Committee on Corporations.

(2) The staff draft should contain a provision requiring complaining members to exhaust all available internal corporate remedies before commencing a derivative action. In this regard, a model for such a provision might be found in the law governing labor union disputes.

(3) The staff draft should also continue the present contemporaneous member requirement of the Corporations Code (i.e., complaining member must have been a member at the time of the transaction about which he is complaining).

(4) The Commission decided that under no circumstances should plaintiffs' attorneys be made liable if the action terminates in favor of the defendant or defendants.

§ 801. Board of directors; title of the board and member of board

Mr. Davis stated that he would provide the staff with an alternative proposal for a two-tier board of directors at a later date.

§ 802. Number of directors

After extensive discussion of possibly requiring only one director if the nonprofit corporation has only one member, the Commission decided that

subdivision (a) should be amended to read: "The number of directors constituting the entire board shall not be less than three."

Subdivision (c) should be amended to eliminate any statutory limitation, except subdivision (a), on the parameters of an indefinite board of directors.

§ 803. Changing number of directors

Subdivision (c) should be revised to read: "No change in the number of directors made by the board shall shorten the term of an incumbent director."

[Underlined words added.]

§ 804. Qualification of directors

The requirement that directors be members of the nonprofit corporation should be deleted, and the section should be revised to read:

The articles or bylaws may prescribe the qualifications for directors. Unless the articles or bylaws provide otherwise, a director need not be a resident of this state.

§ 805. Term of directors

Subdivision (a) should be amended to delete the words "other than those named in the articles." The Comment to this section and to Section 501 should note that, unless another term is specified in the articles or a bylaw adopted by the members, first directors serve the same one-year term as regular directors. The Comment to this section should also note that directors may be removed at any time by majority vote pursuant to Section 808.

The Commission affirmed the staff recommendation that the board not be permitted to amend the bylaws to alter the term of office of any director.

§ 806. Election of directors

The time limit in subdivision (b) should be changed to seven days so as to conform with the requirements of notice of a member's meeting (Section 754).

§ 807. Vacancies

The language in subdivision (b) should be revised so that it is parallel to that in subdivision (a). The word "disabled" should be substituted for the word "incompetent."

The last sentence in subdivision (b) should be deleted to make this section conform to Section 804.

§ 808. Removal of directors

For clarity, the third sentence of subdivision (a) should be revised to read:

If members are entitled to vote cumulatively for the board, the entire board may be removed by majority vote; however, unless the entire board is removed, an individual director shall not be removed if there are sufficient votes cast against the resolution for his removal which, if cumulatively voted at a regular election of directors, would be sufficient to elect one or more directors.

An additional sentence should be added to subdivision (a) which makes clear that the person or group selecting a director (as in the case of class voting) must also consent to his removal.

The Commission rejected the idea of permitting the nonprofit corporation to restrict in its articles or bylaws the power of a majority of the members to remove directors. It also considered and rejected putting a time limit on the power to remove directors (i.e., disgruntled members would have to wait a certain specified amount of time after the last election before directors could be removed). However, a new subdivision should be drafted permitting the nonprofit corporation to adopt in its articles or bylaws some other manner of removing directors.

The Commission has strong misgivings concerning subdivision (b), but it deferred judgment on this matter.

§ 809. Meetings of board; call

The officers permitted to call a meeting should be reviewed in light of the decision in Section 819 to require that a nonprofit corporation possess at least two officers.

§ 812. Place of meetings

Subdivision (b) should be reviewed in light of the new General Corporation Law telephonic meeting provision.

§ 813. Quorum of board

Subdivision (b) should be deleted as conforming change. The section should be revised to make clear that withdrawal of directors after a quorum has been present does not invalidate further action by the board.

§ 814. Effect of majority vote of quorum at board meeting; conference
telephone

Subdivision (b), providing for meetings by conference telephone, should address the following problems:

- (1) Board members participating should be identified and given an opportunity to participate in debate.
- (2) The meeting must be recorded or otherwise memorialized.
- (3) Participating directors should know that they are engaging in a meeting of the board. The Commission noted that a telephonic meeting creates a situation which is in between a regular meeting and the procedure of obtaining written consent to act without a meeting and, therefore, results in difficult policy questions which must be carefully considered.

§ 815.5. Provisional director

Subdivision (a) should be revised to state that: "Any director or 50 members or at least 10 percent of the membership, whichever number is smaller, may bring an action to appoint a provisional director."

Subdivision (b) should be revised to make clear that the court must find that both paragraphs (1) and (2) are satisfied before it appoints a provisional director.

§ 816. Action by board without meeting

The last sentence should be revised to make clear the effect of the presumption (i.e., does it affect the burden of proof or just the burden of production).

§ 817. Duty to act in good faith with ordinary skill

The relationship between this section and Section 1103 (standard of care for trust property) should be clarified.

Subdivision (b) should be broadened. The language in the new General Corporation Law proposal is recommended. The staff should consider whether or not a director should be permitted to rely upon oral representations.

§ 818. Interested directors and officers; quorum

After considerable discussion, this section was generally approved. The fear was expressed that this provision would be too burdensome on nonprofit corporations; however, it was decided that the absence of such a provision might create an even greater burden. All actions of interested directors or officers might be brought into question regardless of disclosure or above-the-board dealing.

§ 819. Officers

Subdivision (a) should be revised to require that every nonprofit corporation possess at least two officers who may or may not be members of the board. These officers should have the duties of the president and secretary, but they may be designated by any name. The rest of this statute should be revised to reflect this change.

§ 820. Removal of officers

Subdivision (b) should be deleted. There should be no court action for removal of officers.

§ 821. Executive committees

Subdivision (e) should be revised to make clear the fact that members of special committees are subject to the same duties as officers.

§ 822. Loans to officers and directors

The Commission disapproved of this section as written and directed the staff to study this matter in more detail. In particular, the effect of prohibiting loans should be considered. The Commission also disapproved of requiring membership approval before making such loans. The Commission noted that perhaps a stricter rule may be justifiable in the case of charitable corporations.

§ 823. Action against directors and officers for misconduct

Subdivision (a) should be revised to delete references to the "effect on ultimate beneficiaries of the corporation's activities"; moreover, the word "concur" should be stricken from the first sentence. In this connection, the staff should consider defining "vote" to include "written consent."

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The Commission noted as a policy question for later review whether or not the phrase "and did not willfully violate the provisions of this code" should be continued.

Subdivision (c) should be revised to make clear that the right of contribution extends only to directors similarly liable under subdivisions (a) and (b).

Subdivision (d) should be completely rewritten. Its meaning is unclear.

§ 825. False report; statement or entry; civil liability

The word "any" should be deleted from the first line.

The meaning of the last clause in subdivision (a) should be clarified.

A provision should be drafted for this section which provides a right of contribution from all similarly liable individuals.

Indemnity for Litigation Expenses (Sections 851-858)

The staff should study this article in light of the new provisions proposed for the General Corporation Law. Moreover, the staff should also consider drafting an indemnity provision for directors and officers similar to those established for public employees. Close attention should be paid to Section 858--the insurance provision. The Commission noted that it desires to limit as much as possible the potential liability so as to minimize the insurance premium.

§ 901. Books and records

Subdivision (b) should be revised to delete permission to keep the corporate books and records outside the state. The place where the books and records are located should be included in the statement required by Article 3 (commencing with Section 975).

Subdivision (c) should be redrafted to make clear who has the duty to pay to convert the records into readable form, and the right to inspect must be qualified in light of this duty.

§ 902. Right to inspect books and records

This section should be redrafted, and the following factors should be considered:

(1) A member should be required to have been a member for a specified period before he is permitted to inspect the books and records.

(2) The right of inspection must be designed so as to balance the cost of compliance against the benefit gained by the member.

(3) A confidentiality provision should be designed which imposes some duty of secrecy upon the person who inspects.

(4) The language "books of account" should be made consistent with the language "books and records of account" used in Section 901.

(5) The right of 10 percent of the membership to require an exhibition at a meeting of the members should be limited to the membership list and minutes or at least to the relevant portions of the books and records of account.

§ 904. Enforcement of right to inspect

This section should be reworked in light of the changes in Sections 901 and 902. Moreover, the clause "or upon petition of 10 percent of the members" should be deleted from the first sentence.

Subdivision (c) should provide the court with a power to reserve its jurisdiction to finally assess costs pending the outcome of the primary litigation.

Annual Report (Sections 951-955)

The annual report provisions should be revised as follows:

(1) An annual report provision should be designed governing all non-profit corporations which may be expressly waived by the articles or bylaws.

(2) The report should be filed with the records of the corporation, and there should be no requirement that a copy must be sent to any member of the general public.

(3) The required provisions of the report should be very narrow, limited to financial information.

(4) The report sent by charitable corporations to the Attorney General pursuant to the Uniform Supervision of Trustees for Charitable Purposes Act (Govt. Code § 12580 et seq.) should be deemed to satisfy the requirements of this article. It was also suggested that a provision might be designed which entitled a member of a nonprofit corporation upon payment of a reasonable charge to a copy of any document filed as a public record.

§ 976. Required provisions

This section should require in addition: (1) a list of the names and addresses of the directors of the nonprofit corporation and (2) the location of the corporate books and records (see Section 901).

§ 980. Supplemental statements

This section should be amended to require the filing of supplemental, updating statements each year. The Comment should carefully justify this added burden.

It was suggested that the new fictitious corporate name statute should be consulted as a model for a provision permitting exofficers or directors to amend the statement to delete their name if the corporation fails to do so.

§ 984. Default; suspension for failure to file; notice

Subdivision (b) should be revised to require that the defaulting non-profit corporation be given 30 days' notice before a suspension becomes effective. Thirty days after this notice, the suspension goes into effect without further notice.

§ 985. Relief from default and suspension

This section should be revised to make clear that, upon compliance, the relief dates back to the date of the suspension unless there is a showing of prejudice due to the failure to file the required statements on the date required.

§ 1001. Capital contributions

This section should be deleted as unnecessary. Section 708 (dues and assessments) should be relocated in its place.

§ 1002. Subventions

The commissioner of corporations should be consulted to determine if his office approves of this concept.

§ 1004. Bonds; rights of bondholders

The third and fourth lines of subdivision (b) should be rewritten to make clear that the rate of interest paid should not be directly tied to the profit level of the nonprofit corporation. Moreover, a proper index for reasonable bond rates should be located, and any limitation on the rate of interest should be applied as of the date of issuance. Finally, any limitation on interest in subdivision (b) should specifically include discount rates in the limitation.

§ 1005. Income from corporate activities

This section should be revised in light of the background study concerning nonprofit corporations engaging in business activity.

§ 1101. Trust property

This section should be revised to: (1) remove the trust concept (e.g., call property, charitable property), (2) provide for noncharitable gifts to charitable corporations (e.g., gift to provide meals for members), and (3) to make subdivision (b) apply to all corporations.

The section should also be reordered so that subdivisions (a) and (b) are interchanged. It was also suggested that a new definition should be developed for later reference such as defining "charitable property" or "property held on a charitable trust."

§ 1102. Indefinite purposes

The last line should be revised to read "most consonant with purpose of the donor and the charitable corporation and most conducive to the public welfare" [underlined words added].

§ 1103. Duty in managing trust property

The relationship between this section and Section 817 (general duty of officers and directors) should be made clear.

§ 1104. Accumulating income

Delete this section as unnecessary.

§ 1105. Apportionment of expenses

Delete this section as unnecessary.

§ 1106. Transfer of property to institutional trustee

The following revisions should be accomplished:

- (1) The first line in subdivision (a) should read: "For the purposes of management, a corporation may"
- (2) The last sentence of subdivision (a) permitting a corporation to transfer its assets irrevocably should be deleted.
- (3) The section should make clear that any entity "authorized to conduct a trust business in this state" may accept such a transfer. Eliminate the specific reference to "banks."
- (4) Subdivision (c) should be deleted as unnecessary; however, the staff is authorized to redraft this provision, and the Commission will then reconsider the concept of requiring periodic payments.

§ 1108. Court action to protect trust property from misuse

Consistent with the decision in Section 1101, this section should be revised to eliminate the reference to trust principles. Moreover, the staff should reconsider this provision after the Attorney General's office has had time to comment.

Common Trust Funds (Sections 1151-1155)

Section 1151 should be revised to clarify the meaning of "furnishing investments to the corporation" (lines 2 and 3 of subdivision (a)). All references to "banks" should be removed (see the revision of Section 1101).

Section 1154 should be combined into Section 1151, if possible. There seems to be no reason for separate treatment of educational institutions.

The Comment to Section 1155 should make clear that this section applies only to nonprofit corporations.

§ 1201. Disposition of all or substantially all assets

This section should be revised considering the new language used in the revision of the General Corporation Law. The reference to "trust property" in subdivision (a) should be clarified in light of the decision in Section 1101.

Merger and Consolidation (Sections 1301-1313)

Mr. Davis, consultant on nonprofit corporations, felt that the merger and consolidation procedures set forth in this article were fairly good as written. He suggested one basic modification: A provision should be designed which requires approval by the Attorney General before a charitable corporation or nonprofit corporation holding assets on a charitable trust is permitted to merge. At least the Attorney General should be given notice in such cases.

The Commission also determined that: (1) Section 1307 should be revised to clarify the meaning of "separately filed." Separate filing should be permissive, not mandatory. (2) Section 1309 should be revised to contain a provision like that in Section 905 of New York's Not-for-Profit Corporation Law which permits a consolidated corporation to automatically receive any testamentary disposition made to a constituent corporation unless such a disposition defeats the testators' intent. (3) Sections 1312 and 1313 should be combined so that it is clear that the statutory limitation in Section 1313 applies only to Section 1312. Section 1312 should also be revised to strike the words "or the public at large." Moreover, the staff should reconsider the question of whether or not a better standard is available than "fraud." (4) The Commission was generally favorable to the staff recommendation disapproving of a provision for dissenting members' appraisal rights similar to that set forth in the General Corporation Law for shareholders.

Minutes
June 27, 28, and 29, 1974

Conversion Into Business Corporation (Sections 1401-1405)

Mr. Davis recommended that this article be restudied and revised. He felt that the New York procedure of permitting merger into a business corporation was preferable; however, he also approved of designing a dissolution procedure which permits dissolution of a nonprofit corporation and transfer of its assets to a business corporation. The primary problem with the staff draft as written is that it fails to account for the problem of filing new articles under the General Corporation Law after conversion. Moreover, the Attorney General should be given notice if charitable assets are involved in a conversion.

Voluntary Dissolution (Sections 1501-1520)

Mr. Davis thought the dissolution procedures in the staff draft are good. He saw few problems. However, the problem of notice to and/or approval by the Attorney General when charitable assets are involved should be addressed in a manner similar to the case of mergers.

Letter to Rand McQuinn

The Commission decided that a letter should be sent to Rand McQuinn on the occasion of his leaving the Commission's service, expressing the Commission's appreciation for his work in assisting the Commission in connection with the study and recommendation on nonprofit corporations.

APPROVED

Date

Chairman

Executive Secretary

June 13, 1974 .

1974 Legislative Program

MEASURES APPROVED

- Res. Ch. 45, Stats. 1974 (Continues Authority to Study Topics)
- Chapter 211, Stats. 1974 (Enforcement of Sister State Judgments)
- Chapter 227, Stats. 1974 (Erroneously Compelled Disclosure of Privileged Information)
- Chapter 331, Stats. 1974 (Disposition of Abandoned Personal Property)
- Chapter 332, Stats. 1974 (Abandonment of Leased Real Property)

MEASURES APPROVED BY POLICY COMMITTEE IN SECOND HOUSE

- AB 101 (Wage Garnishment) (not yet set for hearing by Senate Finance Committee)

MEASURES PASSED BY FIRST HOUSE

- SB 1533 (Nonresident Aliens) (set for hearing in Assembly on June 18)
- SB 1535 (Improvement Acts) (set for hearing in Assembly on June 18)
- AB 2948 (Prejudgment Attachment) (will not be heard in Senate until August)

DEAD

- AB 102 (Discharge From Employment Because of Wage Garnishment) (died in Senate Judiciary Committee)
- SB 1532 (Liquidated Damages) (recommendation withdrawn for further study)
- SB 1534 (Physician-Patient Privilege) (recommendation withdrawn for further study)