

May 8, 1976

<u>Time</u>	<u>Place</u>
May 13 - 7:00 p.m. - 10:00 p.m.	Hyatt House Hotel at Los Angeles
May 14 - 9:00 a.m. - 5:00 p.m.	International Airport
May 15 - 9:00 a.m. - 4:30 p.m.	6225 W. Century Boulevard Los Angeles, CA 90045

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

May 13-15, 1976

1. Minutes of April 22-24, 1976, Meeting (enclosed)
2. Administrative Matters
3. 1976 Legislative Program
(Handout at Meeting)
4. Study 78.50 - Landlord-Tenant Relations (Unlawful Detainer Proceedings)
Memorandum 76-49 (sent 5/1/76)
5. Study 77 - Nonprofit Corporations
New Binder Containing Revised Materials (Handout at Meeting)
Study 77 - Generally
Scope of Study
Memorandum 76-50 (sent 5/5/76)
History of Study
Memorandum 76-52 (enclosed)
Schedule for Study
Memorandum 76-51 (sent 5/7/76)
77.180 - Involuntary Dissolution
77.190 - Voluntary Dissolution
Memorandum 76-28 (sent 3/4/76)
Note. We will start with § 6844.
77.200 - General Provisions Relating to Dissolution
Memorandum 76-39 (sent 4/2/76)

May 8, 1976 -

- 77.210 - Pseudo-Foreign Corporations
 - Memorandum 76-45 (sent 5/1/76)
- 77.210 - Foreign Nonprofit Corporations
 - Memorandum 76-55 (enclosed)
- 77.100 - Sale of Assets
 - Memorandum 76-40 (sent 4/8/76)
- 77.110 - Merger and Consolidation
 - Memorandum 76-46 (sent 4/13/76)
- 77.120 - Reorganization (De Facto Merger)
 - Memorandum 76-53 (sent 5/7/76)
- 77.130 - Dissenters' Rights
 - Memorandum 76-54 (sent 5/5/76)
- 77.140 - Bankruptcy Reorganizations and Arrangements
 - Memorandum 76-33 (sent 4/2/76)
- 77.20 - Bylaws
 - Memorandum 76-48 (sent 5/4/76)
- 77.30 - Directors and Management
 - Memorandum 76-47 (sent 5/4/76)
- 77.50 - Corporate Finance
 - Memorandum 76-42 (sent 5/1/76)
- 77.220 - Crimes and Penalties
 - Memorandum 76-57 (sent 5/7/76)
- 77.250 - Division 4 - Provisions Applicable to Corporations Generally
 - Memorandum 76-56 (enclosed)
- 77.70 - Voting of Memberships
 - Memorandum 76-47

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MAY 13, 14, AND 15, 1976

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on May 13, 14, and 15, 1976.

Present: John N. McLaurin, Chairman
Howard R. Williams, Vice Chairman
John J. Balluff, May 13 and 14
John D. Miller
Marc Sandstrom, May 13 and 14
Thomas E. Stanton, Jr.

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

Members of Staff Present:

John H. DeMouilly
Stan G. Ulrich
Peter A. Whitman, consultant of nonprofit corporations, was present on May 13-15.

Nathaniel Sterling
Robert J. Murphy III

The following persons were present as observers on days indicated:

May 13

Virgil P. Anderson, California State Automobile Ass'n, Sacramento
Ronald P. Denitz, Tishman Realty & Construction Co. Inc., Los Angeles
W. A. Hutchins, California State Automobile Ass'n, San Francisco
R. H. Nida, Automobile Club of Southern California, Los Angeles
Prof. Leslie S. Rothenberg, Loyola University School of Law, Los Angeles

May 14

Virgil P. Anderson, California State Automobile Ass'n, Sacramento
W. A. Hutchins, California State Automobile Ass'n, San Francisco
R. H. Nida, Automobile Club of Southern California, Los Angeles

May 15

Virgil P. Anderson, California State Automobile Ass'n, Sacramento
W. A. Hutchins, California State Automobile Ass'n, San Francisco
R. H. Nida, Automobile Club of Southern California, Los Angeles

ADMINISTRATIVE MATTERS

Minutes of April 22-24, 1976, Meeting

The Minutes of the April 22-24, 1976, Meeting were approved as submitted.

Schedule for Future Meetings

The Commission adopted the following schedule for future meetings:

June - San Francisco

June 17 - 7:00 p.m. - 10:00 p.m.
June 18 - 9:00 a.m. - 5:00 p.m.
June 19 - 9:00 a.m. - 1:00 p.m.

July - Los Angeles

July 8 - 7:00 p.m. - 10:00 p.m.
July 9 - 9:00 a.m. - 5:00 p.m.
July 10 - 9:00 a.m. - 4:30 p.m.

August

No meeting

September - San Francisco

September 9 - 10:00 a.m. - 5:00 p.m.
September 10 - 9:00 a.m. - 5:00 p.m.
September 11 - 9:00 a.m. - 4:30 p.m.

October - Los Angeles

October 7 - 7:00 p.m. - 10:00 p.m.
October 8 - 9:00 a.m. - 5:00 p.m.
October 9 - 9:00 a.m. - 12:00 noon

November - San Francisco

November 11 - 7:00 p.m. - 10:00 p.m.
November 12 - 9:00 a.m. - 5:00 p.m.
November 13 - 9:00 a.m. - 12:00 noon

December - Los Angeles

December 2 - 7:00 p.m. - 10:00 p.m.
December 3 - 9:00 a.m. - 5:00 p.m.
December 4 - 9:00 a.m. - 12:00 noon

Presentation by Professor Leslie S. Rothenberg

Professor Leslie S. Rothenberg requested that he be given an opportunity to inform the Commission concerning various developments in connection with the proposals that a comprehensive study be made of tort liability law. He was granted this opportunity and made a brief presentation, indicating various actions he had taken and planned to take in this connection.

1976 Legislative Program

The Executive Secretary made the following report concerning the 1976 Legislative Program.

1976 LEGISLATIVE PROGRAM
CALIFORNIA LAW REVISION COMMISSION

ENACTED

- AB 2583 - Operative Date of Eminent Domain Law (Chapter 22)
- AB 1671 - Partition of Real and Personal Property (Chapter 73)
- AB 2581 - Modification of Contracts (Chapter 109)
- AB 2761 - Relocation Assistance (Ch. 143)
- AB 2855 - Transfer of Out-of-State Trusts to California (Ch. 144)
- AB 2895 - Claim and Delivery Statute--Turnover Orders (Ch. 145)
- ACR 130 - Continues Authority to Study Topics (Res. Ch. 30)

ON THIRD READING--SECOND HOUSE

- AB 2864 - Prejudgment Attachment

PASSED FIRST HOUSE--NOT YET SET FOR HEARING

- AB 3128 - Service of Process on Unincorporated Associations
- AB 3169 - Liquidated Damages

ON INACTIVE FILE--FIRST HOUSE

- AB 2582 - Byroads and Utility Easements

DEAD MEASURES

- AB 2580 - Admissibility of Duplicates (Died in Assembly Judiciary Committee)
- AB 2847 - Undertakings for Costs (Died in Assembly Judiciary Committee)

MEASURES OF INTEREST TO LAW REVISION COMMISSION

Approved by Assembly Judiciary Committee--Rereferred to Rules Committee

- ACR 170 - Authorizes study of tort law by Law Revision Commission
- AB 3542 - Study of tort law by Law Revision Commission and joint legislative committee

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**STUDY 77 - NONPROFIT CORPORATIONS (SCHEDULE FOR
WORK ON NONPROFIT CORPORATIONS STUDY)**

The Commission considered Memorandum 76-51 and adopted the following schedule for future work on the nonprofit corporations study.

Note. This is a tentative schedule only. The dates set are goals for completion of various phases of the project. It may be possible to complete work on some phases earlier than indicated and some phases may be more difficult than anticipated and may cause a delay in the schedule. Attendance of the staff of Select Committee and some members of State Bar Committee at each Commission meeting will contribute greatly to achievement of goals. Expeditionary review by State Bar Committee of portions when received and transmission of comments to Commission is essential to maintenance of schedule.

June 17-19 Commission Meeting

Commission considers staff draft of provisions of corporate finances, crimes and penalties, and foreign corporations and reviews tentative draft of entire General Nonprofit Corporation Law.

July 8-10 Commission Meeting

Commission reviews transitional provisions and conforming revisions in other statutes and makes necessary policy decisions with reference thereto. Any comments received on May 15 tentative draft are reviewed if received in sufficient time prior to meeting so they can be reproduced and sent out to Commission members, consultants, and others attending meetings.

July 12, 1976

State Bar Committee and Select Committee Chairman and Staff receive tentative draft of entire General Nonprofit Corporation Law and new Division 4, both revised to reflect decisions made at June 17-19 meeting. Tentative draft sent out to other interested persons for review and comment.

August 1, 1976

State Bar Committee and Select Committee Chairman and Staff receive tentative draft of transitional provisions and conforming revisions in other statutes, revised to reflect decisions made at July 8-10 meeting. Same material sent to other interested persons for review and comment.

September 9-11 Commission Meeting

Comments on tentative draft, transitional provisions, and conforming revisions are reviewed by Commission. Entire tentative draft is reviewed section by section.

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October 7-9 Commission Meeting

Commission's recommendation, including revised draft of statutory material, reviewed and approved for printing. Staff makes necessary substantive, technical, and editorial revisions and requests Legislative Counsel to put in form for preprinted bill; preprint bill is printed; preprinted bill to be included in Commission's recommendation.

November 1, 1976

Revised and edited recommendation sent to printer.

STUDY 77 - NONPROFIT CORPORATIONS (HISTORY OF STUDY)

The Commission considered Memorandum 76-52 and the attached history of the nonprofit corporations study, prepared in response to a direction from the Commission at the April 22-24, 1976, meeting. The Commission suggested that the history be expanded to reflect that the creditors' remedies and eminent domain studies were given top priority in response to requests of the Assembly and Senate Judiciary Committees. The history, as so revised, set out below.

HISTORY OF EVENTS IN CONNECTION WITH NONPROFIT
CORPORATIONS STUDY

1. 1969. Request for authority to make study. See 1969 Annual Report, 9 Cal. L. Revision Comm'n Reports 107-108 (1969).
2. 1970. Study authorized. Res. Ch. 54, Cal. Stats. 1970.
3. May 1970. Subcommittee appointed to investigate the possibility of obtaining the services of Mr. James Gaither, San Francisco lawyer, to prepare a comprehensive study relating to nonprofit corporations with the assistance of Dean Bayless Manning of Stanford Law School and Professor Joseph Sneed, Law Revision Commission member. Subcommittee reported at June 1970 meeting that it was unable to obtain the services of Mr. Gaither and that no alternative consultant appeared to be immediately available.

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4. 1971-1974. The Commission, in response to requests of the Assembly and Senate Judiciary Committees, decided to give top priority to the field of creditors' remedies and eminent domain. (Various creditor remedies were held unconstitutional in a series of decisions, the first of which was Sniadach v. Family Finance Corp., 395 U.S. 337 (1969). Interim legislation was enacted relating to the claim and delivery and prejudgment statute with the understanding that the Commission would give top priority to drafting permanent legislation dealing with these aspects of creditors' remedies. The Commission also gave a top priority to a comprehensive wage garnishment statute and to drafting the Eminent Domain Law, which was submitted to the 1975 Legislature.)
5. January 1972. Commission discussed the possibility of retaining Mr. Jerry Davis as an expert consultant on this topic. No action was taken at that time because of a lack of funds to finance the study and because the Commission determined to give top priority to the study of creditors' remedies and eminent domain.
6. 1973. A member of the Commission's staff commenced work on the project and completed a staff draft of a comprehensive nonprofit corporation statute, based primarily on the comprehensive statutes recently enacted in other states, in April 1974. The staff draft consisted of more than 300 pages and was accompanied by 181 pages of source and comparable provisions.
7. November 1973. A contract was made with Mr. Davis to serve as expert consultant on the nonprofit corporations study.
8. May 1974. At the direction of the Commission, the Executive Secretary wrote to the State Bar, advising that the Commission was engaged in drafting a new nonprofit corporation law and requesting--as had been the practice in the case of all other major Commission studies--the appointment of a committee of the State Bar to work with the Commission on the project. It was noted in the

letter that the State Bar already had a committee engaged in revising the business corporation law but that this committee did not plan to work on the nonprofit corporation law. Suggestions were made for coordinating the work and for methods of communication between the committee and the Commission. The letter noted that the Commission was actively studying the topic. (Copy of letter attached to these minutes.)

9. May-June 1974. The Commission considered the staff draft at the May and June, 1974, meetings. The first 100 pages were covered at the May 1974 meeting, which was devoted almost entirely to this subject. A major portion of the remainder of the staff draft was reviewed at the June 27-29, 1974, meeting, and important policy issues presented by portions not reviewed in detail were discussed. After the June meeting, the staff made revisions in the staff draft to reflect Commission decisions at the May and June 1974 meetings. However, Commission consideration of the topic was deferred pending completion of the new General Corporation Law since one of the policy decisions the Commission made was that the nonprofit corporation law should conform to the business corporation law unless some reason existed for deviation. At the June meeting, the Commission received oral comments from Lawrence R. Tapper and Yeoryios C. Apallas, both of the Attorney General's office, and considered written comments from Mr. Robert Sullivan of Pillsbury, Madison, and Sutro, San Francisco, concerning various provisions of the staff draft. Mr. Jerry Davis, the Commission's expert consultant, attended both the May and June 1974 meetings.
10. February 1975. Work on the eminent domain project was basically completed in 1974, and the recommended legislation was presented to the 1975 Legislature. Starting in February 1975, the staff from time to time worked on the nonprofit corporation law study. It was decided at the staff level to prepare a series of memoranda covering specific aspects of the topic rather than a complete staff draft of an entire statute. The earlier draft was available to be

drawn on as a source of material and earlier Commission decisions, but the new General Corporation Law, which was then before the Legislature, was to be used as the starting point in preparing the new draft.

11. August 1975. A staff memorandum prepared in August 1975 suggested that the nonprofit corporation law study be given a top priority. The memorandum pointed out the problem created by the savings clause section of the new General Corporation Law which makes the prior General Corporation Law applicable to nonprofit corporations absent some special inconsistent provision applicable to the nonprofit corporation and will require the practitioner to retain the obsolete volumes of the Corporations Code so he can determine the law applicable to nonprofit corporations.
12. October 1975. At its October 9-11, 1975, meeting, the Commission decided to give top priority to the study of nonprofit corporations with the goal of submitting a recommendation to the 1977 legislative session.
13. October 1975. The State Bar designated the Subcommittee on Revision of Nonprofit Corporations Law to work with the Law Revision Commission on the nonprofit corporation law project. The procedure to be followed was outlined in Memorandum 75-80 (copy attached to these Minutes). (Pursuant to this designation, the Chairman of the Subcommittee, Carl A. Leonard, attended two meetings of the Commission and a member of the Subcommittee, Henry L. Stern, attended a portion of another meeting.) The details of how the State Bar Committee will review tentative drafts of portions of the statute have yet to be worked out.
14. November 1975. Beginning at its November 6-7, 1975, meeting, the Commission considered various memoranda relating to nonprofit corporations. By January 1976, the staff work on major portions of the topic had been substantially completed or was well underway and the Commission itself had considered various portions of the mate-

rials produced by the staff. By early April, approximately one-half of the basic statute was in tentatively approved draft form. By May 15, this portion will be revised to reflect decisions at the April meeting and the remainder of the statute (excluding the transitional provisions) was in staff draft form ready to be considered at the Commission's May 13-15 meeting. Persons attending one or more of the meetings during November-March as observers included Wells A. Hutchins, James P. Molinelli, Robert H. Mida, A. S. Kaufer, and R. U. Robinson. The Commission's consultant, Jerry Davis; Carl Leonard, Chairman of the State Bar Subcommittee; H. L. Stern, member State Bar Subcommittee; Robert McMahon, State Bar Staff; and Lawrence R. Tapper, office of the Attorney General also were present. An extended communication from Professor Oleck, in response to a request from the Commission, was discussed. Several letters from Mr. Robert Sullivan also were considered.

15. February 1976. A letter from Robert McMahon, staff attorney, State Bar, requested that we include members and affiliates of the State Bar Committee on Corporations on our mailing list for nonprofit corporation materials or that we send him copies for duplication and distribution. He attended the February 1976 meeting of the Commission and we provided him with two large boxes of material with the understanding that we would work out procedures to distribute future materials directly or through the State Bar. In a subsequent telephone conversation, he indicated that the members of the State Bar Committee had indicated that they did not wish to receive all the materials but would prefer to receive the tentative drafts. The staff advised him that we hoped to have a tentative draft of the statute available soon.
16. February 1976. Early in February 1976, Assemblyman McAlister advised the Commission that Assemblyman Knox and the State Bar Committee on Corporations were concerned that the Law Revision Commission would not produce the nonprofit corporation law revision bill for the 1977 session. The Executive Secretary advised Assemblyman McAlister that the bill would be produced for the 1977

session and that staff work on a substantial portion already had been completed and the Commission itself had considered various portions of the materials produced by the staff. The Executive Secretary discussed the matter with Assemblyman Knox. The Executive Secretary thought that the result of the conversation with Assemblyman Knox was that there would be a coordinated joint project and that Assemblyman Knox would be the author of the resulting bill. Assemblyman Knox apparently has a different view of the result of this conversation.

17. February 1976. Peter A. Whitman, a Palo Alto lawyer who is a specialist in corporation and nonprofit corporation law, indicated that he had planned a short term public service sabbatical leave from his law firm and the project he had planned to do had fallen through. He indicated his interest in participating in the nonprofit corporation law study. He was retained as an expert consultant on a short term basis on a contract approved in February 1976. Despite a shortage of funds, the contract was approved to expedite the production of the bill to the extent possible in view of the concern expressed by Assemblyman Knox and the State Bar Committee that a bill be ready for the 1977 session and because it was desired to clear the decks in case the Commission is directed to undertake a major study later this year.
18. February 1976. Starting early in February 1976, the staff, at the suggestion of Mr. Leonard, began sending letters to the Chairman of the State Bar Committee on Corporations noting provisions of the new General Corporation Law and related statutes that appeared to be in need of possible revision. Letters from the Chairman of the State Bar Committee indicated that such letters were useful to the Committee. Many of the problems identified in the letters are being dealt with in the corrective bill (AB 2849).
19. March 1976. Each member of the State Bar Committee on Corporations was sent a copy of the recommendation relating to service of proc-

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ess on unincorporated associations and comments were requested. None were received, apparently because the recommendation presented no significant policy issues and had been cleared in advance with Bill Holden of the office of the Secretary of State and revised prior to approval by the Commission to incorporate his suggestions. Assemblyman Knox agreed to author this bill for the Commission and introduced the recommended legislation.

May 13, 1974

John S. Malone, Esq.
State Bar of California
601 McAllister Street
San Francisco, California 94102

Dear Mr. Malone:

The California Law Revision Commission is engaged in drafting a new Nonprofit Corporations Code. The Commission seeks the assistance of the State Bar in this project.

Specifically, the Commission requests that a committee of the State Bar be designated to work with the Commission on the nonprofit corporation law project. As you know, the State Bar already has a committee engaged in revising the business corporation law, but this committee does not plan to work on the nonprofit corporation law.

If it is decided to create a new committee to work with the Commission on the nonprofit corporation law project, the Commission suggests that consideration be given to appointing to this new committee some members of the committee that is now engaged in revising the business corporation law. This would greatly assist in coordination of the two projects and would help avoid unintended inconsistencies between the law governing business corporations and the law governing nonprofit corporations.

If the State Bar is willing to designate a committee to work on the nonprofit corporation law revision, the Commission suggests that the committee be authorized to send its comments on various drafts of the new code directly to the Commission. The Commission recognizes that these would not represent the views of the State Bar, but the direct communication between the committee and the Commission would greatly facilitate the drafting of the new code. The Board of Governors has authorized other committees that have worked with the Commission to communicate directly with the Commission.

The Commission already has a staff draft of the new code under consideration. Accordingly, it would be desirable to have the State Bar committee designated as soon as possible.

Sincerely,

John H. DeMouly
Executive Secretary

JHD:aj

Handwritten notes and initials in the bottom right corner, including "NS" and "SU" written vertically, and a checkmark.

#77

Memorandum 75-80

Subject: Study 77 - Nonprofit Corporations (Subcommittee of State Bar Committee)

The State Bar Committee on Corporations has appointed a Subcommittee on the Revision of the Nonprofit Corporations Law to work with the Law Revision Commission. The Chairman of the subcommittee is Carl A. Leonard, San Francisco. The members of the subcommittee are listed on Exhibit I attached.

The Chairman of the State Bar Subcommittee advised me that the State Bar Committee on Corporations had a meeting with Assemblyman Knox and others interested in the law in this field. Those present were strongly of the view that it is essential that the nonprofit corporations law revision be produced as soon as possible. As you know, the reason is that the new business corporations law does not apply to nonprofit corporations; the law relating to nonprofit corporations incorporates the old business corporations law by reference. This requires the practitioner to keep his obsolete business corporations law volumes. This was the reason the Commission decided at the last meeting to give this topic a top priority and tentatively scheduled its recommendation on this subject for the 1977 legislative session. I so advised the chairman of the subcommittee and further advised him that there was no guarantee that the recommendation of the Commission would be produced in time for the 1977 session. The goal was to produce a recommendation for 1977, but whether this will be possible will depend upon the speed with which the various problems could be solved. I further advised him that we did not want to rush in with a recommendation that was not carefully worked out and then have to make many changes at a subsequent session to correct technical defects and substantive deficiencies.

The subcommittee wants to work with the Commission in the most efficient way and wants to avoid having to review a massive proposal in a short time before it is to be submitted to the Legislature. Accordingly, the chairman of the

subcommittee suggested that the subcommittee might try to keep up with the Commission as the Commission goes through the various problems. In this way, the work can be spread out over the period of the project and the subcommittee will have time to give careful consideration to each problem area.

The chairman asked that we provide him with a copy of all the material on each subject that is sent to the members of the Commission so that he will be aware of the status of the project at all times. He also wants to send the material to the individuals on the subcommittee who have expertise in the particular area. Also, when a section or group of sections is tentatively approved by the Commission, he asks that the section or group of sections be sent to each member of the subcommittee to be taken up by the subcommittee for review and comment. At the same time, background material concerning the particular section or group of sections should be provided to the members of the subcommittee (probably in the form of the staff background memorandum that was submitted to the Commission in connection with the section or group of sections). The chairman of the subcommittee understands that any section or group of sections so provided would be extremely tentative in nature but believes that the proposal is the best method to involve the subcommittee in the project at the earliest time the subcommittee would be able to work in a meaningful way. The subcommittee also requests copies of any background studies as soon as they have been prepared.

The chairman plans to suggest a method of procedure along the above lines at the next meeting of the full Committee on Corporations and will advise thereafter as to the views of the committee. It is obvious that the crash nature of this project requires some procedure that will give the subcommittee the maximum amount of time to consider various problems and to review tentative Commission decisions on particular aspects of the project. What is the Commission reaction to the procedure outlined above?

I advised the Chairman of the Subcommittee that our meetings are public meetings and that we encourage interested persons to attend as observers. Although the meetings are not hearings, the Commission does permit observers to make remarks and persons attending meetings obtain considerable background information concerning matters being considered by the Commission. The Chairman indicated that some members of the Subcommittee might be able to attend meetings when nonprofit corporations law is considered. This should be helpful not only to the State Bar Subcommittee but also to the Commission since the members of the Subcommittee have a variety of experience with nonprofit corporations.

So that we can move this project along as fast as possible, the staff plans to devote a maximum amount of staff resources to the project. We plan to have Nat Sterling work generally full time on the project and to have one other staff member devote a substantial portion (approximately one-half time or more) to the project. We will do this as soon as we have prepared our 1976 legislative program for the printer.

The staff believes that our goal of a recommendation for the 1977 session is a very ambitious one but is one that may be possible to achieve. We intend to exert every effort to meet that goal.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STUDY 77 - NONPROFIT CORPORATIONS (SCOPE OF STUDY)

The Commission considered Memorandum 76-50 and the attached letter from David D. Wexler, suggesting several matters for study in connection with the study of nonprofit corporations.

The Commission directed the Executive Secretary to send a copy of Mr. Wexler's letter to Assemblyman Knox for consideration in connection with the study that the Select Committee is making of nonprofit corporations. The letter from the Executive Secretary to Mr. Wexler, which was attached to Memorandum 76-50, was considered to be an adequate statement of the scope of the Commission's study with respect to the two matters suggested for study by Mr. Wexler.

STUDY 77 - NONPROFIT CORPORATIONS (COORDINATION OF NONPROFIT
CORPORATION STUDY WITH STATE BAR AND
ASSEMBLY SELECT COMMITTEE)

The Commission reviewed and approved a letter to be sent to the Chairman of the State Bar Committee on Corporations over the signature of the Chairman of the Commission. This letter was prepared in response to the direction given by the Commission at its April 22-24, 1976, meeting.

The Executive Secretary reported that, as directed by the Commission at its April 22-24, 1976, meeting, the binder containing tentatively approved portions of the General Nonprofit Corporation Law and new Division 4 had been sent to each member of the State Bar Committee, to Assemblyman Knox, to the staff of the Select Committee, and to others. The binders were mailed on May 11 and 12.

The Executive Secretary presented to the Commission a letter, dated May 12, 1976, from Assemblyman Knox (attached to these Minutes). The Chairman

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reported on a meeting he and the Executive Secretary had with Assemblyman Knox and others on May 4, 1976. After considerable discussion, the Commission directed the Executive Secretary to send Assemblyman Knox a letter substantially along the following lines:

Recognizing that the Commission was established as an aid to the Legislature, the Commissioners have always endeavored to be sensitive to the needs of the Legislature. The Commission appreciates the importance of having a revised Nonprofit Corporation Law--which will be consistent insofar as possible with the revised General Corporation Law--available for consideration and possible enactment by the 1977 Legislature.

The Commission and the State Bar have a long history of close cooperation and frank interchange of views and positions, and both have tried to reach a consensus on legislation of mutual interest before the legislation was recommended for adoption by the Legislature. In the few instances where a consensus was not possible, the matters of disagreement were clearly identified so that the Legislature could resolve them most efficiently.

The Commission understands that, by reason of the important and successful work of the Select Committee and the State Bar Committee on the revised General Corporation Law, the views and reactions of those committees concerning the terms of the proposed revised Nonprofit Corporation Law will be of special importance and weight. The Commission looks forward to receiving those views and reactions as its work proceeds.

At its meeting, the Commission adopted the enclosed schedule for the completion of its work on the Nonprofit Corporation Law. The Commission welcomes any views or comments you may have concerning this schedule and anticipates working cooperatively with your committee and the State Bar in this important undertaking.

DISTRICT OFFICE
3507 MACDONALD AVENUE
RICHMOND, CALIFORNIA 94805
TEL.: AREA CODE 415
237-8171

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COMMITTEES
CRIMINAL JUSTICE
LOCAL GOVERNMENT
WAYS AND MEANS

Assembly California Legislature

JOHN T. KNOX
SPEAKER PRO TEMPORE
ASSEMBLYMAN, ELEVENTH DISTRICT



May 12, 1976

Mr. John H. DeMouly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear John:

I want to thank you and Chairman McLaurin for coming by my office in Sacramento, Tuesday. I think we have established the basis for a co-operative undertaking that will produce a good non-profit corporations code. In order to ensure that things go smoothly from here, I thought it would be useful to set down in writing my own view of the specific procedure which will be followed.

Your Commission will continue its research and drafting according to its own schedule. In the meanwhile, the Select Committee will embark on its own study and drafting, on its schedule. In order to avoid unnecessary duplication of your effort, you will be sending to the Select Committee staff copies of whatever portions of your work product you feel are ready for such circulation. The Select Committee staff will confer with you as it studies and drafts in areas covered by your work, but will exercise its own judgment in determining what portions of your drafts to incorporate in its product. As the Select Committee staff proceeds, it will submit its drafts to the State Bar Committee, identifying as such any portions which are derived from your work. You will be kept informed of the State Bar Committee's schedule and will be welcome to attend its meetings. The Bar Committee will, of course, make its own determinations, and in the ordinary course of events I would expect to support and introduce the draft approved by it.

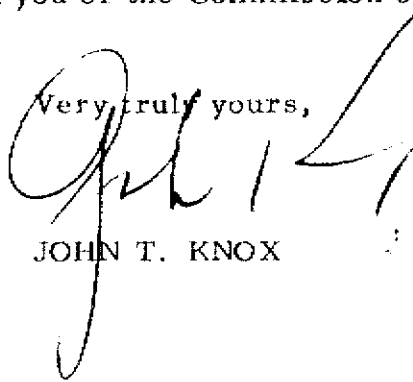
Mr. John H. DeMouly
May 12, 1976
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At the conclusion of the Bar Committee's work, the Select Committee staff will prepare its report and commentary upon the proposed new non-profit code. The Commission will, of course, be free to prepare its own report. As I envision this process, the code, as enacted by the Legislature, will result largely from the combined efforts of the Select Committee, the State Bar Committee, and the Law Revision Commission, and will be identified as such.

I believe that such a procedure will effectively coordinate the efforts of the Commission and the Select Committee, and will allow the State Bar Committee to operate efficiently while receiving the benefit of your efforts as well as that of the Select Committee staff. It will produce a single draft approved by the Bar Committee for introduction in the Legislature.

I look forward to the successful culmination of this project, and would welcome any comments from you or the Commission on the procedure I have outlined above.

Very truly yours,

A handwritten signature in black ink, appearing to read "John T. Knox", with a long, sweeping flourish extending upwards and to the right.

JOHN T. KNOX

JTK:doc
cc: Mr. McLaurin

STUDY 77.20 - NONPROFIT CORPORATIONS (ORGANIZATION AND BYLAWS)

The Commission considered Memorandum 76-48, which presented several miscellaneous problems relating to bylaws. The Commission took the following action with respect to the staff draft provisions attached to the memorandum:

§ 5154.5. Bylaws

This section was revised to read:

"Bylaws" means articles or bylaws except that a provision relating to adoption, amendment, or repeal of bylaws does not apply to articles.

The staff should check the statute carefully to make sure that the word "bylaws" is used properly in its defined sense wherever it occurs.

§ 5260. Adoption of bylaws

This section was tentatively approved. The staff should make certain that the phrasing is sufficiently broad to accommodate differing voting rights and to recognize statutory limitations on the right of the board or members to adopt bylaws.

§ 5260.5. Contents of bylaws

This section was tentatively approved.

§ 5266. Bylaws made available to members

This section was tentatively approved.

§§ 9400, 9404 (repealed)

These repealers were tentatively approved.

STUDY 77.30 - NONPROFIT CORPORATIONS (DIRECTORS AND MANAGEMENT)

The Commission considered Memorandum 76-47 relating to directors and management of nonprofit corporations, making the following decisions with respect to the staff draft attached to the memorandum:

§ 5155. Board

This section was tentatively approved.

§ 5164. Directors

This section was revised to read:

"Directors means the following persons and their successors:

(a) Natural persons named in the articles to act in the capacity of initial directors.

(b) Natural persons designated, elected, or appointed as directors or by any other name or title to act in the capacity of directors.

§ 5189. Subsidiary

This section was tentatively approved, with the word "corporation" inserted after "business" and the phrase "such corporations" substituted for "subsidiaries." The staff should consider reinserting the term "voting power" if defined in terms of votes entitled to be cast for directors. The staff should also draft a definition of "parent" along the lines of the General Corporation Law provision.

§ 5265. Bylaws relating to directors

This section was tentatively approved with the following changes:

(1) The leadline should be broadened.

(2) "Provide" should replace "make provisions" in the introductory sentence.

- (3) "Other" was deleted from subdivision (a).
- (4) "Executive or other" was deleted from subdivision (b).

§ 5310. Control of corporate affairs by board

This section was tentatively approved. The staff should devise a means of permitting nonprofit corporations to have more than one board, with different functions. This might be done through amendment of the definition of "board," through expansion of the committee provisions, or by a substantive provision. The staff should give consideration to problems created by multiple boards, including authentication of corporate actions and liability of directors.

§ 5311. Number of directors

This section was revised to permit fewer than three directors in cases where there are fewer than three members.

§ 5312. Term of directors

This section should be revised to permit the matters relating to terms of directors to be varied in the bylaws but to require that any change in the term of directors be made by the articles or a bylaw adopted by the members. The section should be returned to the Commission for further review as revised.

§ 5313. Initial directors

The word "natural" was inserted before "persons" in subdivision (b)(1) of this section.

§ 5314. Personal liability of directors

This section was tentatively approved.

§ 5320. Nomination of directors

This section was revised to read:

The bylaws shall provide a reasonable means of nominating persons for election as director of a nonprofit corporation.

The staff should examine Section 6621 in light of this provision to determine whether any conforming changes are necessary.

§ 5321. Election of directors

This section was tentatively approved.

§ 5322. Vacancies of directors

This section was tentatively approved.

§ 5323. Declaration of vacancy by board

A subdivision (c) should be added to this section to read:

(c) Any other cause provided in the bylaws.

§ 5324. Resignation of directors

This section was tentatively approved after insertion of a provision permitting the bylaws to require up to 30 days' notice.

§ 5325. Removal of directors

This section was tentatively approved.

§ 5326. Filling vacancies

Subdivision (b) was deleted from this section.

§ 5327. Special election of entire board

This section was deleted.

§ 5328. Appointment of directors by court

This section was tentatively approved.

§ 5330. Bylaws control

This section was tentatively approved.

§ 5331. Call of meetings

This section was tentatively approved.

§ 5332. Notice of meetings

This section was tentatively approved with the addition of a provision precluding the bylaws from dispensing with notice of special meetings.

§ 5333. Adjournment of meetings

This section was tentatively approved.

§ 5334. Validation of defectively noticed meeting

This section was tentatively approved.

§ 5335. Written consent to action without a meeting

This section was tentatively approved after insertion of the introductory phrase, "Notwithstanding any other provision of this article."

§ 5336. Place of meeting

This section was tentatively approved.

§ 5337. Meeting by conference telephone

This section was tentatively approved.

§ 5338. Quorum of directors

This section was tentatively approved.

§ 5339. Acts of board

This section was tentatively approved.

§ 5340. Superior court may appoint provisional directors

This section was tentatively approved.

§ 5341. Deadlock among directors

Subdivision (a)(1) was deleted from this section.

§ 5342. Deadlock among members

This section was deleted. The staff was instructed to write to the State Bar Committee requesting further information concerning this section.

§ 5343. Qualifications of provisional directors

This section was tentatively approved.

§ 5344. Rights and powers of provisional directors

This section was revised to reflect the standard of Section 5341 and the deletion of Section 5342.

§ 5345. Compensation of provisional directors

This section was tentatively approved.

§ 5350. Authority for committees

This section was deleted.

§ 5351. Designation of committees

This section was revised to read:

Unless the bylaws otherwise provide, the board may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees of the board pursuant to this article.

§ 5352. Designation of committee members

This section was revised to read:

(a) A committee of the board shall consist of two or more directors.

(b) Unless the bylaws provide that particular directors are members of specified committees, committee members are designated by the board and serve at the pleasure of the board.

A section or Comment should make clear that the board may designate committees composed of nondirectors so long as the committees are not delegated powers of the board.

§ 5353. Designation of alternate committee members

This section was tentatively approved.

§ 5354. Authority of committees

This section was tentatively approved.

§ 5355. Meetings of committees

This section was tentatively approved. The phrase "mutatis mutandis" should be defined in the Comment.

§ 5360. Corporate officers

This section was tentatively approved.

§ 5361. Chief executive officer

This section was tentatively approved.

§ 5362. Selection of officers

This section was tentatively approved.

§ 5363. Resignation of officers

Subdivision (a) should be made subject to notice required in the bylaws not exceeding 30 days.

§ 5370. Duty of care of directors

This section was tentatively approved.

§ 5371. Contracts involving interested directors

The phrase "A mere common directorship" in subdivision (a) was replaced by the phrase "A common directorship in and of itself." Commissioner Williams expressed his opposition to use of the word "mere" in any statutes drafted by the Commission. The sentence relating to common directorships should be removed from subdivision (a) and placed elsewhere in the section.

§ 5372. Contracts involving common directors

The Comment to this section should indicate that, because "material financial interest" is not defined in Section 5371, Section 5372 should be relied upon by a common director who is more than a "mere" common director only with caution.

§ 5373. Loans to directors and officers

The phrase "regardless of limitations or restrictions on voting rights" was deleted from subdivision (a).

§ 5374. Creditor derivative actions against directors

The reference to Section 5236 in subdivision (a)(1) was replaced by a reference to Chapter 5. The word "and" was substituted for the comma between "present" and "abstains" in subdivision (b). Subdivision (f) was deleted;

a substantive right of contribution should be included in the statute, and a note added to the Comment that a defendant has all the usual pleading and joinder rights under the Code of Civil Procedure. The staff should also give consideration to reincorporating a member's right of action under this section.

§ 5380. Definitions

The statute should make clear that its provisions apply to the estate of an agent.

§ 5381. Indemnification in proceedings other than derivative actions

This section was tentatively approved.

§ 5382. Indemnification in derivative actions

This section was tentatively approved.

§ 5383. Indemnification where agent prevails on merits

This section was tentatively approved.

§ 5384. Corporate action required for indemnification

This section was tentatively approved.

§ 5385. Authority to advance expenses

This section was tentatively approved.

§ 5386. Indemnification other than pursuant to this article

This section was tentatively approved.

§ 5387. Limitation on indemnification

This section was tentatively approved.

§ 5388. Insurance for corporate agents

This section was tentatively approved.

§ 5389. Application of article to fiduciary of employee benefit plan

Subdivision (b) should be revised to make clear that the right to indemnification is not "limited" by Article 8, and the Comment should so indicate.

§ 5390. Certified copy of corporate action.

Subdivision (a) of this section was deleted. The provision of subdivision (b)(2) relating to evidence "of the matters stated therein" should be generalized to apply to all the paragraphs of subdivision (b).

§ 5391. Validity of corporate instruments signed by officers

The staff should consider rewording this section in the manner of the comparable provision of the business corporation law, or making applicable the definition of "officer's certificate." In addition, the staff should analyze the effect of this provision to make certain that all cases intended to be covered are in fact covered.

Corporations Code §§ 9300, 9302, 9401, 9500, 9502, 9503, 9503.1, 9504 (repealed)

The Comments to these repealers were tentatively approved.

STUDY 77.50 - NONPROFIT CORPORATIONS (CORPORATE FINANCE)

The Commission began consideration of Memorandum 76-42 and the attached staff draft of Chapter 5 relating to corporate finance. The Commission took the following action with respect to the provisions of the staff draft:

§ 5500. Levy of dues and assessments

This section was tentatively approved (February 1976) as Section 5510. After discussion of subdivision (d) relating to forfeiture of memberships, the staff was directed to add to the Comment a reference to relevant case law concerning due process requirements.

§ 5501. Levy of assessments

This section was tentatively approved. The Comment should contain some discussion of existing law regarding the authority of nonprofit corporations to impose and collect assessments as background for adoption of the section.

§ 5504. Replacement of lost, stolen, or destroyed instruments

This section was tentatively approved and renumbered as Section 5502. The staff is directed to consider the meaning of "lawful successor" as used in subdivision (a).

§ 5510. Capital contributions authorized

This section was not approved. The Commission was of the opinion that a nonprofit corporation should not be allowed to impose capital contribution requirements upon members except at the time of admission to membership although payment over a period of time should be authorized. The staff was directed to consider the addition to Section 5500 of the authority to impose initiation fees and capital contribution requirements upon admission to membership.

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STUDY 77.70 - NONPROFIT CORPORATIONS (VOTING OF MEMBERSHIPS)

In connection with its consideration of Memorandum 76-47 relating to directors and management of nonprofit corporations, the Commission tentatively approved Section 5708, which reads:

5708. No member may cumulate votes for directors unless the articles or bylaws so provide.

STUDY 77.100 - NONPROFIT CORPORATIONS (SALES OF ASSETS)

The Commission considered Memorandum 76-40 and the attached staff draft of Chapter 10 (Sales of Assets) of General Nonprofit Corporation Law. The Commission made the following decisions:

§ 6000. Hypothecation of assets to secure corporate obligation

Subdivision (b) of Section 6000 was amended so that approval of the members may be required by the bylaws as well as by the articles. Since "bylaws" will be defined in the general provisions to mean articles or bylaws, subdivision (b) will read:

(b) Unless the ~~articles~~ bylaws otherwise provide, no approval of the members shall be necessary for such action.

As thus amended, Section 6000 was tentatively approved.

§ 6001. Sale or transfer of all or substantially all of assets; approval of members

Subdivision (a) of Section 6001 was revised to change "property and assets" to "assets" and to cast the subdivision in prohibitory form to eliminate the possibility of its being construed to apply to a disposition of less than substantially all of the assets. As thus revised, subdivision (a) would read as follows:

6001. (a) A nonprofit corporation may not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets unless the principal terms are approved by the board and either (1) the transaction is in the usual and regular course of its activities, or (2) the principal terms are approved by members holding a majority of the voting power, whether such approval occurs before or after approval by the board or before or after the transaction.

Subdivision (b) should be deleted to reflect the Commission's decision not to adopt proposed Chapter 12 (reorganizations). The substance of the first sentence of Section 6003 (terms, conditions, consideration) should be put in Section 6001.

The Commission decided to require, either in Section 6001 or elsewhere, that the nonprofit corporation give notice to the Attorney General when it disposes of all or substantially all of its assets for less than fair and adequate consideration, the disposition is not in the usual and regular course of its activities, and the assets are held subject to a charitable trust or the nonprofit corporation is organized for charitable purposes.

Section 6001 should be included among the sections enumerated in Section 5628, making member approval at a meeting valid only if the "general nature of the proposal" was stated in the notice of the meeting or in a written waiver of notice.

§ 6002. Abandonment of proposed transaction

Section 6002 was tentatively approved.

§ 6003. Terms and conditions of, and consideration for, the transaction

The first sentence of Section 6003 should be revised to provide that a transaction authorized by Section 6001 "may be upon such terms and conditions and for consideration in such amount and in such form as the board may deem in the best interests of the nonprofit corporation" (subject to rules applicable to trust property), and put in Section 6001. The second sentence of Section 6003 should be deleted.

§ 6004. Certificate of resolution and approval; effect as evidence

Section 6004 was tentatively approved.

STUDY 77.110 - NONPROFIT CORPORATIONS (MERGER AND CONSOLIDATION)

The Commission considered Memorandum 76-46 and the attached staff draft of Chapter 11 relating to merger and consolidation. The Commission tentatively approved the draft subject to the following changes:

§ 6111. Contents of agreement of merger or consolidation

The provision of subdivision (c) requiring the statement in the agreement of consolidation of the matters required to be stated in the articles of a nonprofit corporation should be revised to provide that a copy of the articles of the new consolidated corporation shall be attached to the agreement of consolidation.

The provision in subdivision (e) for a statement in the agreement of the manner of compensation for memberships of a constituent nonprofit corporation which are not to be converted into memberships in the surviving or consolidated nonprofit corporation should be deleted. This is in accordance with the policy against distribution of gains or profits to members of nonprofit corporations except on dissolution.

§ 6112. Amendment of articles by agreement

The cross-references to portions of Chapter 9 should be made more specific.

§ 6113. Articles of consolidated nonprofit corporation

This section should be revised to reflect the decision to make the articles of the consolidated nonprofit corporation a separate document instead of a part of the agreement of consolidation. See the decision concerning Section 6111(c).

§ 6115. Equal treatment of memberships

This section should be deleted. Section 5925, which requires a class vote to approve an action that would adversely affect the rights of members

of one class to a greater extent than members of other classes, should be a general provision to cover the problem raised by Section 6115.

§ 6120. Approval of agreement by board

The provision for signing the agreement on behalf of the board should be consistent with the general provision for an officers' certificate.

(Section 5173.)

§ 6121. Approval of agreement by members

Subdivision (a) should be revised to require written consent of the members entitled to exercise a majority of the voting power rather than two-thirds. It should be made clear that, unless additional approval is required by the bylaws, the agreement of merger or consolidation must be approved by the members entitled to vote for directors.

§ 6122. Additional approval required by bylaws.

This section should also provide that the bylaws may require approval by members other than those entitled to vote for directors or approval of classes of members.

§ 6123. Approval of members by vote

Subdivision (a) should be revised to make clear that it applies where the members act by vote (rather than by consent) and to conform with the general provisions on the manner in which members may act by vote.

§ 6126. Notice of approval of agreement

This section should be revised to permit notice of approval of the agreement to be given in the same manner as notice of meetings is given. However, it was noted that this provision may be unnecessary since dissenters' appraisal rights are not to be continued.

§ 6140. Filing copy of agreement and officers' certificates

This section should also provide for the filing of the articles of the consolidated nonprofit corporation along with the agreement and officers' certificate in view of the revisions of Sections 6111(c) and 6113.

§ 6147. Evidentiary effect of agreement

This section should be revised to provide for certification by the Secretary of State or by a public official of another state or place, consistent with the language of Section 6148.

§ 6149. Effect of merger or consolidation on bequest, devise, gift, etc.

A new section should be added to continue the substance of Corporations Code Section 10206.1 which provides that a bequest to a constituent nonprofit corporation inures to the benefit of the surviving or consolidated nonprofit corporation.

§ 6153. Law controlling merger or consolidation

This section and its Comment should be revised to reflect the elimination of dissenters' appraisal rights.

§ 6154. Filing of agreement

This section should provide for filing a copy of the agreement rather than the agreement itself.

Division and Conversion

The staff should draft provisions relating to division of nonprofit corporations and to conversion of nonprofit corporations into business corporations and vice versa, to be based on the Pennsylvania provisions, for consideration at the next meeting. Conversion should be limited to noncharitable nonprofit corporations. Division of charitable nonprofit corporations should result in two or more charitable nonprofit corporations.

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STUDY 77.120 - NONPROFIT CORPORATIONS (REORGANIZATIONS)

The Commission considered Memorandum 76-53 and the attached staff draft of Chapter 12 relating to reorganizations (de facto mergers). The Commission decided that these provisions were not sufficiently important in the context of nonprofit corporations to require their inclusion in the General Nonprofit Corporation Law. The staff should further examine the provisions of Chapter 10 (Sales of Assets) to make sure that the provisions concerning membership approval are sufficiently broad to require membership approval in a case where the sale of assets is a de facto merger.

STUDY 77.130 - NONPROFIT CORPORATIONS (DISSENTERS' RIGHTS)

The Commission considered Memorandum 76-54 and the attached staff draft of Chapter 13 relating to dissenters' rights. The Commission decided that the General Nonprofit Corporation Law should not provide dissenting members with a right to require the nonprofit corporation to purchase their memberships representing an ownership interest in the case of a reorganization, including merger and consolidation. This decision is in accordance with the policy against distribution of gains or profits to members of nonprofit corporations except on dissolution. The Commission decided, however, that Section 6322 of the draft statute should provide that a member holding a membership representing an ownership interest in the nonprofit corporation may bring an action to enjoin or rescind a merger or consolidation which is manifestly unfair to property rights of the member or of the class of which he is a member.

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STUDY 77.140 - NONPROFIT CORPORATIONS (BANKRUPTCY
REORGANIZATIONS AND ARRANGEMENTS)

The Commission considered Memorandum 76-33 and the attached staff draft of Chapter 14 relating to bankruptcy reorganizations and arrangements. The Commission directed the staff to send the draft of Chapter 14 to Professor Stefan A. Riesenfeld, the Commission's consultant on creditors' remedies, for his comments regarding the substance of and the need for such provisions in the General Nonprofit Corporation Law. It was also suggested that, if these provisions are to be retained, they might best be included in Division 4 (Provisions Applicable to Corporations Generally). Chapter 14 was tentatively approved subject to later revision following its review by Professor Riesenfeld.

STUDIES 77.180 AND 77.190 - NONPROFIT CORPORATIONS
(WINDING UP AND DISSOLUTION)

The Commission resumed consideration of Memorandum 76-28 beginning with Section 6844 of the staff draft of Chapter 18 (Involuntary Dissolution), having considered Sections 6810-6843 at the April meeting. The Commission made the following decisions:

CHAPTER 18. INVOLUNTARY DISSOLUTION

§ 6844. Corporate activities during winding up

Section 6844 should be consolidated with Section 6932 and put in Chapter 20 (General Provisions Relating to Dissolution). As thus consolidated, Section 6844 was tentatively approved.

§ 6845. Notice of winding up

Section 6845 should be revised to allow the court to provide for notice of the involuntary dissolution proceeding to be given to members and creditors other than by mail upon application and good cause shown. The staff should consider whether the notice required to be given to members should be limited to those members entitled to vote or to share in the assets upon distribution, possibly by so defining "members" in a general provision.

Section 6845 should be consolidated with Section 6933 and put in Chapter 20. As thus revised and consolidated, Section 6845 was tentatively approved.

§ 6846. Jurisdiction of the court in proceeding for winding up

The beginning phrase of Section 6846 was revised as follows:

6846. When an involuntary proceeding for winding up has been commenced, the ~~jurisdiction of the~~ court ~~includes~~ may :

The remainder of Section 6846 should be reworded to accommodate the foregoing change. The word "jurisdiction" in the lead line should be changed to "power."

The staff should consider whether Sections 6822 and 6841, and possibly Section 6832, should be consolidated with Section 6846.

In subdivision (g), delete the words "it appears that" The staff should review the drafting of subdivision (g).

§ 6847. Time to present claims; notice to creditors and claimants

Section 6847 should be revised to eliminate the requirement of notice by publication. The claims of creditors should be barred only in the case of those who have been given notice by mail or by such method as the court may prescribe under Section 6845.

§ 6848. Holders of secured claims

Section 6848 was tentatively approved.

§ 6849. Unmatured, contingent, or disputed claims

Section 6849 was tentatively approved.

§ 6850. Time to commence suits on rejected claims

Section 6850 was tentatively approved.

§ 6851. Order for winding up and dissolution

Section 6851 was tentatively approved.

§ 6852. Cessation of corporate existence

Subdivision (a) of Section 6852 should be consolidated with subdivision (a) of Section 7040. Subdivision (b) of Section 6852 should be put in an appropriate place in Chapter 20 (General Provisions Relating to Dissolution).

§ 6853. Filing of copy of decree of dissolution

The staff should consider whether subdivision (a) of Section 6853 should be consolidated with subdivision (d) of Section 6941 and possibly put in Chapter 20 (General Provisions Relating to Dissolution). The staff should also consider whether the language of subdivision (a) of Section 6853 relating to forfeiture of corporate existence should more appropriately belong elsewhere in the Corporations Code.

CHAPTER 19. VOLUNTARY DISSOLUTION

§ 6910. Application of chapter

Section 6910 should be deleted in view of Section 5102 (tentatively approved January 1976) which provides that all of Division 2 will apply to every nonprofit corporation unless there is an applicable special provision which is inconsistent with Division 2.

§ 6920. Voluntary dissolution by members

Section 6920 should be modified to allow the articles or bylaws to require an extraordinary majority for voluntary dissolution. The term "voting power" as used in Section 6920 should mean those entitled to vote for directors.

§ 6921. Voluntary dissolution by board

Subdivision (a) of Section 6921 should be revised to allow the board voluntarily to dissolve:

- (a) A nonprofit corporation which ~~has not begun operation and which~~ has no members other than the directors.

As thus revised, Section 6921 was tentatively approved.

§ 6922. Certificate of election to wind up and dissolve

Subdivision (b) of Section 6922 should be revised in view of the Commission's decision to allow the articles or bylaws to require an extraordinary majority for voluntary dissolution. As thus revised, Section 6922 was tentatively approved.

§ 6923. Revocation of election to wind up and dissolve

In subdivision (a) of Section 6923, the language "50 percent or more of the voting power" should be changed to "a majority of the voting power." With that change, Section 6923 was tentatively approved.

§ 6930. Commencement of proceedings

The word "directors" should be changed to "board." With that change, Section 6930 was tentatively approved.

§ 6931. Powers of board during proceedings

The staff should consider whether Section 6931 should be consolidated with Sections 6843 and 7020. The substance of Section 6931 was tentatively approved.

§ 6932. Corporate activities during winding up

Section 6932 should be consolidated with Section 6844 and put in Chapter 20 (General Provisions Relating to Dissolution). As thus consolidated, Section 6932 was tentatively approved.

§ 6933. Notice of winding up

Section 6933 should be revised to allow the court on petition and good cause shown to provide for notice of the voluntary dissolution proceeding to be given to members and creditors other than by mail. Section 6933 should be consolidated with Section 6845 and put in Chapter 20 (General Provisions Relating to Dissolution). As thus revised and consolidated, Section 6933 was tentatively approved.

§ 6934. Supervision by court upon petition

Section 6934 was tentatively approved. The Comment to Section 6934 should note that, although there is no provision in this section comparable to subdivision (c) of Section 1904 allowing a petition for judicial supervision by

one shareholder when the corporation is a close corporation, if the nonprofit corporation has 20 members or less, one member will satisfy the five-percent requirement of Section 6934(a)(2).

§ 6935. Certificate of dissolution

Paragraph (3) of subdivision (a) of Section 6935 should be revised to take account of the situation where the nonprofit corporation holds assets subject to a charitable trust. As thus revised, Section 6935 was tentatively approved.

§ 6940. Winding up of nonprofit corporation whose term of existence has expired

Section 6940 should be moved to Chapter 20 (General Provisions Relating to Dissolution). Subdivision (a) of Section 6940 should be revised as follows:

6940. (a) Except as otherwise provided by law, if the term of existence for which any nonprofit corporation was organized expires without renewal or extension thereof, the board shall ~~terminate~~ cease to carry on its activities in the manner provided by law and shall wind up its affairs.

The Comment should note that, under Section 5912, a term of corporate existence which has expired may be extended under certain circumstances and that, under Section 6932, the board may act to preserve goodwill or going concern value during winding up.

§ 6941. Petition to court in lieu of filing certificate of dissolution

The provisions of subdivision (c) of Section 6941 should be conformed to the Commission's decision under Sections 6845 and 6847 to dispense with notice by publication, to require notice by mail unless the court provides a different notice procedure, and to cut off the claims only of those who have been given notice. The staff should consider whether subdivision (d) should be consolidated with Section 6852 and subdivision (a) of Section 6853.

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The staff should also, either before or after completion of the recommendation to the Legislature for a General Nonprofit Corporation Law, examine the procedural provisions applicable to the various judicial proceedings under Division 2. Does the Code of Civil Procedure apply generally? Should the Code of Civil Procedure be incorporated by reference? Should special statutory procedures be provided?

STUDY 77.200 - NONPROFIT CORPORATIONS (GENERAL PROVISIONS
RELATING TO DISSOLUTION)

The Commission considered Memorandum 76-39 and the attached staff draft of Chapter 20 (General Provisions Relating to Dissolution). The Commission made the following decisions:

Article 1. Avoidance of Dissolution by Purchase; Procedures

§ 7010. Application of article

Section 7010 should be revised so that Article 1 (Avoidance of Dissolution by Purchase; Procedures) will apply to nonprofit corporations whether or not the memberships are transferable but will not apply to nonprofit corporations which are organized for charitable purposes.

§ 7011. Avoidance of dissolution by purchase

Subdivision (a) of Section 7011 should be revised to make it subject to any contrary provision in the bylaws as well as in the articles. Since "bylaws" will be defined in the general provisions to mean articles or bylaws, subdivision (a) should commence: "Subject to any contrary provision in the articles bylaws"

The purchasing parties should be permitted to avoid dissolution only when the dissolution proceedings have been commenced by a majority of the members. The nonprofit corporation should be permitted to purchase the memberships of the moving parties by approval of members holding a majority of the voting power excluding the voting power of the moving parties, but the members who oppose purchase by the corporation should then be permitted to elect to be bought out by the corporation in the same manner as the moving parties. If the corporation does not elect to purchase, then any one or more members should be permitted to avoid dissolution by buying out the moving parties.

The staff should consider how the rights of creditors of the nonprofit corporation may be adequately protected if corporate assets are to be used for the purchase, and whether paragraph (3) of subdivision (b) of Section 5236 should be revised slightly in view of the provisions of Section 7011.

§ 7012. Stay of court proceedings and valuation of memberships

Section 7012 should be revised so that the court will fix the fair value of the memberships of the moving parties if the purchasing parties "give bond with in a sufficient security amount to pay the expenses (including reasonable attorney's fees) of the moving parties if such expenses are recoverable under Section ~~7013~~ 7014" Section 7012 should be broken up into several shorter sentences, and the Comment should make clear what the term "expenses" includes.

§ 7013. Appraisal of memberships

A provision should be added to Section 7013 or elsewhere in Article 1 of Chapter 20 requiring the purchasing parties to pay the costs of the appraisal unless the court for good cause orders otherwise. With that change, Section 7013 was tentatively approved.

§ 7014. Alternative decree; appeal

Subdivision (b) of Section 7014 should be revised to provide expressly that the purchasing parties may be held liable for the moving parties' expenses if the purchasing parties dismiss a proceeding they have initiated under Section 7012. In subdivision (b), the word "reasonable" should be added before "attorney's fees." As thus revised, Section 7014 was tentatively approved.

§ 7015. Time for payment; transfer of memberships

Section 7015 was tentatively approved.

Article 2. Directors and Officers

§ 7020. Powers of directors and officers during dissolution

The staff should consider whether Section 7020 should be consolidated with Sections 6843 and 6931. The substance of Section 7020 was tentatively approved.

§ 7021. Filling a vacancy on board of directors

Section 7021 was tentatively approved.

§ 7022. Petition to determine or appoint directors

The staff should review the question of whether "directors" as used in Section 7022 means all the directors or any one director and should make the section clear in this respect.

Article 3. Distribution of Assets

Article 3 was previously considered by the Commission in February 1976 and, with the exception of Sections 7035.5 and 7037, the sections included in the staff draft were tentatively approved in February. The Commission reviewed Article 3 and made the following decisions:

§ 7030. When distribution may be made

The lead line to Section 7030 should be revised to read: "Distribution after payment of debts."

§ 7032. Distribution among members or in accordance with articles or bylaws

Section 7032 should be renumbered as Section 7034.

§ 7033. Return of assets held on condition

Section 7033 should be renumbered as Section 7032. The Comment should note that the section is a special application of the general rule requiring

that the charitable intent of the donor be carried out, whether this is necessitated by dissolution of the donee corporation or for any other reason. See In re Los Angeles County Pioneer Society, 40 Cal.2d 852, 865-866, 257 P.2d 1, ___ - ___, cert. denied, 346 U.S. 888 (1953); 7 B. Witkin, Summary of California Law, Trusts § 49, at 5411-5412 (8th ed. 1974).

§ 7034. Disposition of assets held on trust or by charitable corporation

Section 7034 should be renumbered as Section 7033.

§ 7035.5. Plan of distribution of assets in kind

The language at the beginning of subdivision (a) of Section 7035.5 should be revised to read: "Notwithstanding any provision in the ~~articles~~ bylaws" ("Bylaws" will be defined in a general section to mean articles or bylaws.) As thus revised, Section 7035.5 was tentatively approved.

§ 7037. Recovery of improper distribution to members

Section 7037 was tentatively approved. The Comment to Section 7037 should note that the remedy provided by subdivision (b)(creditor's right to sue in the name of the corporation for improper distribution to members) is not exclusive, and the creditor may pursue any other remedies he may have. The Commission also tentatively approved the staff recommendation to amend Section 359 of the Code of Civil Procedure as follows:

359. This title does not affect actions against directors ~~or stockholders~~ , shareholders, or members of a corporation

Article 4. Continuation After Dissolution

§ 7040. Continued existence for some purposes of dissolved nonprofit corporation

Subdivision (a) of Section 6852 should be consolidated with subdivision (a) of Section 7040. As thus consolidated, Section 7040 was tentatively approved.

§ 7041. Suits against dissolved nonprofit corporation

The staff should consider whether the language in subdivision (b) which reads "or an assistant or deputy secretary of state" might be deleted as surplusage with an appropriate reference in the Comment. The staff should review and possibly revise the language in subdivision (c) which reads "such action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure," since the latter sections relate to jurisdiction. With those qualifications, Section 7041 was tentatively approved.

Article 5. Conditions for Dissolution of Regulated
Nonprofit Corporations

§ 7050. Conditions for dissolution of regulated nonprofit corporations

Section 7050 should be revised to break it into two complete sentences. With that revision, Section 7050 was tentatively approved.

STUDIES 77.210 AND 77.250 - NONPROFIT CORPORATIONS (FOREIGN AND
PSEUDO-FOREIGN CORPORATIONS)

The Commission considered Memorandum 76-45 and a letter from Mr. Douglas L. Hammer of Pillsbury, Madison, and Sutro which was handed out at the meeting and is attached as an exhibit to these minutes. The Commission determined that the problems which would be created by the incorporation into nonprofit corporation law of the "pseudo-foreign" corporation concept would outweigh the potential benefits, and thus determined not to include provisions comparable to Section 2115 of the General Corporation Law.

The Commission deferred consideration of Memorandum 76-55.

STUDY 78.50 - LESSOR-LESSEE RELATIONS (UNLAWFUL DETAINER PROCEEDINGS)

The Commission considered Memorandum 76-49, with attached tentative recommendation, and a letter from Thomas W. Pulliam, Jr., of the San Francisco Neighborhood Legal Assistance Foundation. The tentative recommendation attached to Memorandum 76-49 was approved for printing after the following revisions have been made:

(1) The substance of the revision proposed by Mr. Pulliam should be included in proposed Section 1252.3.

(2) Proposed Section 1252.3 should be revised, if necessary, to recognize that a cross-complaint is a separate pleading from the answer.

(3) Editorial revisions suggested by Commissioners on copies of the recommendation returned to the staff should be considered in preparing the recommendation for the printer.

STUDIES 77.210
77.250

EXHIBIT I

Minutes
May 13, 14, and 15, 1976

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May 12, 1976

HAND DELIVERED

Mr. John H. DeMouilly
California Law Revision
Commission
Stanford Law School
Stanford, CA 94305

Dear Mr. DeMouilly:

In a telephone conversation with Bob Murphy yesterday, we discussed a proposal to introduce in the California legislature a statute having effects on the California Nonprofit Corporation Law similar to the effects of new section 2115 on the General Corporation Law. As you no doubt know, Mike Halloran of this office and I have submitted to the UCLA Law Review an article concerning section 2115 and a copy of that article has been furnished to Bob Murphy. As you will see from the article, we believe that section 2115 will cause problems of such magnitude with respect to the General Corporation Law that any benefits arising from the adoption of section 2115 will be submerged in a morass of legal questions and litigation.

Without having done substantial research into the Nonprofit Corporation Law, we would suggest at least preliminarily that the adoption of a statute having effects on the Nonprofit Corporation Law similar to section 2115 should be expected to cause problems similar to those which we anticipate section 2115 will cause. In addition, section 2115 was proposed to the legislature and enacted primarily to substitute California law for Delaware law as applied in specified respects to profit-making foreign corporations doing business in California. It was believed by a majority of the Committee on Corporations of the California State Bar that Delaware law in this respect affords insufficient protection to shareholders and creditors of profit-making corporations while the new California law would cure this ill if it were applicable to foreign corporations doing business here. Even if this were

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true, and, as discussed in our article, we believe it is not true, it would not support the enactment of a statute like section 2115 in the area of Nonprofit Corporation Law since we have not become aware of significant criticism of the policies underlying Delaware law in this area which would be obviated by application of California law.

Given the difficulties which section 2115 is likely to create, we would suggest that the Law Revision Commission at least delay a few years until the strengths and weaknesses of section 2115 can be ascertained from practical experience. If it then appears desirable that portions of the Nonprofit Corporation Law be applied to foreign corporations, the statute causing such application can be drafted to avoid the problems which will otherwise arise.

Yours very truly,



Douglas L. Hammer
for
Pillsbury, Madison & Sutro