

#77.400

11/3/76

Fourth Supplement to Memorandum 76-90

Subject: Study 77.400 - Nonprofit Corporations (Comments Concerning  
Division 2--Nonprofit Corporation Law)

Attached to this supplement are three additional letters commenting on the tentative recommendation relating to nonprofit corporation law.

Exhibit LXXVII was distributed at the last meeting. Exhibits LXXVIII AND LXXIX contain additional thoughts from persons who previously submitted comments. The statistics contained in the letter from Mr. Howland (Exhibit LXXIX) are very interesting. You should read this letter. We will call your attention to the other matters contained in the attached letters at the appropriate time as we review the provisions of Division 2.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

## EXHIBIT LXXVII

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RUTH CHURCH GUPTA  
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File: 00499

October 15, 1976

John H. DeMouilly, Esq.  
Executive Secretary  
California Law Revision Commission  
Stanford Law School  
Stanford, CA 94305

My dear Mr. DeMouilly:

Thank you for your letter of September 22, 1976 in connection with the copy of the tentative recommendation relating to non-profit corporation law that was supplied to me in July of 1976 at my request.

I believe you will recollect that I pointed out to you that I would not be able to set aside much time to the study of the text and the proposal until after the then pending State Bar Conference of Delegates meeting which started on the 18th of September, and ended up in the following week. This, of course, was because I was a delegate from the Lawyers Club of San Francisco to the Conference and one of our proudest moments as a Club is the fact of total dedication to the analysis and argument concerning the well over two hundred resolutions and reports that are submitted regularly to delegates for consideration at such meetings.

I have not been able to get to finish the entire submission, but I have read a considerable part of the explanatory materials and I want to compliment you and your staff for one of the most excellent jobs of preparing a new legislative code that I have had the opportunity of studying. I am sorry that I was not able to meet your October 5 deadline either, because of the fact that Mrs. Gupta, the other attorney in this office, has been in the hospital with major surgery and is out now recuperating and this being a two person office with varied schedules to meet, it has become most necessary to assign priorities as you will no doubt imagine.

As we are involved in a number of non-profit organizations, it is very important to us to see that a good workable law is developed. We agree that the basic approach of the tentative draft, complete in itself, as indicated, is a very sound approach to the solution of the problems that face the citizens of California.

I am enchanted by the utilization of sound explanatory material in readable and understandable English, which presumably will become a part of the Code so that the attorneys who volunteer their times and hours in connection with non-profit corporation activities can simply turn a copy of the Code over to the volunteer personnel, who will do most of the work and tell them to do thus and thus and this and this, etc.

There are a couple of observations that may be of significance or interest to those who are handling this proposal. I am particularly

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California Law Revision Commission, Stanford, CA 94305

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worried about the opening of membership records (pages 42 and 43). It would seem to me that a Constitutional question is involved here, in that there is a right of privacy in the State of California, as well as the fact that it may create a chilling effect upon the right to organize and petition if for any reason the rosters of organizations are required to be open to the public. You know and I know of the McCarthy days harassment and the predilection of self-appointed gaudsitters in various Government agencies to assemble dossiers and otherwise harass people and groups that the straightfaced types that are usually associated with police agencies just do not like. I am wondering if the ACLU or any other like-minded organizations has caught this proposal and commented upon it.

I would also think that the requiring of annual reports like a general corporation is very onerous to non-profit and charitable organizations which are generally made up of volunteer personnel and also of people who are not in a position to make reports on a formal basis. I also wonder whether a simple majority should be able to change articles, or authorize for mergers and disposition of assets or voluntary dissolution as is indicated on page 35. It would seem to me that it would really require more than a simple majority present in a meeting or within the framework of a proper quorum to do this kind of thing.

I note also that on page 30 it has been the intention of the drafters to adopt the New York and Pennsylvania rules authorizing transfer for investment purposes all or part of the assets to institutional trusts or give them into the possession of institutional trustees. The justification for this provision seems to be to protect the directors of the non-profit corporation. I doubt that California ought to adopt this kind of a rule. The reason to me would be that there is a possibility of conflicts of interest that might develop in the investment of funds in organizations of countries of origin which might cause problems. I am thinking, of course, of the fact that people resent the officers and directors of companies investing or doing business with organizations for instance, that exploit Blacks in Africa, etc. It seems to me there ought to be some way of protecting the organized non-profit corporation members from this kind of involuntary use of their funds.

As you can see, the only observations I have are relatively picay-unish except for the Constitutional issue that I have observed above. I am cognizant of the fact that the proposed text will be introduced into the Legislature either as a provisional bill or a direct bill, and that there will be numerous hearings before the various committees of the Legislature and probably extensive amendments at that level. It would be one of my interests to follow these procedures in Sacramento. I may also depending on your response to me, concerning the Constitutional issue, call friends of mine in other organizations and ask them how they would feel about the provisions of open membership records. I would guess, however, that you have already received complaints in connection with this particular factor. Not only is it a problem with respect to Water gate type harassment, but it is a nuisance to have open records available for exploitation by commercial purveyors.

It would be interesting to know whether charitable organizations have made observations to the Commission about the necessity of having another layer of Government to work with in addition to the Office of

John H. DeMouilly, Esq.  
Executive Secretary  
California Law Revision Commission, Stanford, CA 94305

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The Secretary of State and the Franchise Tax Board. I refer of course to page 12, where charitable organizations would be required to send copies of their articles in addition to the Attorney General of the State of California. If charitable organizations appear to be chary of this procedure I would join with them in objecting to that kind of a necessity. I would think that either the Office of the Secretary of State or the Franchise Tax Board should be required to prepare the copy and send it to the Attorney General if they thought it necessary, but I kind of doubt that it would be fair to require a charitable organization or other kinds of volunteer organizations to be responsible to send extra copies and prepare extra copies of lengthy documents just to satisfy an idle requirement of storage in another place. I say this advisably because you know and I know that 90% of these reporting requirements usually end up with having the papers sold as waste paper; witness the admission by the IRS of the fact that these reports from lending and banking institutions are never read, except in 2% of the tenders.

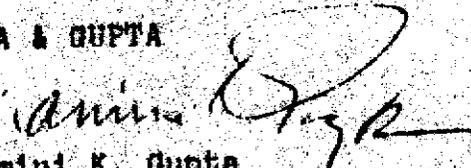
Although I have taken the opportunity of listing observations from my notes, I do want to repeat that the thrust and the totality of the work is excellent and I am very, very glad to see that the California Law Review Commission is approaching the solution of problems in the way that this appears to have been done.

I will continue to read the actual text material and comments as time and the press of business permits and will advise you further of my observations if you are interested in having them.

Yours very truly,

GUPTA & GUPTA

By

  
Kamini K. Gupta

RKG:jp

EXHIBIT LXXVIII

LAW OFFICES  
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October 20, 1976

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348-1

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Attention: John H. DeMouilly  
Executive Secretary

Dear Sir:

Thank you for your kind letter of October 15, 1976.  
I would be grateful if I could make even a token contribution to  
your diligent efforts.

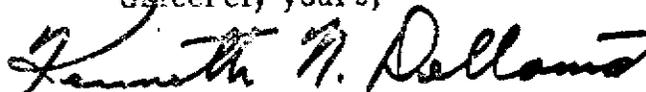
I do have one other thought.

One of the constitutional characteristics of all corpora-  
tions is that their charters are subject to the state's reserved  
power to change them. (Cal. Const., Art. XII, Sec. 1; 5 Witkin  
Summary (8th ed) 3920, Sec. 621; 1 Witkin Summary (8th ed) 35,  
Sec. 11)

Recognizing the fact, as we must, that both the non-  
profit corporation code of California and the cases based thereon  
have been inadequate and inequitable in many respects, we suggest  
that the new code be both retroactive and effective immediately upon  
enactment. An example of such a provision is contained in Civil  
Code, Sec. 2261(5) (1969)

One of hundreds of benefits to be derived from such a pro-  
vision would be to make "equity" members from the "debt" members  
who have no chance of collecting their investments prior to 2010, or  
later.

Sincerely yours,



KENNETH N. DELLAMATER

KND:mf

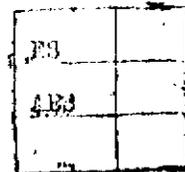
EXHIBIT LXXIX

**WALLACE HOWLAND**  
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October 21, 1976.

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



Dear Mr. DeMouilly,

Thank you for your letter of October 5th, with its invitation to submit additions to my comments on the Tentative Recommendation Relating to Nonprofit Corporation Law.

As set forth in my letter to the Commission, October 4th, my suggestions related almost entirely to those nonprofit corporations that are organized for charitable purposes (herein, "charitable corporations"). Such corporations are numerically only a small percentage of the total number of nonprofit corporations. On the other hand, the value of their assets (including endowments and trust funds) and their annual cash flow (huge in the case of charitable corporations that publicly solicit funds) establish a public concern with their proper governance that is disproportionate with their mere number.

I can offer a few statistics that should help to put charitable corporations in proper perspective. My source is the public available file of the California Registry of Charitable Trusts.

As of November 1, 1971, there were 10,372 charitable organizations of all kinds registered with the California Attorney General. Of these, 8,459 or 81.6% were corporations organized under the California General Nonprofit Corporation Law with which we are here concerned. (1).

These registrants held assets for charitable purposes of the order of 10 billions of dollars and received annual revenues of around 5.4 billions. (2). Lacking more specific data but based on experience, I know of know reason why it may not be assumed that California charitable corporations enjoyed some 82% of such assets and annual revenue.

(1). The next largest category comprised some 1,350 trustees of express charitable trusts, about 13% of all registrants.

(2). These figures do not include either assets held or revenues received in the more than 600 instances of charitable trusts of which banks or title companies are sole trustees. Such trustees must register with the Attorney General but are exempt from making periodic financial reports. (Govt. Code § 12586).

Mr. John H. DeMouilly, October 21, 1976.

At present, the number of registered charitable organizations of all kinds has grown to approximately 13,500, an increase of about 30% since the end of 1971. I have no reason to believe that the assets and the annual revenues of today's registrants have not grown in proportion with their numbers, or that California nonprofit corporations have not maintained their heavy preponderance in total registrations.

Projections based on such assumptions would indicate that today California nonprofit corporations organized for charitable purposes hold some 82% of an estimated total of some 13 billions and receive an equal percentage of total annual revenues of the order of 7 billions.

Based on experience, I am reasonably sure that nonprofit corporations organized for non-charitable purposes have nowhere near the financial responsibilities of those that are charitable in purpose. Consequently, neither do they involve as acute a public interest and concern in their proper administration.

Subject to the views I expressed in my letter of October 4th, I think the Tentative Recommendation reflects a keen recognition by the Commission of the unique characteristics of and resulting public concern in California charitable corporations.

I trust that this addendum to my prior comments will be helpful.

Sincerely yours,

*Wallace Howland.*  
Wallace Howland.

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JOHN F. FORAN

November 2, 1976

Law Revision Commission  
Stanford Law School  
Palo Alto, California 94305

Re: REVISION OF SECTION 9505 CORPORATIONS CODE -  
PROPOSED SECTION 5564

Gentlemen:

We have read the proposed modification of the language contained in the present Section 9505 Corporations Code.

We can see no reason for the change. It is totally unclear to us what is meant by the words "shall take appropriate action". Historically, the Section has read "shall institute in the name of the State of California the proceedings necessary". What is meant by "shall take appropriate action"?

We see no need to add this language. The Section as presently constituted gives the Attorney General all the authority that is needed. If the language adds nothing to his authority or changes nothing, it should not be interjected.

Very truly yours,

DESMOND, MILLER, DESMOND & BARTHOLOMEW



BY: LOUIS N. DESMOND  
LND:rm



EXHIBIT LXXXI

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SCOTT D. CUMMINS  
CHARLES A. BIRD  
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PATRICK C. SHEA

THOMAS H. HAMILTON  
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RICHARD N. MURPHY

November 2, 1976

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

Dear Mr. DeMouilly:

In responding to your request for general comments as to the approach of the Law Revision Commission's tentative draft for the new Nonprofit Corporation Law, I must express some concern as to that approach. This question came up in the State Bar Committee on Corporations in its initial planning stages for the revision of the General Corporation Law when the decision was made as to whether or not to separate the provisions specifically relating to "close corporations". A decision was made at that time that the "close corporation" provision should be integrated with the statute. In addition, the definitional provisions sought to identify specific and important sections relating to close corporations within the General Corporation Law itself.

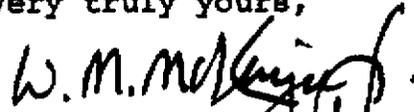
The reason for this approach was a concern that the general practitioner, unfamiliar with the General Corporation Law in his day to day practice, might be less likely to recognize the existence of certain provisions applicable to specialized areas if they were not incorporated with the General Corporation Law in those chapters relating to the specific subjects.



John H. DeMouilly  
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I believe that the same general philosophy applies to the Nonprofit Corporation Law. In addition, I would be concerned that the extensive repetition of matters covered in the General Corporation Law might lead to the amendment of one without necessarily catching all of the amendments in the other. My recommendation would, therefore, be that the Nonprofit Corporation Law be separate and distinct from the General Corporation Law but that its provisions be limited to those matters which the Committee specifically feels require different treatment from that given in the General Corporation Law. With the approach taken in the New General Corporation Law I would think that these differences would be minimal.

Very truly yours,



William M. McKenzie, Jr.

WMM:map