

Second Supplement to Memorandum 88-65

Subject: Study L-3012 - Uniform Management of Institutional Funds Act
(Comments of Interested Persons)

Attached to this supplement are letters concerning the Uniform Management of Institutional Funds Act from Jonathan Brown, Vice President of the Association of Independent California Colleges and Universities (Exhibit 1), and Herbert J. Paine, Executive Director of United Way of California (Exhibit 2).

Mr. Brown concludes that UMIFA has been beneficial to colleges and universities that have chosen to use it. He also suggests that the concerns expressed in the letter from the Attorney General's office (see the First Supplement to Memorandum 88-65) are of a hypothetical nature and are not borne out by experience.

Mr. Paine believes that UMIFA should be extended to charitable and religious organizations. Like Mr. Brown, he believes that the trustees of charitable organizations would be likely to behave responsibly.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

Association of
Independent
 California
 Colleges and
 Universities

October 4, 1988

Stan Ulrich
 Staff Counsel
 California Law Revision Commission
 4000 Middlefield Rd. Suite D-2
 Palo Alto, CA 94303-4739

Dear Stan,

I am in receipt of your second set of materials regarding the proposed expansion of the Uniform Management of Institutional Funds Act beyond educational entities and am now prepared to make some comments on the proposed revision. Please accept them with the caveat that I am not an attorney and thus am burdened more with the operation rather than the structure of statutes! I have watched the operations of this statute since before its last amendment.

Benefits from Existing Law : I have not done a formal survey of the response to UMIFA, however, I did spend a fair amount of time discussing the act with Chief Financial Officers of our member institutions when the sunset was removed. Their uniform response was that the act was very useful in offering flexibility to their operations. That opinion has been confirmed in discussions with CFOs at institutions across the country in those states which have adopted the model statute. I suspect that many of the smaller institutions in the Association do not use the provisions of the act. If data on the question would be useful I would be glad to carry out a survey about usage among all our members.

Comments from the Office of the Attorney General : One of the constant questions raised by regulators when dealing with this kind of issue is whether the statutes should trust Boards of Directors in their role of stewards of the institution or whether the Attorney General's office has a better knowledge of how charitable organizations should function. As someone who has spent most of the last two decades dealing with the finances of charitable institutions, I have a high degree of confidence that the benefits of UMIFA far exceed the hypothetical problems. Trustees, in the vast majority of instances, take their roles seriously. The choice about utilizing a more flexible investment policy has been in my experience one which has been taken like other major decisions, with great care. When the act was originally proposed, and when it was amended, we got a parallel set of comments to the ones you sent out in your second mailing from the Attorney General's office; the comments were no more valid then than now. Finally, although I do not think it would give them comfort, but my anecdotal evidence suggests that small and unsophisticated educational institutions simply do not avail themselves of the act's provisions. It is likely that smaller charities would not utilize the provisions if the act were extended.

My conclusions about a possibly broadening of the statute would fall into three broad categories. 1) We believe that the experience of the last fifteen years has

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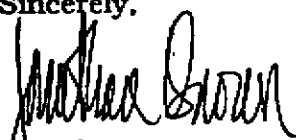
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demonstrated that UMIFA has been a useful addition to colleges and universities in the state who chose to utilize its features. 2) The fears of the Attorney General's Office about hypothetical problems which might occur, have not been demonstrated in the use with educational institutions. 3) It is unlikely that very small charities would avail themselves of the provisions of the Act, if the experience of educational institutions is a good guide. Thus, those most likely to use the provisions of the Act are the very entities most likely to use it well. Thanks for the opportunity to comment on the proposal.

Sincerely,



Jonathan Brown
Vice President

United Way**of California**

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October 10, 1988

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Stan G. Ulrich
Staff Counsel
California Law Review Commission
4000 Middlefield Road, Ste. D2
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Dear Stan:

Thank you for forwarding the materials regarding the Uniform Management of Institutional Funds Act.

I believe it makes eminent sense to extend the provisions of the California Act to endowment funds of charitable and religious organizations. Opportunities of this sort can serve only to enhance the viability of nonprofit organizations. Responsible charitable entities ought to be entitled to the benefits of such legislation and can be trusted to exercise the necessary self-regulating and fiscal management procedures.

Because of the importance of this proposal to the nonprofit sector, I am scheduling for discussion at our next meeting of the Charities' Accountability Forum a review of the act and your commission's proposal. The Charities' Accountability Forum was founded by the United Way of California in 1987 to serve as a vehicle for public benefit organizations to review public policy issues affecting our sector. If you have interest in joining us at this discussion, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read 'HJP'.

Herbert J. Paine
Executive Director

HJP:jh

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