

Memorandum 74-28

Subject: Study 77 - Nonprofit Corporations (Powers of Attorney General)

This memorandum presents background information on the powers of the Attorney General to bring civil actions against corporations as requested by the Commission at the last meeting.

The staff believes that the background information discussed below supports the approach of the draft statute. The draft provides the Attorney General with general supervisory powers over nonprofit corporations (see draft Sections 1901-1903) and also, for the sake of clarity, provides specific enforcement powers; see draft Sections 401 (action to enjoin misleading use of corporate name), 561 (action to enjoin amendment to articles), 808 (action to remove a director), 1312 (action to enjoin or rescind merger or consolidation), 1405 (action to enjoin or rescind corporate conversion), 1509 (petition for court supervision of voluntary winding up), 1602-1603 (action for dissolution), and 1758 (action to annul or enjoin certificate of qualification of foreign corporation). The draft does not significantly enlarge upon the present powers and duties of the Attorney General regarding charitable corporations. The Attorney General's established powers over noncharitable nonprofit corporations are significantly expanded by the draft but not without some support in the language of the courts.

The Attorney General's authority derives from three sources: the state Constitution, common law, and statute.

I. State Constitution

The constitutional expression of the Attorney General's authority is contained in Section 13 of Article 5, which in relevant part provides:

Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be his duty to see that the laws of the State are uniformly and adequately enforced.

The remainder of Section 13 concerns the authority of the Attorney General over the district attorneys and other law enforcement officers. (The statutory expression of the constitutional provision is in Government Code Section 12510 et seq.)

II. Common Law

General Powers

The constitutional provision cited above derives from the common law view that the Attorney General was the representative of the sovereign and had the prerogative to bring an action to enforce the interests of the state.

California courts have frequently cited the following general principle:

The attorney-general, as the chief law officer of the state, has broad powers derived from the common law, and in the absence of any legislative restriction, has the power to file any civil action or proceeding directly involving the rights and interests of the state, or which he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights and interests. Pierce v. Superior Court, 1 Cal.2d 759, 37 P.2d 453 (1934).

See People v. Stratton, 25 Cal. 242 (1864); People v. Oakland Water Front Co., 118 Cal. 234, 50 P. 305 (1897); Brown v. Memorial National Home Foundation, 162 Cal. App.2d 513, 329 P.2d 118 (1958); Don Wilson Builders v. Superior Court, 220 Cal. App.2d 77, 33 Cal. Rptr. 621 (1963).

Despite the frequency with which one encounters the statement of this general principle, there are very few cases which rely exclusively upon the general inherent power of the Attorney General. In the cases which do rest on this principle, there is generally no other adequate remedy and the court finds that the interests of the people of the state are significantly involved.

Hence, in Pierce v. Superior Court, supra, the court relied on the general common law power of the Attorney General to uphold an action to cancel fraudulent voter registrations. In Don Wilson Builders v. Superior Court, supra, the court held that the Attorney General had the authority to bring an action for injunctive relief under the Unruh Act even though that act did not provide for such actions. In People v. Arthur Murray, Inc., 238 Cal. App.2d 333, 47 Cal. Rptr. 700 (1965), the court held that the Attorney General could get injunctive relief in the name of the people under the Dance Studio Act since the act was designed to protect the public generally even though the act did not grant such powers to the Attorney General. The Supreme Court followed similar reasoning in People v. Centr-O-Mart, 34 Cal.2d 702, 214 P.2d 378 (1950), where it was held that district attorneys could bring actions to enjoin violations of the Unfair Practices Act. Although recognizing the general authority of the Attorney General, the court in People v. New Penn. Mines, Inc., 212 Cal. App.2d 667, 28 Cal. Rptr. 337 (1963), found that the Dickey Water Pollution Act provided the exclusive means for controlling water pollution. The staff has not discovered any case concerning the authority or existence of corporations which relied only upon the Attorney General's general power to see that the laws protecting the people are enforced since better authority was always available.

So far as concerns corporations, Attorneys General have traditionally relied upon two common law powers: the responsibility to supervise charitable trusts and the power to bring quo warranto actions.

Supervision of Charitable Trusts

Although the Attorney General's supervisory power over charities (charitable corporations, corporations holding property subject to charitable

trust, charitable trusts) is now governed largely by statute (e.g. Corp. Code §§ 9505, 10207; Govt. Code §§ 12580-12597), some decisions still invoke the prestatutory language of cases such as People v. Cogswell, 113 Cal. 129, 45 P. 270 (1896):

It is not only the right, but the duty of the attorney general to prosecute such an action. The state, as parens patriae, superintends the management of all public charities or trusts, and, in these matters acts through her attorney general. Generally speaking, such an action will not be entertained at all unless the attorney general is a party to it. Such was the rule at common law, and it has not been changed in this state. Even in those states, such as Massachusetts, where, by a special statute, the attorney general is instructed to prosecute such actions, it is declared that the statute does not narrow or diminish in this regard the common-law powers incident to the office.

The last two sentences of this excerpt from Cogswell are prophetic of the court's disposition of the contention in Brown v. Memorial National Home Foundation, 162 Cal. App.2d 513, 329 P.2d 118 (1958), that Corporations Code Section 9505 required a finding by the Attorney General that there has been a failure to comply with the trust before suit could be brought. The court answered that there was no intention when the predecessor of Section 9505 was enacted in 1931 to change the law as stated in Cogswell. The Attorney General's inherent power to regulate charities was held sufficient in Brown to support an action for declaratory relief concerning conflicting claims over control of the charitable corporation. In addition, the court found that it had equitable power to remove a trustee, distinct from an action quo warranto.

In Estate of Quinn, 156 Cal. App.2d 684, 320 P.2d 219 (1958), involving a clause in a will directing that part of the estate "go to charity" the court, citing Cogswell and various statutory provisions, held that, as parens patriae, the Attorney General had "a right and a duty to participate and protect this gift to charity."

Quo Warranto

The common law information in nature of quo warranto (usually referred to simply as quo warranto) is a procedure by which the Attorney General may try the right of a person to a franchise or office. Judgment against the corporation generally means its destruction although it is said that the corporation may be ousted from a particular franchise without revocation of its charter. See People v. Dashaway Ass'n, 84 Cal. 114, 24 P. 277 (1890). Cf. Yore v. Superior Court, 108 Cal. 431, 41 P. 477 (1895). The right to hold office in a private corporation may also be tested by quo warranto. See Guaranty Loan Co. v. Fontanel, 183 Cal. 1, 190 P. 177 (1920). Quo Warranto may be employed where a corporation usurps powers or where it acts in excess of its authority. Quo warranto may be used to prevent a foreign corporation from engaging in business in this state where that corporation is formed for a purpose improper in California (e.g., practicing law). See People v. Merchants Protective Corp., 189 Cal. 531, 209 P. 363 (1922).

The proceeding in the nature of quo warranto has been largely replaced by statute (see discussion of Code Civ. Proc. §§ 803-811 and Corp. Code §§ 4690-4693 below) although a few cases decided after the enactment of the statutory procedures have continued to refer to a nonstatutory quo warranto proceeding. See, e.g., City of Oakland v. Key System, 64 Cal. App.2d 427, 149 P.2d 195 (1944); Brown v. Memorial National Home Foundation, 162 Cal. App.2d 513, 329 P.2d 118 (1958). (In 1872 writs of quo warranto were abolished by Code of Civil Procedure Section 802 but, apparently, were reestablished by the Constitution of 1879. Section 802 was amended to omit reference to quo warranto in 1880. The Constitution now makes no mention of quo warranto writs.)

Particularly relevant to a consideration of nonprofit corporations is the use of quo warranto (whether statutory or common law) to inquire into a nonprofit corporation's abuse of its charter by usurping the functions of an ordinary corporation. See People v. Milk Producers Ass'n, 60 Cal. App. 439, 212 P. 957 (1923), where it was alleged that the association had misused its capital to engage in business for profit and had combined with others in the illegal restraint of trade.

III. STATUTES (See Appendix for text of major statutes)

Corporations in General

Statutes which give the Attorney General authority over corporations in general, including nonprofit corporations, are as follows:

Business and Professions Code Section 16750 gives the Attorney General authority to bring antitrust actions under state and federal law as the representative of the state, its political subdivisions, public agencies, or citizens of the state who are affected by the violation.

Business and Professions Code Section 16752 provides for an action by the Attorney General or district attorney for "forfeiture of charter rights, franchises or privileges and powers" and the dissolution of a corporation violating Sections 16600-16758 (restraint of trade).

Business and Professions Code Section 16753 provides for an action by the Attorney General, similar to Section 16752, against foreign corporations.

Business and Professions Code Section 16754 provides that the Attorney General, or district attorneys on order of the Attorney General, may bring civil or criminal actions for violation of Sections 16600-16758 (restraint of trade).

Business and Professions Code Sections 17535, 17535.5, and 17536 provide the Attorney General, district attorney, county counsel, city attorney, or city prosecutor with the power to seek an injunction or civil penalty for the violation of Sections 17500-17572 (false advertising). Sections 17510-17510.7 regulate charitable solicitations, including sales.

Code of Civil Procedure Sections 802-811 provide a statutory procedure in the nature of quo warranto. Section 803 provides that the Attorney General on his own information or on complaint may bring an action against a corporation which "usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state." The purpose of this statutory quo warranto procedure is essentially the same as the common law information in the nature of quo warranto. See People v. Dashaway Ass'n, 84 Cal. 114, 24 P. 277 (1890). Hence, Section 809 provides that, a judgment excluding the defendant from the office, franchise, or privilege must be rendered if the defendant is found guilty. (It is interesting to note, however, that this requirement of Section 809 by its terms does not apply where a corporation is found guilty of unlawfully exercising--as opposed to usurping, intruding into, or holding--a franchise. It is also arguable that the limitation of Section 809 applies only to cases involving individuals.) Section 809 also provides for assessment of fines up to \$5,000.

Civil Code Section 3369 provides that the Attorney General or any district attorney may bring an action to enjoin unfair competition. Sections 3369 and 3370 define unfair competition to mean "unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising" and any act denounced by Business and Professions Code Sections 17000-17101 (unfair practices) or 17500-17535 (part of false advertising chapter). Section 3370.1 provides for civil penalties.

Corporations Code Section 310 provides for an injunction to prevent the use of a misleading or deceptive name but does not provide who can bring the action. Cases indicate that the injured party brings such actions.

Corporations Code Section 2240 provides the Attorney General with authority to bring an action or intervene to enforce provisions of Sections 2200-2239 (shareholders' meetings and voting rights) and Sections 3000-3022 (corporate records). Such action may be taken only on complaint and after a 30-day period within which the corporation may answer the complaint.

Corporations Code Sections 4690-4693 provide a codification of the common law information in the nature of quo warranto insofar as it applies to corporations. Section 4690 permits the Attorney General to bring an action to dissolve a corporation where the corporation has seriously offended against statutes regulating corporations, abused or usurped corporate privileges or powers, violated any law for which the penalty is forfeiture of corporate existence, or failed to pay taxes for five years. Section 4691 provides that the Attorney General shall give the corporation 30 days' notice within which it can remedy its misbehavior. Section 9800 makes clear that this procedure applies to nonprofit corporations.

Government Code Section 12014 provides that the Governor may require the Attorney General or a district attorney to inquire into the affairs of a corporation.

Charitable Corporations and Nonprofit Corporations Holding Property Subject to a Charitable Trust

Corporations Code Section 9505 provides that the Attorney General may examine and bring actions against nonprofit corporations holding property subject to a public or charitable trust in order to correct any noncompliance or departure. The court in Brown v. Memorial National Home Foundation, 162

Cal. App.2d 513, 329 P.2d 118 (1958), stated that Section 9505 is a codification of the Cogswell decision cited above in the discussion of the Attorney General's common law power over charities.

Corporations Code Section 9801 provides that, where the corporation holds its assets on trust or where it is organized for a charitable purpose, upon dissolution the assets are to be disposed of pursuant to court order upon petition of the Attorney General or any person concerned in the liquidation if the Attorney General is a party.

Corporations Code Section 10207, analogous to Section 9505, provides that the Attorney General may examine and bring actions against a charitable corporation to see that it complies with trusts it has assumed and with the general purpose for which it is formed. In In re Los Angeles County Pioneer Society, 40 Cal.2d 852, 257 P.2d 1 (1953), the court held that, in attempting to dissolve and distribute its assets among its members, the Pioneer Society had abused and abandoned its trust. In such a case, the Attorney General has the power to obtain appointment of a successor trustee under Section 10207, and it is not necessary for the Attorney General to proceed by way of statutory quo warranto (Section 4690 et seq.) which would have allowed the Pioneer Society 30 days within which to correct its faults.

Government Code Sections 12580-12597 (the Uniform Supervision of Trustees for Charitable Purposes Act) are applicable to charitable corporations (Section 12582.1) and corporate charitable trustees (Section 12582) but not to religious organizations, cemetery corporations, or charitable corporations organized and operated primarily as religious, educational, or hospital organizations (Section 12583). The Attorney General is required to keep various records concerning persons covered by the act (Sections 12584, 12585) and is given power to make rules concerning the filing of reports (Section

12586) and for any other necessary purpose (Section 12587). The Attorney General has the power to investigate and require production of records (Section 12588) and may institute appropriate proceedings to secure compliance with the act (Section 12591).

It is reported that the Attorney General has invoked the equitable power of the courts pursuant to his authority over charitable corporations and non-profit corporations holding property subject to a charitable trust to obtain the following types of relief: enjoin activity, remove trustee and substitute another, order distribution of funds for intended charitable purpose, obtain restitution of funds or property improperly distributed, reduce amount of excessive fees charged by trustees, cancel or revise contracts made by organization with persons having a fiduciary relationship to it, transfer assets to successor trustees appointed by the court following dissolution, order termination or dissolution, order property to be impressed with charitable trust, secure appointment of trustee to fill vacancy where a deadlock exists, invoke cy pres to clarify purposes to which charitable assets could be applied, and order trustees to secure services of professional investment counsel, accountants, and so forth. See Howland, The History of the Supervision of Charitable Trusts and Corporations in California, 13 U.C.L.A. L. Rev. 1029, 1037 (1966).

Cooperative Corporations

Corporations Code Section 12955 provides that any citizen or agency of the state (presumably including or involving the Attorney General) may bring an action to enjoin the unauthorized use of "cooperative" in a name (Section 12950) or the conduct of business contrary to the purpose of a cooperative corporation (Section 12954).

Corporations Sole

Corporations Code Section 10015 provides that the Attorney General may petition for the disposition of the assets of a corporation sole which has dissolved.

Respectfully submitted,

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APPENDIX

Business & Professions Code § 16750:

(a) Any person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover three times the damages sustained by him, and shall be awarded a reasonable attorneys' fee * * * together with the costs of the suit.

The amendments to this section adopted at the 1959 Regular Session of the Legislature do not apply to any action commenced prior to September 18, 1959.

(b) The state and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section.

(c) The Attorney General may bring an action on behalf of the state or of any of its political subdivisions or public agencies to recover the damages provided for by this section, or by any comparable provision of federal law, provided that the Attorney General shall notify in writing any political subdivision or public agency of his intention to bring any such action on its behalf, and at any time within 30 days thereafter, such political subdivision or public agency may, by formal resolution of its governing body or as otherwise specifically provided by applicable law, withdraw the authority of the Attorney General to bring the intended action. In any action brought pursuant to this section on behalf of any political subdivision or public agency of the state, the state shall retain for deposit in the Attorney General antitrust account within the General Fund * * *, out of the proceeds, if any, resulting from such action, an amount equal to the expense incurred by the Attorney General in the investigation and prosecution of such action or an amount equal to 10 percent of the total recovery obtained by the Attorney General, whichever is greater.

(d) In any antitrust action brought on behalf of the state in which the Attorney General is the class representative of political subdivisions, public agencies, or citizens of the state who have been affected by the matters set forth in the complaint, the state shall retain for deposit in the Attorney General antitrust account within the General Fund, the proceeds, if any, of any attorneys' fees awarded by the court in which such case is located, to the Attorney General, resulting from such class representation.

(e) In any action brought by the Attorney General pursuant to either state or federal antitrust laws for the recovery of damages by the state or any of its political subdivisions or public agencies, in addition to his other powers and authority, the Attorney General may enter into contracts relating to the investigation and the prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the Attorney General finds it advantageous to act jointly, or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding the provisions of Section 12520 of the Government Code, the Attorney General may undertake, among other things, either to render legal services as special counsel to, or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof, any county, city, public corporation or public district of this state or of any other state, that has brought or intends to bring a similar action for the recovery of damages, or their duly authorized legal representatives in such action. The Attorney General may also enter into any agreement authorized by Chapter 5 (commencing with Section 6500) Division 7, Title 1 of the Government Code with any governmental entity enumerated in this subdivision, notwithstanding any provision to the contrary contained in Section 6500 of the Government Code. Every contract or agreement entered into pursuant to this * * * subdivision (e) shall be approved by the Department of General Services.

(f) The amounts paid into the Attorney General antitrust account within the General Fund pursuant to subdivisions (c), (d) and (e) arising from the same action or companion actions shall not cumulatively exceed the greater of ten percent (10%) of the total recovery in all actions resulting from the Attorney General's representation or an amount equal to the expenses incurred by the Attorney General in the investigation and prosecution of such actions. Any excess shall be paid in to the General Fund.

Business & Professions Code § 16752:

§ 16752. Corporations or associations; action to forfeit charter, etc., and for dissolution. Upon a violation of this chapter by any corporation or association the Attorney General or the district attorney of the proper county may institute proper proceedings in a court of competent jurisdiction for the forfeiture of charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the corporation or association.

Business & Professions Code § 16753:

§ 16753. Foreign corporations or associations; revocation of powers, etc.; exclusion from doing business in state; injunction. Every foreign corporation or association, exercising any of the powers, franchises or functions of a corporation in this State, which violates this chapter, is subject to revocation of those powers, franchises or functions and upon such revocation is prohibited from doing any business in this State. The Attorney General may enforce this provision by bringing proper proceedings by injunction or otherwise. Upon receipt of a certified copy of the judgment and decree of any court of competent jurisdiction finding any foreign corporation or association guilty of violating this chapter and ordering a revocation of its powers, franchises or functions of a corporation in this State, the Secretary of State shall revoke the license of any such corporation or association heretofore authorized to do business in this State.

Business & Professions Code § 16754:

§ 16754. Civil actions or criminal proceedings; venue. The Attorney General, or the district attorney of any county on the order of the Attorney General, shall initiate civil actions or criminal proceedings for violation of this chapter. Civil actions and criminal proceedings for violation of this chapter initiated by the Attorney General or on his order may be brought in the superior court in and for any county where the offense or any part thereof is committed or where any of the offenders reside or where any corporate defendant does business.

Business & Professions Code §§ 17535-17536:

§ 17535. Injunctive relief; orders; prosecutor; complainant

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in

interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

§ 17535.5 Violation of injunction; civil penalty; disposition of penalty collections

(a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars (\$6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In

determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

§ 17536. Civil penalties

(a) Any person who violates any provision of this chapter, except Section 17530, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs, the court shall determine the reasonable expenses incurred by the board in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 206. If the board has no such special fund the moneys shall be paid to the State Treasurer.

As used in this subdivision, "board" includes commission, bureau, division, and other similarly constituted agency.

Civil Code §§ 3369-3370.1:

§ 3369. Unavailability to enforce penalty, forfeiture, or penal law; exceptions; nuisance; unfair competition; definitions; injunctions, who may prosecute.

1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

§ 3370. Unfair competition; additional acts constituting

The words "unfair competition" as used in Section 3369 above shall also mean and include any act denounced by the "Unfair Practices Act," Chapter 4, Part 2, Division 7 of the Business and Professions Code¹ except that no action may be prosecuted by any district attorney in this State for a violation of the said "Unfair Practices Act" except as provided in Article 6 thereof.²

¹ Business and Professions Code § 17000 et seq.

² Business and Professions Code § 17100 et seq.

§ 3370.1 Violations; penalty; action for recovery

Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund.

Code of Civil Procedure §§ 802-811:

§ 802. Scire facias abolished

The writ of *scire facias*¹ is abolished.

¹ Probably should read "scire facias".

§ 803. Action by attorney general in name of people

An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.

§ 804. Complaint; alleging name of person entitled to office

Whenever such action is brought, the * * * Attorney General, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto * * *.

§ 805. Judgment; determination of rights of defendant and claimant

JUDGMENT MAY DETERMINE THE RIGHTS OF BOTH INCUMBENT AND CLAIMANT. In every such action judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice may require.

§ 806. Judgment for claimant; acquisition of office after qualifying

WHEN RENDERED IN FAVOR OF APPLICANT. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he will be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

§ 807. Damages; recovery by claimant

DAMAGES MAY BE RECOVERED BY SUCCESSFUL APPLICANT. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he may have sustained by reason of the usurpation of the office by the defendant.

§ 808. Multiple claimants; single action to determine rights

WHEN SEVERAL PERSONS CLAIM THE SAME OFFICE, ETC. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

§ 809. Judgment against defendant; exclusion from office franchise or privilege; costs; fine

IF DEFENDANT FOUND GUILTY, WHAT JUDGMENT TO BE RENDERED AGAINST HIM. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise, or privilege, judgment must be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The Court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the Treasury of the State.

§ 810. Action on information or application of private party; undertaking

When the action is brought upon the information or application of a private party, the Attorney General may require such party to enter into an undertaking, with sureties to be approved by the Attorney General, conditioned that such party or the sureties will pay any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in the prosecution of the action.

§ 811. Action by supervisors or by legislative body of municipal corporation

The action provided for in this chapter may be maintained by the board of supervisors of any county or city and county or the legislative body of any municipal corporation, respectively, in the name of such county, city and county or municipal corporation against any person who usurps, intrudes into or unlawfully holds or exercises any franchise, or portion thereof, within the respective territorial limits of such county, city and county or municipal corporation and which is of a kind that is within the jurisdiction of such board or body to grant or withhold.

Corporations Code § 310:

§ 310. Misleading or deceptive name; reservation of name; injunction

The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, any of the following:

(a) The name of a domestic corporation.

(b) The name of a foreign corporation which is authorized to transact business in this state.

(c) A name which is under reservation for another corporation.

Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by this section, and upon the issuance of the certificate the name stated therein shall be reserved for a period of * * * 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive * * * 60-day periods to the same applicant or for the use or benefit of the same person, partnership, firm or corporation; nor shall consecutive reservations be made by or for the use or benefit of the same person, partnership, firm or corporation of names so similar as to fall within the prohibitions of this section.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

Corporations Code § 2240:

2240. The Attorney General, upon complaint that a corporation is failing to comply with the provisions of Sections 2200-2239 and 3000-3022, may in the name of the people of the State of California send to the main office of such corporation notice of the complaint.

If the answer of the corporation is not received within 30 days or if the answer is not satisfactory, the Attorney General may institute, maintain or intervene in such suits, actions or proceedings of any type in any court or tribunal of competent

jurisdiction or before any administrative agency for such relief by way of injunction, the dissolution of entities, the appointment of receivers, or any other temporary, preliminary, provisional or final remedies as may be appropriate to protect the rights of stockholders or to undo the consequences of failure to comply with Corporations Code requirements. In any such action, suit or proceeding there may be joined as parties all persons and entities involved, or affected by, or instrumental to such activity.

Corporations Code §§ 4690-4693:

4690. The Attorney General may bring an action against any corporation or purported corporation, in the name of the people of this state upon his own information, or upon complaint of a private party, to procure a judgment dissolving the corporation and annulling, vacating, or forfeiting its corporate existence upon any of the following grounds:

(a) The corporation has seriously offended against any provision of the statutes regulating corporations.

(b) The corporation fraudulently has abused or usurped corporate privileges or powers.

(c) The corporation has violated any provision of law by any act or default which under the law is a ground of forfeiture of corporate existence.

(d) The corporation has failed to pay to the Franchise Tax Board for a period of five years any tax imposed upon it by the Bank and Corporation Tax Law.

§ 4691. Notice to correct violation or deficiency; condition precedent to action. However, if the cause of action is a matter or act which the corporation has done or omitted to do that can be corrected by amendment of its articles or by other corporate action, such suit shall not be maintained unless (a) the Attorney General, at least 30 days prior to the institution of suit, has given the corporation written notice of the matter or act done or omitted to be done, and (b) the corporation has failed, neglected, or refused to institute proceedings to correct it within the 30-day period or thereafter fails to prosecute such proceedings.

§ 4692. Authority of court. In any such action, the court may order dissolution or such other or partial relief as it deems just and expedient. The court also may appoint a receiver for winding up the affairs of the corporation, or may order that the corporation be wound up by its board of directors subject to the supervision of the court and to its power to make orders as in case of voluntary dissolution and winding up.

4693. In any action initiated pursuant to Section 4690, service of process and notice to the corporation, its officers, directors and stockholders shall be accomplished by written notice to the president or secretary of the corporation at the address indicated in the corporation's last tax return filed pursuant to the Bank and Corporation Tax Law. The Attorney General shall also publish a notice to the stockholders of the corporation in a newspaper of general circulation in the county where the principal office for the transaction of the business of the corporation is located, as set forth in the articles of incorporation filed with the Secretary of State.

Corporations Code § 9505:

§ 9505. Property held under public or charitable trust; supervision by attorney general. A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the non-compliance or departure.

Corporations Code § 9801:

§ 9801. Disposition of assets; payment of debts; distribution to members; asset held in trust; subordinate body

Upon the dissolution or winding up of a nonprofit corporation, after paying or adequately providing for the debts and obligations of the corporation, the director or persons in charge of the liquidation shall divide any remaining assets among the members in accordance with their respective rights therein, or dispose of them in such other manner as may be provided in the articles, unless the corporation holds its assets on any trust or is organized for a charitable purpose or purposes.

If the corporation holds its assets on trust, or is organized for a charitable purpose or purposes, the assets shall be disposed of in such manner as may be directed by decree of the superior court of the county in which the * * * corporation * * * has its principal office, upon petition therefor by the Attorney General or any person concerned in the liquidation, in proceedings to which the Attorney General is a party.

Corporations Code § 10015:

§ 10015. Disposition of assets. After the debts and obligations of the corporation are paid or adequately provided for, any assets remaining shall be transferred to the religious organization governed by the corporation sole, or to trustees in its behalf, or disposed of as may be decreed by the superior court of the county in which the dissolved corporation had its principal office upon petition therefor by the Attorney General or any person connected with the organization.

Corporations Code § 10207:

§ 10207. Supervision by attorney general; institution of corrective proceedings; accumulating income. Each such corporation shall be subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purpose for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure. Except as specially approved by the Attorney General such a corporation shall not accumulate income for a period longer than five years.

Corporations Code § 12955:

§ 12955. Injunction. Any person, firm, partnership, trust, domestic corporation, foreign corporation, or association may be enjoined from violating the provisions of Section 12950 or Section 12954 or from issuing, selling, offering for sale, negotiating, advertising or distributing stocks, notes, bonds, certificates or evidences of indebtedness, or other securities, issued by him or concerning his business or affairs in violation of this part, at the instance of any citizen or official agency of this State.

Government Code § 12014:

§ 12014. Inquiry into corporate affairs or management. The Governor may require the Attorney General or the district attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this State.

Government Code §§ 12580-12597:

§ 12580. Citation. This article may be cited as the Uniform Supervision of Trustees for Charitable Purposes Act.

§ 12581. Charitable corporations and trustees to whom article applies. This article applies to all charitable corporations and trustees holding property for charitable purposes over which the State or the Attorney General has enforcement or supervisory powers.

§ 12582. Trustee defined. "Trustee" means (a) any individual, group of individuals, corporation, or other legal entity holding property in trust pursuant to any charitable trust, (b) any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation, and (c) a corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

§ 12582.1 Charitable corporation defined. "Charitable corporation" means any nonprofit corporation organized under the laws of this State for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this State for such purposes.

§ 12583. Trustees to whom article does not apply. This article does not apply to the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to any religious corporation sole or other religious corporation or organization which holds property for religious purposes, or to any officer, director, or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the Business and Professions Code,¹ or to a charitable corporation organized and operated primarily as a religious organization, educational institution or hospital.

§ 12584. Establishment of register of charitable corporations and trustees. The Attorney General shall establish and maintain a register of charitable corporations and trustees subject to this article and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register.

§ 12585. Filing of copy of articles of incorporation or instrument providing for trustee's title, powers or duties. Every charitable corporation and trustee subject to this article who has received property for charitable purposes shall file with the Attorney General, within six months after any part of the income or principal is authorized or required to be applied to a charitable purpose, a copy of the articles of incorporation or other instrument providing for his title, powers or duties. If any part of the income or principal is authorized or required to be applied to a charitable purpose at the time this article takes effect, the filing shall be made within six months thereafter.

§ 12586. Filing of additional reports as to nature of assets held and administration thereof; rules and regulations; time for filing. (a) Except as otherwise provided and except corporate trustees which are subject to the jurisdiction of the Superintendent of Banks of the State of California or to the Comptroller of Currency of the United States, every charitable corporation and trustee subject to this article shall,

§ 12587. Additional rules and regulations. The Attorney General may make additional rules and regulations necessary for the administration of this article.

§ 12588. Investigation of transactions and relationships of corporations and trustees; authority to require persons to give information, produce books, etc. The Attorney General may investigate transactions and relationships of corporations and trustees subject to this article for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

§ 12589. Order setting forth time and place when attendance required; obedience of orders; review. When the Attorney General requires the attendance of any person, as provided in Section 12588, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by the superior court in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions.

§ 12590. Public inspection of register and reports. Subject to reasonable rules and regulations adopted by the Attorney General, the register, copies of instruments, and the reports filed with the Attorney General shall be open to public inspection. The Attorney General shall withhold from public inspection any instrument so filed whose content is not exclusively for charitable purposes.

§ 12591. Proceedings to secure compliance with article; powers of attorney general; jurisdiction of court. The Attorney General may institute appropriate proceedings to secure compliance with this article and to invoke the jurisdiction of the court. The powers and duties of the Attorney General provided in this article are in addition to his existing powers and duties. Nothing in this article shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings.

§ 12592. Application of article. This article shall apply regardless of any contrary provisions of any instrument.

§ 12593. Furnishing copies of instruments and records to attorney general; duty of custodian of records. Every person who offers for probate any instrument which establishes a testamentary trust of property for charitable purposes or who records in any county or city and county any inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish such copies of papers, records and files of his office relating to the subject of this article as the Attorney General requires.

(Government Code §§ 12580-12597 cont.)

§ 12594. Filing of applications for tax exemption. Every officer, agency, board, or commission of this State receiving applications for exemption from taxation of any corporation, charitable trust or similar relationship in which the corporation or trustee is subject to this article shall annually file with the Attorney General a list of all applications received during the year.

§ 12595. Construction of act. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 12596. Limitation of action by attorney general

Any action brought by the Attorney General against trustees or other persons holding property in trust for charitable purposes or against any charitable corporation or any director or officer thereof to enforce a charitable trust or to impress property with a trust for charitable purposes or to recover property or the proceeds thereof for and on behalf of any charitable trust or corporation, may be brought at any time within ten (10) years after the cause of action shall have accrued.

§ 12597. Provision in judgment in action to secure compliance to pay reasonable expenses incurred by state

In any proceeding brought by the Attorney General to secure compliance with the provisions of Sections 12584 to 12587, inclusive, or any regulation issued pursuant thereto, the judgment, if in favor of the state, shall provide that the person having the responsibility or duty to comply with such provisions on behalf of any charitable trust or charitable corporation, shall pay the reasonable expense necessarily incurred by the state in the investigation and prosecution of such action.