

#77

10/28/75

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

EXHIBIT I

CALIFORNIA STATE BAR COMMITTEE ON CORPORATIONS
SUBCOMMITTEE ON REVISION OF NONPROFIT CORPORATIONS LAW

Carl A. Leonard
Morrison & Foerster
One Post Street
San Francisco, Ca 94104
(415) 986-1310

James R. Andrews
Wyman, Bautzer, Rothman & Kuchel
726 United California Bank Building
9601 Wilshire Blvd.
Beverly Hills, Ca 90210
(213) 556-8000

Bill Holden
Associate Counsel
Corporations Division
Secretary of State
111 Capitol Mall
Sacramento, Ca 95814
(916) 445-0620

Denis T. Rice
Howard, Prim, Rice, Nemerovski, Canady & Pollak
650 California Street, Suite 2920
San Francisco, Ca 94108
(415) 434-1600

Henry L. Stern
Mitchell, Silberberg & Knupp
1800 Century Park East
Los Angeles, Ca 90067
(213) 553-5000

Brian R. Van Camp
Diepenbrock, Wulff, Plant & Hennegan
455 Capitol Mall, Suite 800
Sacramento, Ca 95814
(916) 444-3910