

Memorandum 76-8

Subject: Study 77.20 - Nonprofit Corporations (Organization--Powers)

This memorandum contains a brief discussion of the powers of a nonprofit corporation; attached hereto are a draft of Section 5230 on powers and an appendix containing the text of repealed law. Several provisions of the old and new General Corporation Law relating to corporate powers are attached as Exhibit I.

A powers section should state in fairly general terms the means by which the nonprofit corporation may further its purposes. Every nonprofit corporation will have the statutory powers without the need to state them in its articles except where another statute restricts such powers or where the nonprofit corporation limits the powers it may exercise by an explicit provision in its articles. Generally speaking, the powers of a nonprofit corporation in California under existing law are as broad as the powers of a business corporation--the difference between nonprofit and business corporations in the modern view is in their purposes not their powers.

Section 9501 of the present General Nonprofit Corporation Law contains a relatively brief and incomplete list of corporate powers. The scope of powers available to nonprofit corporations is not restricted by this provision, however, because a catchall provision at the end of the section empowers the nonprofit corporation to do "all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation."

At the May 1974 meeting, the Commission approved a section specifying several more powers than Section 9501 but not significantly altering the

existing law. We have followed this model in the draft of Section 5230 attached to this memorandum. Since the Commission considered the earlier draft, the new General Corporation Law has been passed; accordingly, the draft of Section 5230 includes some provisions derived from the new law. While Section 5230 specifies more powers than existing Section 9501, it does not specify as many powers as do the New York and Pennsylvania statutes. Section 5230 is not intended to accomplish any substantive change in existing law. As far as we can tell from the treatises and cases, there are no serious problems arising from the provisions relating to the powers of a nonprofit corporation in California.

The Comment to the attached draft of Section 5230 indicates the derivation of the various provisions. The only items added to the provisions approved by the Commission in May 1974 are the power to make contracts which is in existing law and the power to participate in partnerships, joint ventures, or other associations which is based on a similar provision in the new General Corporation Law.

Respectfully submitted,

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EXHIBIT I

SECTION 207 OF THE NEW GENERAL CORPORATION LAW

207.

Subject to any limitations contained in the articles and to compliance with other provisions of this division and any other applicable laws, a corporation shall have all of the powers of a natural person in carrying out its business activities, including, without limitation, the power to:

(a) Adopt, use and at will alter a corporate seal, but failure to affix a seal does not affect the validity of any instrument.

(b) Adopt, amend and repeal bylaws.

(c) Qualify to do business in any other state, territory, dependency or foreign country.

(d) Subject to the provisions of Section 510, issue, purchase, redeem, receive, take or otherwise acquire, own, hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares, bonds, debentures and other securities.

(e) Make donations, regardless of specific corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes.

(f) Pay pensions, and establish and carry out pension, profit-sharing, share bonus, share purchase, share option, savings, thrift and other retirement, incentive and benefit plans, trusts and provisions for any or all of the directors, officers and employees of the corporation or any of its subsidiary or affiliated corporations.

(g) Subject to the provisions of Section 315, assume obligations, enter into contracts, including contracts of guaranty or suretyship, incur liabilities, borrow and lend money and otherwise use its credit, and secure any of its obligations, contracts or liabilities by mortgage, pledge or other encumbrance of all or any part of its property, franchises and income.

(h) Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind, whether or not such participation involves sharing or delegation of control with or to others.

SECTIONS 801, 802 OF THE OLD GENERAL CORPORATION LAW

§ 801. Corporate powers. Every corporation may:

(a) Sue and be sued in any court.

(b) Adopt, use, and at will alter, a corporate seal, but failure to affix a seal does not affect the validity of any instrument.

(c) Make by-laws.

(d) Appoint such subordinate officers or agents as its business may require, and allow them suitable compensation.

(e) Qualify to do business in any other state, territory, dependency, or foreign country and conduct business within or without the State.

(f) Do any act authorized by this division.

§ 802. Corporate powers. Every corporation may also:

(a) Acquire, hold, lease, encumber, convey, or otherwise dispose of real and personal property within or without the State, and take real and personal property by will, gift, or bequest.

(b) Assume any obligations, enter into any contracts, or do any acts incidental to the transaction of its business or to the issue or sale of its securities, or expedient for the attainment of its corporate purposes.

(c) Borrow money and issue bonds, debentures, notes, and evidences of indebtedness, and secure the payment or performance of its obligations by mortgage or otherwise.

(d) Acquire, subscribe for, hold, own, pledge, and otherwise dispose of and represent shares of stock, bonds, and securities of any other corporation, domestic or foreign.

(e) Purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations, and, subject to the provisions of this division, purchase or otherwise acquire its own shares.

(f) Subject to the provisions of its articles, redeem shares thereby made subject to redemption.

(g) Make donations for the public welfare or for charitable, scientific, or educational purposes.

Article 3. Powers

§ 5230. Powers of nonprofit corporation

5230. Subject to any limitation provided by statute or in its articles, a nonprofit corporation has the following powers which may be exercised only in furtherance of its corporate purposes:

(a) Adopt, use, and at will alter a corporate seal, but failure to affix a seal does not affect the validity of any instrument.

(b) Adopt, amend, and repeal bylaws.

(c) Conduct its affairs, including engaging in business, within and without this state and qualify to conduct its affairs in any other state, territory, dependency, or foreign country.

(d) Appoint such subordinate officers, employees, or other agents as the activities of the nonprofit corporation may require and allow them reasonable compensation for services rendered.

(e) Sue and be sued.

(f) Make contracts.

(g) Receive property by devise or bequest and otherwise acquire and hold any real or personal property including shares of stock, bonds, and securities of other corporations and nonprofit corporations.

(h) Act as trustee under any trust incidental to the principal purposes of the nonprofit corporation and receive, hold, administer, and expend funds and property subject to such trust.

(i) Convey, exchange, lease as lessor, mortgage, encumber, transfer upon trust, or otherwise dispose of any real or personal property.

(j) Borrow money, contract debts, and issue bonds, notes, and debentures, and secure the payment or performance of its obligations.

(k) Make charitable contributions.

(l) Participate with others in any partnership, joint venture, or other association, transaction, or arrangement of any kind which the nonprofit corporation would have power to conduct itself, whether or not such participation involves sharing or delegation of control with or to others.

(m) Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the nonprofit corporation.

Comment. Section 5230 empowers a nonprofit corporation to engage in a wide range of activities in furtherance of its corporate purposes. However, as provided by the introductory clause, the listed powers may be subject to limitations provided by other statutes or the nonprofit corporation may restrict the statutory powers available by a provision in its articles. Section 5230 does not substantially alter prior law applicable to nonprofit corporations. See former Section 9501. However, for clarity, several powers which would have been included within the general grant of authority of subdivision (h) of former Section 9501 are listed in this section.

Subdivisions (a) and (b) are the same as subdivisions (a) and (b), respectively, of Section 207 (General Corporation Law). Subdivision (c) is derived from subdivision (e) of former Section 801 (former General Corporation Law) and subdivision (c) of Section 207 (General Corporation Law). Subdivision (d) is based on subdivision (d) of former Section 301 (former General Corporation Law).

Subdivisions (e), (f), (g), (h), (i), and (j) are nearly identical to subdivisions (a), (b), (c), (d), (e), and (f), respectively, of former Section 9501 (former General Nonprofit Corporation Law). It should be noted that subdivision (h), empowering the nonprofit corporation to act as a trustee, does not excuse compliance with other laws

regulating trustees. The language of subdivision (c) of former Section 9501 to the effect that the nonprofit corporation could receive property by devise or bequest "subject to the laws regulating the transfer of property by will" has been omitted from subdivision (g) of Section 5230 because it is superfluous in light of the introductory provision.

Subdivision (k) is derived from subdivision (g) of former Section 802 (former General Corporation Law). Subdivision (l) is based on subdivision (h) of Section 207 (General Corporation Law) but provides a limitation derived from Section 7502(a)(11) of the Pennsylvania Corporation Not-for-profit Code to the effect that the nonprofit corporation may participate in partnerships and the like only when the nonprofit corporation would have power to conduct such activities itself.

Subdivision (m) is identical to subdivision (h) of former Section 9501 (General Nonprofit Corporation Law).

APPENDIXCorporations Code § 9501 (repealed)

9501. Every nonprofit corporation may:

(a) Sue and be sued.

(b) Make contracts.

(c) Receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and otherwise acquire and hold all property, real or personal, including shares of stock, bonds, and securities of other corporations.

(d) Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, and expend funds and property subject to such trust.

(e) Convey, exchange, lease, mortgage, encumber, transfer upon trust, or otherwise dispose of all property, real or personal.

(f) Borrow money, contract debts, and issue bonds, notes, and debentures, and secure the payment or performance of its obligations.

(g) Pay the reasonable value of services rendered in this state to the nonprofit corporation before January 1, 1975, and not previously paid, by any person who performed such services on a full-time basis under the direction of a religious organization in connection with the religious tenets of the organization. Such person shall have relied solely on the religious organization for his or her financial support for a minimum of five years. A payment shall not be made if such person or religious organization waives the payment or receipt of compensation

for such services in writing. Payment may be made to such religious organization to reimburse it for maintenance of any person who rendered such services and to assist it in providing future support and maintenance; however, payment shall not be made from any funds or assets acquired with funds donated by or traceable to gifts made to the non-profit corporation by any person, organization or governmental agency other than the members, immediate families of members and affiliated religious organizations of the religious organization under whose direction the services were performed.

(h) Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

Comment. Former Section 9501 is superseded by Section 5230. The provisions of former Section 9501 are continued in Section 5230 with the exception of subdivision (g) which has not been continued since it is special legislation having only a retroactive effect. See I. Ballantine & G. Sterling, California Corporation Laws 788.10 n.42 (4th ed. 1975).