

## Memorandum 76-94

Subject: Study 77 - Nonprofit Corporations (Schedule for Completion of Project)

September Meeting of State Bar Committee on Corporations

Commissioner Stanton and Mr. Sterling attended the September meeting of the State Bar Committee on Corporations. The State Bar Committee did not get into a section-by-section review of the Commission's tentative recommendation as we had hoped. Instead, the major portion of the meeting was devoted to a presentation by Professor Hone (of the Assembly Select Committee on Revision of the Nonprofit Corporations Code) of what he considered the major policy issues in a revision of nonprofit corporation law. Mr. Sterling's impression of the issues raised was that the Commission's draft either takes care of the particular issue in a satisfactory manner or the issue is one that proposes a radical departure from existing law which did not appear to be acceptable to the State Bar Committee. However, as far as we are aware, the State Bar Committee did not make any specific decisions with respect to the various policy issues presented by Professor Hone. We are unable to present the policy issues he raised for your consideration since he has indicated that his statement of issues is confidential and not for distribution.

Apparently, the State Bar Committee has decided not to review the Commission's tentative draft at this time. Exhibit XXX (attached to Memorandum 76-83) is a letter from the Chairman of that Committee reporting that the Committee recommends that the tentative draft "be referred to the Assembly Select Committee on Nonprofit Corporations for further study, to enable all interested groups, including the Commission, the Select Committee and our Committee, to focus their joint efforts upon the development of the best possible bill for presentation to the Legislature." It does not appear that any specific comments on the various sections of the tentative recommendation will be coming from the State Bar Committee on Corporations within the near future. It should be noted that the other State Bar committee studying our tentative recommendation is in support of it and has submitted detailed comments. See Memorandum 76-83.

### Request for Meeting With Professor Hone

Several weeks ago, the staff called Professor Hone in an effort to work out a joint effort on the project. After a number of attempts over a period of more than a week, Mr. Sterling was finally able to complete a telephone call to Professor Hone. Professor Hone said he would call the following week to work out a time for a joint meeting with himself and the Commission's staff. However, he did not call the following week or the week after that, and we assume that he is not interested in a meeting.

### Suggested Schedule for Completion of Project

The staff is pleased to note the number and overall quality of the comments on the tentative recommendation. We made a special effort to obtain comments of lawyers whose practice involves nonprofit corporations and received an excellent response. More comments are expected. It is apparent that many of the commentators made a careful study of the tentative recommendation. As a result, we believe that the tentative recommendation has had a good review by a substantial number of interested practitioners. Moreover, it should be noted that many of the commentators do not represent any particular client or interest group but submitted their comments in the interest of assisting the Commission in this project and as a public service. The tentative recommendation was very favorably regarded. See Memorandum 76-83.

We believe that substantial revisions will be made as a result of the comments received. We have practically exhausted our supply of the tentative recommendation. In light of the general reaction to the tentative recommendation, we believe that it is basically sound. We believe that it should now be put in bill form and our recommendation printed so that this material will be more generally available in a more convenient form and so that we can obtain legislative review of our recommendation. Accordingly, the staff believes that the Commission should go ahead and publish its recommendation on this subject. At the same time, it must be recognized that any legislation introduced will require amendment (as have other major legislative proposals of the Commission) to accommodate necessary changes brought to light by study

by the Commission, the State Bar Committee on Corporations, and others after the recommendation has been printed and the legislation introduced.

At the October meeting, the staff is hopeful that the Commission will be able to review and make decisions with respect to all the policy and technical issues raised by the comments received on the tentative recommendation. We hope that the recommendation, as revised at the meeting, can be approved for printing at the October meeting subject to the following qualifications:

(1) Any specific sections or Comments the Commission decides it wishes to review before printing will be revised and brought back for review at the November meeting.

(2) The preliminary part of the recommendation will be revised to reflect the revisions made in the proposed legislation after those revisions have been made and to make significant additions and editorial revisions and will be presented for approval for printing at the December 2-4 meeting.

(3) Any additional comments received before the November meeting will be reviewed at the November meeting and any needed revisions made in the recommendation before it is printed.

(4) Any comments received thereafter but before the December meeting will be reviewed at the December meeting with a view to amending the bills introduced to effectuate the recommendation. Comments received thereafter will be reviewed at the meeting following their receipt.

(5) Necessary editorial and technical changes will be made by the staff before sending the material to the printer.

We believe that the above schedule would permit production of a printed report early in March 1977 (assuming only modest revisions are made in the staff draft of the preliminary portion of the recommendation at the December meeting). After the October meeting, the staff would work first on revising the text of the proposed legislation so that it can be sent to the Legislative Counsel to prepare for introduction. Next we would work on the Comments to the sections and then on the preliminary portion of the recommendation. The bills would be introduced at the December session of the Legislature or early in January 1977, depending on when the Legislative Counsel completes work on them.

The introduced bill would be used to print the bill in our report, thereby saving the Commission the cost of composing the text of the various bills.

A major advantage of the procedure suggested above is that it will make available to the Commission, the State Bar Committees, and other interested parties the Commission recommended legislation in bill form with all revisions made. It would not be practical to again reproduce revised drafts of Parts I and II of the Tentative Recommendation. Moreover, it will be a great convenience to have the text of the proposed legislation available in printed bill form. As soon as the bills are available, it is anticipated that all interested persons thereafter will work with the bills as we consider further suggestions from the State Bar Committees and others concerning our proposed legislation.

#### Form in Which Proposed Legislation Presented to Legislature

The staff has given considerable thought to the form in which the proposed legislation should be presented to the Legislature. We have concluded that the proposed legislation would best be divided into three companion bills (similar to the procedure used in the 11-bill eminent domain package):

(1) A bill to enact a new Division 2 (new Nonprofit Corporation Law) and to repeal existing Division 2.

(2) A bill to make the conforming amendments and repeals in the preliminary portion of the Corporations Code and in the new General Corporation Law and to add the new Division 4 (provisions applicable to corporations generally).

(3) A bill to make other conforming amendments, additions, and repeals.

The transitional provisions will be carefully reviewed and inserted in the appropriate bill or bills. All bills would become operative on the same date as the new nonprofit corporation law. All bills would be drafted so that all would have to become law if any are to become law.

#### Letter to State Bar Committee on Corporations

If the Commission approves the schedule for completion of the project outlined above, the staff suggests that a draft of a letter to

the State Bar Committee on Corporations be prepared for consideration at the November 11-13 meeting. The letter would outline the Commission's plans very briefly and indicate the Commission's plans to consider any comments received from the State Bar Committee and make any necessary amendments in the proposed legislation.

Respectfully submitted,

John H. Delouilly  
Executive Secretary