

#44

9/24/68

Memorandum 68-100

Subject: Study 44 - Fictitious Business Name Statute

The staff suggests that the attached recommendation be approved for submission to the 1969 Legislature. The reason for the need for submission of legislation in 1969 is set forth in the recommendation. The staff considers this an essential recommendation. We are sending this staff draft of the recommendation to the county clerks association for comment so that we will have their views before the October meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

September 19, 1968

RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

FICTITIOUS BUSINESS NAMES

Resolution Chapter 202 of the Statutes of 1957 directed the Law Revision Commission to make a study to determine whether the law relating to the use of fictitious names should be revised. A background research study on this topic, prepared by a former member of the Commission's staff, was recently published,¹ and the Commission is now preparing a comprehensive revision of the California fictitious business name statute (Civil Code Section 2466-2471). While significant progress has been made, the recommendation of the Commission will not be available for presentation prior to the 1970 legislative session.

Civil Code Section 2469.2, which was added to the fictitious business name statute in 1966, provides that fictitious name certificates "heretofore" filed expire on January 1, 1971, unless a renewal certificate is filed before that date. It is highly probable that the Commission will recommend changes in the system for filing fictitious business name certificates. Any such changes would be first considered by the 1970 Legislature. Accordingly, to avoid requiring persons transacting business under a fictitious name to file renewal certificates (as required by the 1966 legislation) just before the Legislature considers a comprehensive revision of the statute, the Commission recommends that the time limits

1. McClintock, Fictitious Business Name Legislation--Modernizing California's Pioneer Statute, 19 Hastings L. J. 1349 (1968).

provided in Civil Code Section 2469.2 be extended for one year, allowing time for the Commission and the Legislature to complete their work on the revision.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Section 2469.2 of the Civil Code, relating to
fictitious name certificates.

The people of the State of California do enact as follows:

Section 1. Section 2469.2 of the Civil Code is amended to read:

2469.2. Every certificate of fictitious name filed under the authority of this chapter shall expire and be of no further force and effect at the end of five years following the first day of January next after the filing of a certificate of fictitious name with the county clerk in accordance with Section 2466, unless at any time within 12 months immediately preceding said date of expiration a renewal certificate containing all information required in the original certificate and subscribed and acknowledged as required by that section is filed with the county clerk with whom said original is on file. No such renewal certificate need be published unless there has been a change in the information required in the original certificate, in which event publication shall be made as provided for the original certificate.

Every certificate of fictitious name ~~heretofore~~ filed before January 1, 1967, with the county clerk pursuant to Section 2466 shall expire and be of no further force and effect on and after January 1, ~~1971~~ 1972 , unless at any time on or after January 1, ~~1970~~ 1971 , but not later than December 31, ~~1970~~ 1971 , a renewal certificate in accordance with this section is filed with said county clerk.