

#77

4/8/76

Memorandum 76-44

Subject: Study 77 - Nonprofit Corporations (Generally)

Attached is a letter from Mr. Robert Sullivan relating to two points involved in the nonprofit corporation law draft. The first point relates to Section 5913 (Binder--blue pages), which would require notice to the Attorney General of certain proposed amendments of the articles of a charitable corporation. The second point relates to the portion of Section 5250 (Memorandum 76-43) that would require the articles to designate an initial agent for service of process. The staff plans to discuss Mr. Sullivan's comments orally at the meeting at the time the sections to which they relate are considered.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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EXHIBIT I

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March 26, 1976

California Law Revision
Commission - Draft of
Proposed New General
Nonprofit Corporation Law

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Dear Mr. Sterling:

In reviewing the material concerning the proposed new General Nonprofit Corporation Law, I came across the proposed new Section 5913. I question whether this addition to the code requiring written notice to the Attorney General of certain proposed amendments to the articles is necessary or desirable. I understand your desire to accommodate the Attorney General in enforcing his responsibilities with respect to charitable trusts, however, he will receive a copy of any amendment to the articles when the annual report is filed with his office.

First, it seems to me that the advance notification of an amendment will tell the Attorney General very little and will only require an inquiry on his part that will probably involve statements similar to those in the annual report form.

Second, the effect of violating the section is not clear. Perhaps there is no legal effect other than to be a violation of law which under certain circumstances may permit the Attorney General to sue for dissolution.

Third, since no time limits are specified in the section, I suspect that the notice will be sent to the Attorney General at the same time as the amendment is sent to the Secretary of State, in which case the amendment will probably be effective by the time the Attorney General reacts to the notice in any event.

Aside from the foregoing considerations, I cannot think of a reason why the Attorney General is concerned about the name of the nonprofit corporation. I had thought that the question of corporate name being confusing or misleading was passed upon by the Secretary of State when the corporation's articles were filed or the name amended in a subsequent filing.

I would not object to this provision if I thought that it would really accomplish any significant regulatory purpose, but I believe it will just end up as another duplicate reporting requirement, the benefits of which will not outweigh the costs in time and effort in complying with the requirement. The Attorney General should monitor this information in the annual report filed with him and revise the form to require a brief statement of the purpose of amendment affecting the provisions listed in 5913.

I also question the desirability of adding a subparagraph (e) to Section 5250 requiring that the articles of incorporation set forth the name and address of initial agent for service and process. This will probably have the effect of delaying incorporation in certain cases until the incorporators complete their organization. Frequently the best person to be the agent for service of process will be the president of the corporation who will not be elected until after the articles are filed and the first board meetings held. The requirement also seems unnecessary as the agent would then be designated pursuant to Section 6532 in the initial statement of designation to the Secretary of State required to be filed within 90 days after the filing of the articles.

Yours very truly,


Robert E. Sullivan