First Supplement to Memorandum 76-44

Subject: Study 77 - Nonprofit Corporations (Generally)

This memorandum is not listed on the agenda but we plan to take it up as the first item on April 23.

Attached is a draft of a letter the staff would like to send to the Chairperson of the State Bar Committee on Corporations. We would like to have Commission approval before we do this and also any suggested revisions.

The Corporations Code is now organized as follows:

General Provisions
Title 1. Corporations
  Division 1. General Corporation Law
  Division 2. Nonprofit Corporations
      Part 1. General Nonprofit Corporation Law
      Part 2. Corporations Sole
      Part 3. Corporations for Charitable or Eleemosynary Purposes
      Part 3.5. Trust Funds
      Part 4. Societies for Prevention of Cruelty to Children and Animals
      Part 5. Port and Terminal Protection and Development Corporations
  Division 3. Corporations for Specific Purposes
      Part 1. Chambers of Commerce, Boards of Trade, Mechanics' Institutes, etc.
      Part 2. Cooperative Corporations
      Part 3. Fish Marketing
      Part 4. Professional Corporations [covered by General Corporation Law]
      Part 5. California Job Creation Program
      Part 6. Business and Industrial Development Corporations
  Division 4. General Provisions Relating to Corporations [New division proposed in attached letter]
Title 2. Partnerships
Title 3. Unincorporated Associations
Title 4. Securities
Title 5. Subversive Organization Registration Law

Respectfully submitted,

John H. DeMoully
Executive Secretary

<u>DRAFT OF LETTER</u>

Section 119 of the former General Corporation Law made Division 1 of the Corporations Code applicable to every private corporation, profit or nonprofit, now existing or hereafter formed, unless the corporation was expressly excepted from the operation thereof or there was a special provision applicable to the corporation inconsistent with some provision of the division, in which case the special provision prevailed. By way of contrast, Section 102 of the new General Corporation Law limits the application of Division 1 to corporations organized under the division and to certain other domestic corporations. However, if I interpret Assembly Bill 2849, as amended March 8, correctly, Division 1 will not apply to nonprofit corporations, chambers of commerce, boards of trade, mechanics' institutes, cooperative corporations, fish marketing corporations, California Job Creation Corporations, business and industrial corporations organized under Corporations Code § 14200 <u>et seq.</u>, or to corporations organized under codes other than the Corporations Code or to corporations organized under special statutes.

One problem created when the application of Division 1 is limited is that some of the provisions in Division 1 should apply to all corporations without regard to the statute under which they are formed. For example, some of the following sections of Division 1 probably should have general application to all corporations (some would have to be redrafted to give them general application):

§ 101(b) - reservation of right to amend or repeal
§ 103 - capital stock owned by United States or federal agency
§ 105 - right to sue corporation
§ 106 - right to attach corporate property
§ 107 - issuing money
§ 108 - fees of Secretary of State
§ 109 - certificates of correction
§ 110 - duty of Secretary of State to file instrument
§ 201 - misleading or decptive name
§ 1506 - furnishing information to assessor
§ 1507 - false reports, statements, etc.
§ 1700 - service on domestic corporations
§ 1701 - service on domestic corporations
§ 1702 - service on domestic corporations
§ 2204 - failure to file annual statement; notice by Secretary of State
§ 2254 - false reports, statements, etc.

This does not purport to be a complete listing; it is merely illustrative of the problem.

There are two methods that might be used to deal with this problem. Section 102 of the new General Corporation Law includes a provision that the provisions of Division 1 apply to "any other corporation only to the extent expressly included in a particular provision of this division." Those provisions of the new General Corporation Law that should have general application could be revised, if necessary, to make them of general application and an express statement added to each such provision stating that the provision applies to every private corporation, profit or nonprofit, now existing or hereafter formed, unless the corporation is expressly exempted from the operation thereof or there is a special provision applicable to the corporation inconsistent with the particular provision of this division. An alternative, and probably better, method of dealing with the problem would be to create a new Division 4 of Title 1 entitled "General Provisions Applicable to Corporations" and to include in this new division those provisions that are desired to be given general application to all corporations and to repeal their counterparts in the new General Corporation Law.

This problem is a matter of great and immediate concern to the staff of the Law Revision Commission since we are now at the point where we must determine whether to include, for example, provisions comparable to Sections 105, 106, 107, 108, and other sections listed in this letter in our tentative draft of the General Nonprofit Corporation Law. In addition, we are planning to review a number of statutes in other codes that deal with particular types of nonprofit corporations and we would like to avoid the need to duplicate provisions that appear to be of the type that should apply to all corporations without regard to the law under which they are organized. Accordingly, it is requested that the State Bar Committee review this letter and give the staff of the Commission their reaction to the problem outlined in this letter and their suggestions as to what the Committee considers the best method of dealing with the problem. An early response would be of great assistanct to use. The staff of the Commission is available to assist your Committee in drafting a new Division 4 of Title 1 if your Committee concludes that would be a desirable solution.