

## First Supplement to Memorandum 76-58

Subject: Study 77.250 - Nonprofit Corporations (Division 4--Provisions  
Applicable to Corporations Generally)

Attached (pink page) is a letter from Bill Holden indicating that he will not cooperate in the nonprofit corporation study and objecting to the creation of a new Division 4.

The staff does not find Mr. Holden's objections to the new Division 4 persuasive. By way of background on Division 4, we attach the portion relating to Division 4 from the staff draft of the preliminary portion of the recommendation. We are still working on the preliminary portion of the recommendation, but you may want to read the attached portion in connection with Mr. Holden's objection.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary



Office of the Secretary of State  
March Fong Eu

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CORPORATE DIVISION

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June 10, 1976

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Attention John H. DeMouilly  
Executive Secretary

Dear Mr. DeMouilly:

This is in reply to your letter of June 7. Prior to writing the letter of June 3, you had sent me the Commission's timetable and I had read it carefully. Therefore there is nothing in the June 3 letter that should be changed.

Apparently the problem is that we have differing views of the legislative process. It seems to be your view that once the Commission issues its report the matter is cast in concrete. On the other hand, I assume that for a 1977 bill the proposal of amendments in the Spring of 1977 would still be quite timely.

I remain of the opinion that it is best to let the two separate studies develop in their own ways in order to allow ample room for exploration of imaginative alternatives.

I do have an opinion on proposed Division 4. In my opinion it is a mistake. There first should be enacted a new General Nonprofit Corporation Law. Only after that has been accomplished, should thought be turned to the question of whether there are some identical provisions for both business and nonprofit corporations which should be removed from the General Corporation Law and General Nonprofit Corporation Law and placed in a Division 4. The proposal of a Division 4 at this time assumes that there will be no amendments of the nonprofit corporation proposal during the legislative process. This is both an unrealistic assumption and a demeaning of the legislative process.

Sincerely,

BILL HOLDEN  
Staff Counsel

BH:clr  
Assemblyman John T. Knox  
Walter G. Olson  
Michael C. Hone

## PROVISIONS APPLICABLE TO CORPORATIONS GENERALLY

The former General Corporation Law applied 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 former General Corporation Law, in which case the special provision prevailed. See former Section 119.

The new General Corporation Law is limited in its application; the new law does not apply to nonprofit corporations subject to Division 2 (commencing with Section 9000) of Title 1 of the Corporations Code, to certain corporations subject to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code--chambers of commerce, boards of trade, mechanics' institutes, cooperative corporations, fish marketing associations, California job creation corporations, or business and industrial development corporations--or to corporations organized or existing under any statute of this state other than the Corporations Code, unless expressly included in a particular provision of the new General Corporation Law. See Section 102.

Section 16 of Chapter 682 of the Statutes of 1975 saves the former General Corporation Law to the extent that that law applied to corporations not covered by the new General Corporation Law.<sup>1</sup>

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1. Section 16, as amended by Chapter \_\_\_\_ of the Statutes of 1976, provides:

Sec. 16. (a) Section 119 of the Corporations Code as in effect immediately prior to the effective date of this act, to the extent that it makes applicable the General Corporation Law to private corporations organized under other laws, shall continue in effect notwithstanding its repeal by the provisions hereof; but it shall refer to the provisions of Division 1 of Title 1 of the Corporations Code as in effect immediately prior to the effective date of this act, unless and until the provisions of any other statute permitting the incorporation of private corporations shall be amended to incorporate by reference in such other statute specific sections or portions

There are a number of provisions of the former General Corporation Law that were carried forward into the new General Corporation Law that should apply generally to all corporations, profit or nonprofit, now existing or hereafter formed. The Commission recommends that these provisions be compiled in a new Division 4 of Title 1 of the Corporations Code. This new division would apply to every private corporation, profit or nonprofit, stock or nonstock, now existing or hereafter formed, unless the corporation is expressly excepted from the operation thereof or there is a special provision applicable to the corporation inconsistent with some provision of the new division, in which case the special provision would prevail. This would give the new division the same scope of application as the former General Corporation Law was given by former Corporations Code Section 119.

The inclusion of a particular provision in the new division would avoid the need to duplicate the provision in the new Nonprofit Corporation Law, would permit repeal of the comparable provision of the new General Corporation Law, and would avoid the need to save the provision in the former General Corporation Law for corporations not covered by either the new General Corporation Law or the new Nonprofit Corporation Law.

The provisions that the Commission recommends be compiled in the new Division 4 of Title 1 are discussed below.

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of Division 1 of Title 1 of the Corporations Code as amended hereby. All references in any such other statute to any sections or portions of the General Corporation Law shall, until such amendment, continue to be references to Division 1 of Title 1 of the Corporations Code as in effect immediately prior to the effective date of this act. Nonprofit cooperative corporations organized pursuant to Title 22 of Part 4 of Division First of the Civil Code prior to August 14, 1931 which have not elected to be governed by Part 2 of Division 3 of Title 1 of the Corporations Code pursuant to Section 12206 of the Corporations Code, and existing as nonprofit cooperative corporations on January 1, 1977, shall be governed on and after such date by the General Nonprofit Corporation Law.

(b) Notwithstanding subdivision (a), subdivision (b) of Section 201 of the Corporations Code as in effect on January 1, 1977, and as subsequently amended, shall apply to all corporations.

### General Provisions

The provisions of former Corporations Code Sections 123 (federal corporations), 126 (reservation of right to amend or repeal), 126.1 (subjection of property to attachment), 128 (corporation may be sued as provided in Code of Civil Procedure), 129 (issuance of money prohibited), 313 (evidence of corporate formation and existence), 314 (evidence of bylaws, meeting, or minutes), 2240 (enforcement of certain statutory provisions by Attorney General), 3301.1 (information to assessor), 4122 (evidence of record ownership in surviving or consolidated corporation), 4690-4693 (action by Attorney General to dissolve corporation), and 6409 (information to assessor) should be compiled in the new division with appropriate technical revisions. The comparable provisions of the new General Corporation Law should be repealed.

### Corporate Name

The provisions of the new General Corporation Law relating to reservation of corporate name, permissible corporate name, and sanctions for name violations (subdivisions (b) and (c) of Section 201) should be compiled in the new division to be generally applicable to all corporations. The comparable provisions of the new General Corporation Law should be repealed.<sup>2</sup>

### Filing of Instruments; Certificates of Correction

The provisions of the new General Corporation Law relating to the filing of instruments with the Secretary of State (Sections 108 and 110) and certificates of correction (Section 109) should be compiled in the new division and be made generally applicable to all corporations.<sup>3</sup> The comparable provisions of the new General Corporation Law should be repealed.

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2. Section 201 should be repealed. Subdivision (a) of Section 201 should be added to Section 400 of the Financial Code; the remainder of Section 201 should be compiled in new Division 4. Subdivision (b) of Section 201 was made applicable to "all corporations" by a 1976 amendment which added subdivision (b) to Section 16 of Chapter 682 of the Statutes of 1975. See Cal. Stats. 1976, Ch. \_\_\_, § \_\_.
  3. The provision of Section 110 (to be carried forward into the new division) which requires the Secretary of State to rely, with respect to a disputed point of law, upon a written opinion of counsel in determining whether an instrument conforms to law should be limited in its application to instruments filed under Division 1, 2, or 3 of Title 1 of the Corporations Code.

### Service of Process on Domestic Corporations

The provisions of the new General Corporation Law providing an additional method of serving domestic corporations (Sections 1700, 1701, and 1702) should be compiled in the new division and be made generally applicable to all domestic corporations. The comparable provisions of the new General Corporation Law should be repealed.

### Statement Identifying Officers, Office, and Agent for Service

The provisions of the new General Corporation Law requiring the filing of an annual statement identifying officers, office, and agent for service (Sections 1502, 1503, 1504, and 1505) should be compiled in the new division; but the following special provisions should be included for nonprofit corporations:

(1) The provision of former Section 3301 which required a filing only once every five years for nonprofit corporations should be continued and, in the case of a nonprofit corporation, the required statement should include only the name and address of its chief executive officer, the address of its principal executive office, and, if the address of its principal executive office is not in this state, the address of its principal office in this state, if any.

(2) Nonprofit corporations, like other corporations, should be required to designate in the statement an agent for service of process. One of the changes made by the new General Corporation Law is that the designation of an agent for service for corporations under that law is now mandatory; designation of an agent for service was permissive under former Section 3301.

(3) A nonprofit corporation should be required to file a new statement within 30 days of a change of any of the information required to be included in the statement. Under former Section 3301, a nonprofit corporation was required to file a new statement every time there was any change in officers.

(4) The provision of former Section 3301 which requires that the statement of a nonprofit corporation be filed without fee should not be continued. The same fee that applies to other corporations filing a statement should apply to nonprofit corporations. There is no justification for imposing the cost of filing these statements on the taxpayers generally.

These recommendations concerning nonprofit corporations recognize that the administrative duties imposed on nonprofit corporations often must--because of the nature of the corporation--be performed by volunteers without compensation. The value of the information provided by the statement does not justify imposing the burden of annual filings when there is no change in the information.

#### Foreign Corporations

The Commission recommends against the adoption of the psuedo-foreign corporation concept for nonprofit corporations.<sup>4</sup> However, the other provisions of the new General Corporation Law relating to foreign corporations--qualification to transact intrastate business, registration of corporate name, permissible corporate names, service of process, and related provisions (Sections 2100-2107, 2110-2114, and 2116)--should be compiled in the new division to be generally applicable to all corporations.<sup>5</sup> The comparable provisions of the new General Corporation Law should be repealed.<sup>6</sup>

#### Crimes

The substance of criminal sanctions imposed by former Corporations Code Sections 1308, 1309, 1511, 3019-3022, 6800, 6803, and 6804 (carried forward in substance in the new General Corporation Law as Sections 2251-2260) should be compiled in new Division 4 and be applicable to corporations generally. The comparable provisions of the new General Corporation Law should be repealed.

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4. See discussion on page \_\_\_\_.
  5. The requirement that a foreign nonprofit corporation transacting intrastate business in this state qualify to do so would continue prior law. See Mechanical Contractors Ass'n of America, Inc. v. Mechanical Contractors Ass'n of Northern California, Inc., 342 F.2d 393, 398-400 (1965).
  6. Sections 2108, 2109, and 2115 would not be repealed. These sections relate to pseudo-foreign corporations.

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1. See discussion on page \_\_\_\_.