

## Memorandum 76-92

Subject: Study 77.400 - Nonprofit Corporations (Comments on Tentative Recommendation--Conforming Changes)

There were only a few comments on the conforming changes. The major area of controversy--the fee for filing the statement of officers and office--is covered in Memorandum 76-91. The others are discussed in this memorandum.

General Effort to Eliminate Special Nonprofit Corporation Statutes

Professor Jerry A. Kasner (Exhibit LXII) approves "the attempt to reduce the number of 'special' nonprofit corporations and would hope that even more of the special classifications could be eliminated." It should be noted, however, that the remaining special nonprofit corporations are generally of the type that would go under the new General Corporation Law rather than under the new Nonprofit Corporation Law and that the effort to eliminate those is beyond the scope of the current study.

Nonprofit Corporations for Medical Services (page 527)

Exhibit XXXVII states:

I note that non-profit corporations for medical services are recommended to be relocated in the Business and Professions Code with other provisions concerning the healing arts. Such corporations are now subject to control of the Corporations Commissioner under the Knox Keane Act, and it does appear that the said Commissioner thus is in a foreign field and will become involved in much duplication of reporting, investigating and clearing.

The proposed legislation makes no change in existing law; it merely relocates an existing section.

Exhibit LVIX states:

We are also attorneys for California Physicians' Service, doing business as "Blue Shield of California." The corporation was originally organized by the California Medical Association pursuant to Corporations Code Section 9201. We have historically opposed any tampering with Section 9201. However, we think that your approach, which is to add a new article and Section 700 to the Business and Professions Code, probably makes more sense than retaining this provision in the Corporations Code. We believe that Blue Shield will support this change.

Nonprofit Corporations for Legal Services (page 528)

In preparing this article, the staff failed to note an uncodified section which we believe should be codified in the article as follows:

Business & Professions Code § 6176 (added)

6176. Nothing in this article shall be construed to prohibit the formation and conduct of any group, prepaid, or other legal service arrangement organized under an unincorporated association or pursuant to the Nonprofit Corporation Law which arrangements need not comply with Section 6175 provided, however, that attorneys furnishing legal services thereunder are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such arrangements.

Comment. Section 6176 continues the substance of an uncodified section of former law. See Cal. Stats. 1972, Ch. 894, § 1.5, at p. 1589.

Corporations Sole (pages 558-560)

The tentative recommendation proposes to retain the corporations sole provisions of existing law with various conforming and simplifying changes, primarily changes to avoid the need to verify the articles and to eliminate the requirement that articles be filed with a county clerk. These changes were generally approved. See also Exhibit II (reviewed and approved tentative recommendation with corporations sole in mind). Exhibit XI raises some questions concerning the changes made in the existing law, but these are merely changes to conform to the new general scheme for business and nonprofit corporations which eliminates the duplicate filing of articles with the county clerk.

Our consultant, Jerry Davis, raises a more basic question:

I see no reason to continue the anachronistic provisions for the corporation sole, presently found in old corporations codes §§10000-10015. This can be accomplished simply by the provisions of our new law allowing one person to serve as the sole director of the corporation. I do not think you would get any particular opposition from the church either, as long as some transitional provision could be made merely requiring them to elect to come under the new law.

The staff does not agree with Mr. Davis. A corporation sole is a unique type of corporation. See Corp. Code § 10008 (perpetual existence; effect of vacancy,

We believe that it would create considerable uncertainty to place corporations sole under the new law. The question that would be then raised would be the extent to which the various provisions of the new law would be applicable to a corporation sole. Under the present draft, a corporation sole would not be subject to the proposed nonprofit corporation law. See note 32, page 69. In addition, we do not share Mr. Davis' view that there would be no objection to his proposal. We believe that a number of persons have followed our progress to determine what changes were to be recommended with respect to corporations sole.

Special Statute Relating to Corporations for Charitable or Eleemosynary Purposes (repealed)

Exhibit LXIII comments: "I'm certainly delighted to see archaic provisions relating to special corporations, such as charitable and eleemosynary, deleted."

Societies for the Prevention of Cruelty to Children and Animals (pages 587-592; see also pages 529, 563 (repealers))

The tentative recommendation proposes to consolidate provisions currently located in the Corporations Code and in the Civil Code and to relocate the consolidated provisions in the Health and Safety Code with technical revisions to conform the provisions to the proposed nonprofit corporation law. The first four sections of the new statute relating to SPCAs relate to the formation and powers of such corporations and preserve existing statutory requirements which are designed to limit entry into this field and to restrict such corporations from holding excess real property investments for income. The remainder of the statute deals with specific matters of a regulatory nature beyond the scope of the nonprofit statute itself and appropriate for the special statute.

Exhibit XI comments:

This division is probably one of the most important parts of the new code. The subject deserves all the attention and legislative wisdom we can supply.

Moving sections from the Civil Code to this one give the division more continuity and makes it a complete entity.

Let us hope that Division 15 will attract the attention of individuals and groups who will use the new nonprofit corporation law for charitable purposes, and select children and animals as the objects of their charity.

Jerry Davis (Exhibit XXXXVI), on the other hand, comments:

I don't understand why a special law has to be considered for SPCAs since the non-profit corporation law quite adequately covers it. As far as I can tell from reading the sections, the new non-profit corporation law permits them to do everything they have always wanted to do and presently do.

In the event that you do continue the SPCA and other special sections I would suggest that all the sections on special corporations should be indexed and cross referenced by a special section in Part 2 of the statute telling where they went so that inexperienced persons can find them by references that pop up in the non-profit corporation law. In other words, if agricultural cooperatives are found somewhere else, or the SPCA are elsewhere, one section of cross references should be included in the basic statute so that they will show up in the non-profit corporation index when people look for them. Similar provisions are now placed in the Internal Revenue Code which, while exasperating at the time, are very helpful since otherwise one has no reference in the law and does not know where to look.

The provisions of the special law (four sections) relating to formation and powers are limitation provisions. In all other respects, the provisions of the nonprofit corporation law will apply. Since there is considerable other material of a regulatory nature, we believe these four sections should be compiled with the other relevant material rather than in the nonprofit corporation law itself. This is the pattern we have followed for similar situations such as medical services and legal services corporations. Mr. Davis suggested that the provisions relating to medical services and legal services (which formerly we had included in the new nonprofit corporation statute itself) be severed out and be compiled in the Business and Professions Code and we merely followed the same pattern here.

We believe his other point can be met by including the references to various special statutes in an appropriate Comment or Comments. See, for example, the Comment to Section 5102 which can be expanded if necessary. Perhaps the Comment to Section 5210 should have a reference over to the Comment to Section 5102. We believe, however, that the nature of an exception often is so complex that it would be undesirable to attempt to state it in statutory form in a cross-reference type provision in the new nonprofit corporation law. Even if an accurate statement could be formulated, it would become inaccurate as amendments are made over the years.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary