

6/22/77

Memorandum 77-46

Subject: Nonprofit Corporation Law Study

You will recall that, at the May meeting, the Commission indicated its agreement that the staff meet with the Chairman of the State Bar Subcommittee on Nonprofit Corporations and the draftsman for the Select Assembly Committee with a view possibly to avoid the situation of having conflicting Law Revision Commission and Select Committee nonprofit corporation proposals presented in 1978.

Mr. Sterling and I met with Mr. Leonard and Professor Hone. The attached correspondence is the result of our attempt to work out a joint effort.

You will recall also that some time ago the Chairman of the Commission was to send a letter to the Commission's legislative members to solicit their advice on how the existing situation could best be dealt with. No response has to date been received from either legislative member. Perhaps the responses will be received after the session recesses; at the present time, the Legislature is engaged in a major effort to complete work on the budget and numerous other important bills.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

# THE STATE BAR OF CALIFORNIA



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June 7, 1977

John H. DeMouilly, Esq.  
Executive Secretary  
California Law Revision Commission  
Stanford Law School  
Stanford, California

Dear John:

Following our meeting, I have given further thought to the way in which your product and that of the Assembly Select Committee could be combined to preserve the constructive efforts which each group has made. I have discussed the matter with a number of persons on the State Bar Corporations Committee and on the Subcommittee on Nonprofit Corporations. As a result, I will recommend that the Assembly Select Committee adopt the approach of your draft in the following specific instances if you would then withdraw your bill from consideration and not oppose the bill presented by the Assembly Select Committee. That bill would then represent the joint efforts of the Law Revision Commission and the Assembly Select Committee. These instances are:

1. Adopt your approach of dividing chapters into articles wherever chapters relate to more than one general subject.
2. Adopt your approach of dividing Chapter One into an article on definitions and an article on rules of construction.

3. Adopt a new Chapter Two on "general provisions," paralleling the form of your Chapter Two.

4. Create a new Chapter Three on "Purposes, Powers, and Formation," which would follow your Chapter Three in organization. This would require breaking out a portion of Chapter Two of the current Select Committee draft, which now follows Chapter Two of the General Corporations Law ("GCL").

5. Adopt a new Chapter Four following the format of your Chapter Four. This would require combining the balance of Chapter Two of the current Select Committee draft with the provisions which would otherwise have been contained in the Select Committee draft of Chapter Nine. This would again require departure from the format and organization of the GCL.

6. The Corporations Committee will evaluate and consider adopting those portions of your conforming provisions which require amendment to the GCL. I cannot be more specific on these provisions at this time, since the entire Committee must consider them at the time the Nonprofit Code is adopted.

7. Adopt most if not all of the remaining conforming provisions set out on pages 2647-2714 of your report.

8. In certain instances in which the GCL has combined a number of separate topics into one section, I will recommend that your approach of breaking apart the topics into separate sections be followed. This would apply, for example, to Section 307 of the GCL, which you have broken apart into Article Three of your Chapter Five, and to Section 800, which your exposure draft divides into a number of sections.

I have reviewed the foregoing with the draftsmen of the Select Committee, and they are agreeable to the approach outlined above. This approach offers a basis upon which we can avoid having competing bills presented to the Legislature. Obviously, an immediate resolution

of this problem would be beneficial to all parties.  
Accordingly, please advise me of the Commission's  
position on this matter.

With best wishes,



Carl A. Leonard  
Chairperson, Subcommittee on  
Nonprofit Corporations

CAL:jc

cc: Rufus Bradbury Clark  
Subcommittee on Nonprofit Corporations  
Michael Hone  
Hon. John T. Knox

June 9, 1977

Carl A. Leonard, Esq.  
State Bar of California  
601 Wallister Street  
San Francisco, California 94102

Dear Carl:

You will recall that I indicated that I would recommend to the Law Revision Commission that it not recommend bills on nonprofit corporations for enactment at the 1979 legislative session, then leaving the field to the legislation being drafted by your subcommittee, if I would be able to advise the Commission that your draft would use the Commission's recommended legislation as a starting point and make any additions, deletions, or revisions your subcommittee concluded were necessary or desirable from the standpoint of policy or appropriate statutory organization or language.

I believe that the Commission feels that a major contribution of its recommended legislation is in the overall organization of the statutory material and the drafting of the individual sections. If this major contribution would not be lost, I felt that I would recommend to the Commission that it not submit its own bills in 1978. For convenience, I also suggested that the sections be numbered generally to conform to the sections in the Commission's recommendations; this would facilitate comparison of the two proposals by the numerous persons who have reviewed the Commission's draft and would make it easier to identify the policy issues presented by the changes made in the Commission's draft.

Your letter of June 7, which I received today, indicates that you are willing to recommend adoption of the organizational approach of the Commission's draft in specific instances if to do so would result in a joint effort of the Law Revision Commission and the Assembly Budget Committee. However, your proposal does not indicate that you plan to adopt the Commission draft of individual sections. Before the Commission makes a decision whether or not to abandon its efforts to obtain enactment of its recommended legislation, it should be clear precisely how the Commission's draft would be used. This would avoid any misunderstanding on the part of the Commission. As I read your letter, you would to some extent follow the general organization of the Commission's

Carl A. Leonard, Esq.

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draft, particularly in the use of articles and splitting long sections. You would not, however, be using the basic drafting of the individual sections drafted by the Commission. Is this an accurate characterization of your proposal? It is of critical importance that this be made clear before the Commission considers this matter. The Commission will be meeting on July 7-9, and this matter could be scheduled for consideration at that meeting.

Sincerely,

John H. DeMouly  
Executive Secretary

JHD:kac

CC: Rufus Sandbury Clark  
Subcommittee on Nonprofit Corporations  
Michael Hone  
Hon. John T. Knox

# THE STATE BAR OF CALIFORNIA



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June 20, 1977

John H. DeMouilly, Esq.  
Executive Secretary  
California Law Revision Commission  
Stanford Law School  
Stanford, California

Dear John:

I hope our phone conversation of last week helped clarify my letter of June 7, 1977. My letter was written as a result of our three-hour meeting on May 26th. At that time you asked us to accept the organization, including section numbers, of the Law Review Commission's draft of the Nonprofit Corporation Law. You also requested that the State Bar Committee and Select Committee adopt your proposal as their working draft, modifying particular sections as necessary. As you can tell from the drafts we have sent to you, the meetings Mr. Sterling has attended, and our current 300-page draft, it would be extremely difficult to proceed in the way you initially suggested.

At our May 26th meeting we discussed an alternative approach; we outlined changes which could be made if you and the Law Revision Commission felt the changes would make a better law and avoid conflicting bills. My letter of June 7th set forth this approach in detail. I hope that that letter and this explanation can result in an agreement to go forward with one bill.

It is my understanding that the Select Committee will only proceed to make the changes specified in my earlier letter if the provisions outlined therein are acceptable to and desired by the Law Revision Commission. Because we are under no small amount of pressure for an early completion of an exposure draft, I would hope that the Commission could reach a decision on my proposal at its July 7-9 meeting.

Please do not hesitate to phone me if I can be of further assistance.

Very truly yours,



Carl A. Leonard, Chairperson  
Subcommittee on Nonprofit Corporations

CAL:jc

cc: Hon. John T. Knox  
Rufus Bradbury Clark  
Subcommittee on Nonprofit Corporations  
Michael Hone