

## First Supplement to Memorandum 2001-16

### Administrative Rulemaking Cleanup (Additional Comment)

---

We have received a letter from David Carroll, general counsel to the California Labor Federation, AFL-CIO, commenting on memorandum 2001-16 (the letter is attached). He agrees with the Department of Industrial Relations and the Occupational Safety and Health Standards Board (“DIR & OSHSB”) that there is a problem with Government Code Section 11346.2(b)(3), which requires rulemaking agencies to describe alternatives to a proposed regulation. The provision in question is set out in the main memorandum at page 2.

Mr. Carroll suggests that “the first sentence of (3)(A) and the first sentence of (B) may be simply redundant. If there is a duty under the first sentence of (A) to search out reasonable alternatives, then an agency will have ‘identified’ such alternatives within the meaning of (B).” This is mostly correct. However, there is an important distinction between (A) and (B). Subparagraph (B) is concerned with a special class of reasonable alternatives — “those that would lessen any adverse impact on small business.” Requiring a description of alternatives beneficial to small businesses means that an agency must focus particular attention on the needs of small businesses, which the agency might not do if it were only required to describe reasonable alternatives generally. This seems to be a plausible justification for preserving the requirements of both (A) and (B). The fact that Mr. Carroll and DIR & OSHSB have different views as to how Section 11346.2(b)(3) should be reformed affirms the staff’s sense that this issue involves more than mere technical cleanup. **The staff recommends** that Mr. Carroll’s perspective be noted and considered when the Commission next considers substantive matters relating to administrative rulemaking.

Respectfully submitted,

Brian Hebert  
Staff Counsel

LAW OFFICES  
OF  
CARROLL & SCULLY, INC.  
300 MONTGOMERY STREET  
SUITE 735  
SAN FRANCISCO, CALIFORNIA 94104-1909

CHARLES P. SCULLY (1915-1985)  
DONALD C. CARROLL  
CHARLES P. SCULLY, II

TELEPHONE  
362-0241  
AREA CODE 415

January 25, 2001

Law Revision Commission  
RECEIVED

JAN 26 2001

File: \_\_\_\_\_

Mr. Brian Hebert  
Staff Counsel  
California Law Revision Commission  
4000 Middlefield Rd., Room D-1  
Palo Alto, CA 94303

RE: Memorandum 2001-16 – Administration Rulemaking  
Cleanup (Tentative Recommendation) #N-306

Dear Mr. Hebert:

We serve as General Counsel to the California Labor Federation, AFL-CIO.

We share the concern expressed by DIR and the Standards Board with respect to Government Code Section 11346.2(b)(3). With the recent changes, we think that the first sentence of (3)(A) and the first sentence of (B) may be simply redundant. If there is a duty under the first sentence of (A) to search out reasonable alternatives, then, an agency will have “identified” such alternatives within the meaning of (B). Why the last sentence of (B) would apply only to (B) and not to (A) appears to be a legitimate question. We thus agree with the observation of Staff in the first full paragraph of page 3 of the Memorandum 2001-16.

It may be that these legislative changes were intended to lighten the regulatory

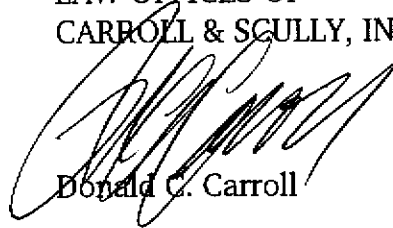
Mr. Brian Hebert  
January 25, 2001  
Page 2

burden on small business; but, the changes should not be such as to present unreasonable and artificial hurdles to the regulatory process.

Thank you.

Very truly yours,

LAW OFFICES OF  
CARROLL & SCULLY, INC.

A handwritten signature in black ink, appearing to read 'Donald C. Carroll', is written over the typed name below.

Donald C. Carroll

DCC:lml  
ope-3-afl-cio  
cc: Art Pulaski  
Tom Rankin  
Heidi Gotlieb  
Carol Belcher