

April 13, 1975

Time

Place

April 22 - 7:00 p.m. - 10:00 p.m.  
April 23 - 9:00 a.m. - 5:00 p.m.  
April 24 - 9:00 a.m. - 12:00 noon

State Bar Building  
601 McAllister Street  
San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

April 22-24, 1976

April 22

1. Minutes of February 26-28, 1976, Meeting (sent 4/2/76)

Minutes of March 11-13, 1976, Meeting (sent 4/8/76)

2. Administrative Matters

3. 1976 Legislative Program

Status of Legislative Program

Oral Report at Meeting

Discussion of Various Legislative Proposals

Memorandum 76-42 (to be sent)

4. Study 78.50 - Landlord-Tenant Relations (Unlawful Detainer Proceedings)

Memorandum 76-34 (sent 4/2/76)

Tentative Recommendation (attached to Memorandum)

5. Study 39.100 - Sister State Judgments

Memorandum 76-35 (sent 4/2/76)

Tentative Recommendation (attached to Memorandum)

April 23 and 24

6. Study 77 - Nonprofit Corporations

New General Corporation Law (Chapter 682) (sent to you for January meeting)  
(Please bring to April meeting)

Binder Containing Provisions of New Nonprofit Corporation Law (enclosed)  
(Please bring to April meeting)

Study 77.150 - Records and Reports

Memorandum 76-36 (sent 4/2/76)

- Study 77.170 - Rights of Inspection  
Memorandum 76-37 (enclosed)
- Study 77.170 - Service of Process  
Memorandum 76-38 (sent 4/2/76)
- Study 77.290 - Additional Conforming Revisions  
Memorandum 76-43 (enclosed)
- Study 77.60 - Shareholders' Meetings and Consents  
Memorandum 76-41 (sent 4/8/76)
- Study 77.180 - Involuntary Dissolution  
Study 77.190 - Voluntary Dissolution  
Memorandum 76-28 (sent 3/4/76)
- Study 77.200 - General Provisions Relating to Dissolution  
Memorandum 76-39 (sent 4/2/76)
- Study 77.100 - Sale of Assets  
Memorandum 76-40 (sent 4/8/76)
- Study 77.110 - Merger and Consolidation  
Memorandum 76-46 (enclosed)
- Study 77.140 - Bankruptcy Reorganizations and Arrangements  
Memorandum 76-33 (sent 4/2/76)
- Review of provisions included in binder containing Provisions of  
new Nonprofit Corporation Law (enclosed)
- Study 77 - Nonprofit Corporations (Generally)  
Memorandum 76-44 (enclosed)

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION

APRIL 22, 23, AND 24, 1976

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on April 22, 23, and 24, 1976.

Present: John N. McLaurin, Chairman  
Howard R. Williams, Vice Chairman  
John D. Miller  
Thomas E. Stanton, Jr., Thursday and Saturday

Absent: Robert S. Stevens, Member of Senate  
Alister McAlister, Member of Assembly  
John J. Balluff  
Marc Sandstrom  
George H. Murphy, ex officio

Members of Staff Present:

John H. DeMouilly  
Stan G. Ulrich  
Nathaniel Sterling  
Robert J. Murphy III  
Peter A. Whitman  
D.

Commission Consultant Present: G. Gervais Davis III

The following persons were present as observers on days indicated:

April 22

Garrett H. Elmore, Attorney, Burlingame  
Larry Kiml, California Chamber of Commerce, Sacramento  
Bill Staiger, California Cattlemen's Ass'n, Sacramento  
Robert E. Young, S.F. Neighborhood Legal Assistance Foundation, San Francisco

April 23

Virgil P. Anderson, California State Automobile Ass'n, Sacramento  
John F. Duff, Archdiocese of San Francisco, San Francisco  
Ira Ellman, Assemb. Select Comm. on Revision of Nonprofit Corp. Code, Berkeley  
Mike Hone, Assemb. Select Comm. on Revision of Nonprofit Corp. Code, San Francisco  
Wells A. Hutchins, California State Automobile Ass'n, San Francisco  
R. H. Nida, Automobile Club of Southern California, Los Angeles

April 24

Ira Ellman, Assemb. Select Comm. on Revision of Nonprofit Corp. Code, Berkeley  
Wells A. Hutchins, California State Automobile Ass'n, Sacramento  
R. H. Nida, Automobile Club of Southern California, Los Angeles

ADMINISTRATIVE MATTERS

Minutes of February 26-28 and March 11-13, 1976, Meetings

The Minutes of the February 26-28, 1976, meeting were approved as submitted. The Minutes of the March 11-13, 1976, meeting were corrected to add the following paragraph on page 10 (Study 52.80 - Undertakings for Costs):

The Commission pointed out to Mr. Pollock that it had expressly disclaimed any endorsement of the cost bond requirement in particular kinds of cases but had limited its recommendation to remedying the procedural defects in the cost bond statutes.

As thus corrected, the Minutes of the March 11-13, 1976, meeting were approved.

Coordination of Nonprofit Corporation Study With State Bar and Assembly Select Committee

The Commission discussed its prior plan to prepare a recommendation in cooperation with the State Bar and a select committee of the Assembly that Assemblyman Knox had indicated to the Executive Secretary he was planning to request the Speaker to authorize. The Executive Secretary reported that a Select Committee on Nonprofit Corporations Law had recently been created but that the Executive Secretary had been advised that there was apparently some misunderstanding concerning the prior plan to prepare a bill for Assemblyman Knox to introduce as a result of a joint effort by the Commission, the State Bar Committee, and the staff of the Select Committee.

The Commission expressed its concern over possible duplication of effort on this project and directed the Executive Secretary to do all of the following in consultation with the Chairman of the Commission:

(1) To transmit as soon as possible to the State Bar Subcommittee for their review and comment those portions of the Law Revision Commission's draft of the nonprofit corporation law which have been tentatively approved.

(2) To draft a letter for the signature of the Chairman, addressed to the Chairman of the State Bar Committee, expressing the Commission's desire to have early input from the State Bar on the Commission's tentative draft, to coordinate the work of the Commission with the work of the staff of the Assembly Select Committee, and to maintain close communication with the State Bar Committee until the completion of the project.

(3) To prepare a chronology of the significant events in the history of the Law Revision Commission's nonprofit corporations study, with a view to sending a letter to Assemblyman McAlister providing him with this information.

(4) To prepare for the Commission a schedule of progress goals which the Commission should achieve in the future in order to have the legislation ready for introduction at the commencement of the 1977 legislative session.

(5) To attend the meeting scheduled by Assemblyman Knox on May 4, with the Chairman of the Commission if the Chairman finds it possible to attend the meeting, and with Assemblyman McAlister if Assemblyman McAlister can attend. It is the understanding of the Commission that the purpose of this meeting is to work out an arrangement to coordinate the efforts of the Commission, the State Bar Committee, and the Select Committee with a view to a joint effort to produce a single draft of legislation to revise nonprofit corporation law which will be ready by the target date of January 1, 1977.

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STUDY 39.100 - ENFORCEMENT OF SISTER STATE JUDGMENTS

The Commission considered Memorandum 76-35 and the attached staff draft of the Recommendation Relating to Interest on Sister State Money Judgments. The Commission approved the recommendation to be printed and sent out for comment, subject to the revision set out below and to any editorial changes.

Subdivision (b), which is proposed to be added to Section 1710.30, should be changed to read substantially as follows:

(b), The fee for service of the notice of entry of judgment is an item of costs recoverable in the same manner as ~~costs-recoverable without-a-court-order-pursuant-to~~ statutory fees for service of a writ as provided in Section 1033.7, but such fee may not exceed the amount allowed to a public officer or employee in this state for such service.

STUDY 77.10 - NONPROFIT CORPORATIONS (DEFINITIONS)

The Commission considered Memorandum 76-43 and the following actions were taken.

§ 5113. Mailing

This section was tentatively approved, but the staff is to check the entire statute to determine whether certified mail may be used in cases where registered mail is specified. It was stated that no receipt of mailing is provided in the case of certified mail. The staff is to check this matter out and to report any needed revisions.

§ 5114. Financial statements

Approved as drafted

§ 5115. Independent accountant

Approved as drafted.

§ 5149. Acknowledged

This definition should be consistent with the corrective bill. Also, the necessity of "certificate of" in the last paragraph of the section should be determined.

§ 5167. Domestic nonprofit corporation

Approved as drafted. Whether this definition is appropriately used should be checked each place it is used in the statute. Also, is this definition intended to include corporations heretofore or hereafter formed?

§ 5177. Proper county

Approved as drafted.

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STUDY 77.20 - NONPROFIT CORPORATIONS (ORGANIZATION)

The Commission considered Memorandum 76-43 and Memorandum 76-44.

§ 5250. Required contents of articles

The suggested provision set out in Memorandum 76-43 to require designation of an initial agent for process was disapproved. The reasons are given in the letter from Mr. Robert Sullivan which was attached to Memorandum 76-44.

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STUDY 77.60 - NONPROFIT CORPORATIONS (MEMBERS'  
MEETINGS AND CONSENTS)

The Commission considered Memorandum 76-41 and the attached staff draft of provisions relating to members' meetings and consents. The Commission took the following action with respect to the provisions of the staff draft:

§ 5195. Written or in writing

This section was not approved. It is to be revised to require readability by human beings.

§ 5264. Bylaws relating to meetings

This section was tentatively approved.

§ 5610. Place of meeting

This section was tentatively approved. A note should be added to the Comment that the bylaws may specify a manner in which the meeting place is fixed, such as by resolution of the board or in the notice of the meeting.

§ 5611. Annual meeting

This section should be subject to contrary provisions in the bylaws.

§ 5612. Failure to hold annual meeting

This section should only apply where an annual meeting is required by law or the bylaws. The staff was instructed to investigate the possibility of drafting a general statute for enforcement of members' rights, with more detailed procedures spelled out (such as requirements of a prior demand on the corporation and standards for awarding attorney's fees), which would apply to enumerated provisions.

§ 5613. Special meetings

Subdivision (a)(4) relating to the percentage of members required to call a special meeting should be revised to make clear that the percentage is of those members entitled to vote on the matters to be considered at the meeting. The word "whatsoever" was deleted from the phrase "any purpose whatsoever" in subdivision (b).

§ 5614. Quorum

Subdivision (c) was deleted from this section and should be recodified with the provisions relating to mutual water companies either in the Civil Code or elsewhere.

§ 5615. Vote required

This section was tentatively approved. The Comment should note that the vote on any matter is subject to satisfaction of the proper notice requirements.

§ 5616. Adjournment absent a quorum

The language relating to votes "represented either in person or by proxy" should be replaced by a standard phrase "represented at the meeting," which is used consistently throughout the statute.

§ 5617. Vote required absent a quorum

This section was tentatively approved.

§ 5620. When notice required

Subdivision (a) of this section was revised to read:

(a) Whenever members are required or permitted to take action at a meeting, notice of the meeting shall be given in the manner provided in this article.

A new subdivision (b) should be added that provides in substance:

(b) Notwithstanding any other provision of this article, the bylaws of a nonprofit corporation may prescribe reasonable notice requirements.

§ 5621. Time of notice

This section was tentatively approved.

§ 5622. Contents of notice

Subdivision (d) of this section should refer to regular as well as to annual meetings. The Comment should indicate that "proper" matters that may be presented at such meetings are those permitted by law or the bylaws.

Subdivision (e) was revised to read:

(e) The notice of a meeting at which directors are to be elected shall include the names of nominees known to the board at the time of the notice.

§ 5623. Manner of giving notice

Subdivision (b) should be revised to require that undeliverable notices be posted and made available at the principal executive office. The Comment should note that the bylaws may provide any other reasonable means of giving notice.

Subdivision (d) should be revised to refer to an affidavit of the giving of notice rather than to an affidavit of mailing.

§ 5624. Alternative manner of giving notice

This section was deleted.

§ 5625. Notice of special meeting

This section should be revised to incorporate prior Commission decisions.

§ 5626. Notice of adjourned meeting

The reference in the second sentence of subdivision (a) to transaction of business by the nonprofit corporation should be changed to a reference to the transaction of business by the members.

§ 5627. Validation of defectively noticed meeting

This section was tentatively approved.

§ 5628. Notice required for approval of specific proposals

This section should be an absolute requirement which cannot be waived in the bylaws.

§ 5630. Consent to action without a meeting and prior notice

The reference to "any annual or special meeting" was replaced by a reference to "a meeting."

§ 5631. Notice required for consent

After considerable discussion of the possible defects and ambiguities in this provision, the Commission determined to conform to the comparable provision of the General Corporation Law and tentatively approved this section as drafted.

§ 5632. Revocation of consent

This section was tentatively approved.

§ 5633. Consents required to elect directors

This section was not approved pending further staff research to ascertain whether it is appropriate for nonprofit corporations.

§ 5640. Form of proxy or written consent

This section should be split into two provisions--one dealing with proxies and one dealing with written consents. The staff should make certain that the proxy provision does not preclude use of a general proxy and, in this connection, should study the evolution of SB 364 (Dunlap 1975) for insight.

§§ 9401, 9600 (repealed)

These repealers were tentatively approved.

STUDY 77.150 - NONPROFIT CORPORATIONS (RECORDS AND REPORTS)

The Commission considered Memorandum 76-36 and reviewed the draft of Chapter 15 attached to the memorandum. The following actions were taken with respect to sections not previously approved or with respect to previously approved sections that were revised.

§ 6510. Required books and records

This section was approved as revised after the word "if" was substituted for "so long as" in subdivision (d).

The Commission discussed whether a provision comparable to subdivision (c) of Section 312 (General Corporation Law) should be included in the General Nonprofit Corporation Law and determined that Section 6510 covers everything that is covered in subdivision (c) of Section 312, and subdivision (c) is more limiting than Section 6511 because Section 6511 requires merely that the minutes be kept in "written form" whereas subdivision (c) requires that they be kept in a book and also that they be kept at the principal executive office of the corporation whereas Section 6511 imposes no such requirement.

§ 6511. Form of records; place where kept

This section was approved after the third "office" was deleted in subdivision (b).

§ 6512. Information to assessor

This section will be compiled in Division 4.

§ 6513. Liability for false report, record, or entry

This section will need to be renumbered and perhaps should be compiled in Division 4.

§ 6520. Annual report required unless bylaws otherwise provide

The deletion of Section 6523 requires that "6525" be substituted for "6526" in the second line of this section.

§ 6522. Annual report; financial information

The phrase "fiscal year" was substituted for the phrase "12-month fiscal period" and the phrase "12-month period" in various places in this section.

Subdivision (b), paragraphs (1) and (2), were revised to read:

(1) The assets (including any held in trust) and liabilities of the nonprofit corporation as of the report date.

(2) The major changes in assets (including any held in trust) and liabilities during the fiscal year ending on the report date.

The Comment should indicate that the initial report may be for a fiscal year of less than 12 months.

§ 6523. Annual report; membership information

This section was deleted. The remaining sections in the article are to be renumbered and any references corrected so they refer to the renumbered sections.

§ 6525. Providing member with copy of annual report

This section is to be revised to provide that the annual report is either to be made reasonably available for examination or a copy mailed to the member.

§ 6527. Members' right to obtain fiscal information

The word "less" was substituted for "more" in the fifth line of subdivision (b).

The Comment should include some discussion of the circumstances in which subdivision (a) applies. Consideration should be given to including in the discussion a statement that the written annual report can be obtained if one

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was prepared but that the bylaws may dispense with this requirement or the annual report may have been an oral one. In the latter circumstances, subdivision (a) applies.

The last sentence of subdivision (1) was revised to read in substance:

This subdivision applies only if the address specified in the statement is in this state and is one of the following: (1) An address within the county where the principal executive office of the nonprofit corporation is located; or (2) An address within the county where the principal office of the corporation in this state is located if the address of its principal executive office is not in this state.

#### § 6529. Judicial enforcement

This section was tentatively approved but the staff should attempt to redraft subdivision (a) to make it more understandable. It was noted that the more useful remedy would be a court order that the nonprofit corporation comply with the requirement concerning the annual report at future annual meetings.

#### Article 3 (commencing with Section 6530)

Consideration should be given to including this article as a part of Division 4.

#### § 6530. Applicable filing period defined

This section should be revised to conform to the decisions made with respect to the other sections in this article.

#### § 6531. Statement identifying officers, principal office, and principal activity

The statement should be required to be filed within 90 days after the filing of its original articles and every five years thereafter and should contain only the following:

(1) The name and complete business or residence address of its chief executive officer.

(2) The street address of its principal executive office.

(3) If the address of its principal executive office is not in this state, the street address of its principal office in this state, if any.

In addition, if there is any change in the above information, a new statement must be filed within 30 days of such change.

§ 6532. Designation of agent for service

Approved as drafted.

§ 6533. Filing new statement when information changes

This section should be revised to require the new statement to be filed within 30 days of the change. (See discussion under Section 6531.)

§ 6534. Statement of resignation as agent; notice to corporation

Approved as drafted.

§ 6535. When designation of new agent required

Section approved after inserting the phrase ", upon notice of such fact," after the "corporation shall" in the seventh line of the section.

§ 6536. Renewal forms

This section should codify existing practice. The Secretary of State should be contacted to determine existing practice. The cost involved in sending renewal statements should be ascertained. The views of the Secretary of State as to whether renewal forms should be sent annually even though the statement is required to be filed only once every five years should be ascertained.

§ 6537. New statement supersedes previous statement; disposal of superseded statement

Approved as drafted.

§ 6538. Statement not construed as notice

Subdivision (a) was deleted, this matter being covered by a section to be added to the Government Code by the corrective bill (AB 2849).

Subdivision (b) was approved.

§ 6539. No fee required

This section was disapproved. Government Code Section 12210 is to be amended to require all corporations to pay a five-dollar fee for filing a statement.

§ 6540. Procedure upon failure to file statement

This section was not approved. The views of the Secretary of State should be ascertained whether the system provided is as simple and as effective as it might be. The Commission believes the section is unduly complicated and that it will not accomplish the purpose it seeks to accomplish. If the procedure provided by Section 6540 is not appropriate, the views of the Secretary of State as to an appropriate procedure should be requested.

STUDY 77.160 - NONPROFIT CORPORATIONS (RIGHTS OF INSPECTION)

The Commission considered Memorandum 76-37 and the attached draft of Chapter 16 relating to rights of inspection. The Commission made the following decisions on the sections in Chapter 16:

§ 6610. Rights may not be limited by articles or bylaws

Section 6610 should be deleted from Chapter 16, and a similar provision put elsewhere in Division 2 applicable to the entire division.

§ 6611. Inspection by agent or attorney; right to copy and make extracts

Section 6611 was tentatively approved.

§ 6612. Records to be made available in written form

Section 6612 was tentatively approved. The term "written" or "writing" should be defined in a general section to mean in readable English form.

§ 6620. Authorized member defined

Approval of Section 6620 was deferred pending consideration of the remainder of Chapter 16. The term "voting power" as used in Section 6620 should be defined in a general section, possibly comparable to Section 194.5 of the General Corporation Law. It was suggested that, in Section 6620, "voting power" should probably mean the power to vote for the election of directors.

§ 6621. Adoption of bylaw providing procedure for communicating to members

Subdivision (c) of Section 6621 should be revised by deleting the words "without cost to the authorized member" and "without cost to the nominee." There should be substituted for such language a sentence to the effect that the cost of printing and mailing the communication shall be borne by the

corporation. The Comment should make clear that cost of mailing includes postage, the cost of envelopes, and the cost of labor to put the material in the envelopes.

The language in paragraph (2) of subdivision (c) referring to the nomination of any "member or members" should be revised since a nonmember may be nominated. A preferable term would be "person" or "qualified person."

The second sentence of paragraph (2) should be revised to make clear that "name" refers to the name of the person sought to be nominated.

The second sentence of paragraph (4) of subdivision (c) should be revised to allow the "authorized member" who solicits proxies to furnish prepaid envelopes with the proxy solicitation. This may be accomplished by amending the language as follows:

The authorized member shall be permitted to communicate a proxy solicitation statement and a proxy form to be returned, at the expense of the member giving the proxy or of the authorized member, at the latter's election, by a member who desires to give a proxy to the authorized member.

Paragraph (4) should be further revised to provide that, if management solicits proxies and provides prepaid envelopes at company expense, management must do the same for an authorized member who is soliciting proxies.

In subdivision (e), the language "in the opinion of independent counsel" and "such as matter which is libelous" should be deleted. The Comment may refer to matter which is libelous as an example of matter which properly may be eliminated from a proxy solicitation statement by the nonprofit corporation. Either subdivision (e) or the Comment thereto should make clear that, in the event of litigation, the nonprofit corporation has the burden of proving that the matter eliminated would likely result in the imposition of liability on it.

It was suggested that the staff might find SEC proxy rules helpful on this issue.

In subdivision (f), "any other method" should be changed to "any other reasonable method."

§ 6622. Right to inspect and obtain membership record

The language proposed in paragraph (2) of subdivision (a) ("[i]s complying with the provisions of the bylaw adopted pursuant to Section 6621") should be deleted and replaced with language indicating that Section 6622 does not apply when the court has ordered a procedure for the nomination and election of directors pursuant to Section 6624, and such order includes a provision that Section 6622 shall not apply to the nonprofit corporation.

The Comment should indicate that, if a member is permitted to inspect the membership record for a purpose reasonably related to his interests as a member, the subsequent use of such information shall be similarly limited to such a purpose. The Comment should also indicate that the burden is on the member to show that such inspection is reasonably related to his interests as a member.

The second sentence of paragraph (2) of subdivision (d) should be revised as follows:

The nonprofit corporation may require, as a condition of obtaining the membership list, that the demand be accompanied by a tender of a reasonable charge specified by the nonprofit corporation, not in excess of ~~an amount equal to five cents for each name to be so provided or~~ the actual cost to the nonprofit corporation of furnishing the list ~~whichever is the lesser amount~~ .

Subdivision (e) should be rewritten to permit rather than to require the court to postpone a membership meeting, and should give the nonprofit corporation the opportunity to seek from the court an extension of time for complying with a demand under subdivision (d).

§ 6623. Application of article

Consideration of Section 6623 was deferred until after the subject of pseudo-foreign corporations is considered.

§ 6624. Authority of court not limited

A provision should be put in Section 6624 giving the court the authority to determine that the procedures provided by the court pursuant to Section 6624 for the nomination and election of directors or for communicating with members is in lieu of the rights given by Section 6622.

A provision should be added, either in Section 6624 or in a separate section, to the effect that Article 2 is intended to deal with the nomination and election of directors and the solicitation of proxies and does not limit the power of the court to permit reasonable access to membership records or to provide for communicating to members for other legitimate purposes.

§ 6630. Inspection of books, records, and minutes

The term "financial records" should be substituted for the term "books and records of account." The term "financial records" should be defined, and it should be made clear that, when such records are furnished for inspection, they should be in readable English. Consideration should be given to a requirement that such records be kept according to generally accepted accounting procedures.

The Comment to Section 6630 should point out the relationship between this section and Section 6527 (members' right to obtain fiscal information). The Comment should indicate the judicial limitations which have been placed on the term "reasonably related to such member's interests as a member."

The Comment should note that a member may inspect records beyond those relating directly to his own personal interests, but that this section does not permit a member to go on an unrestricted "fishing expedition."

§ 6631. Application of article

Consideration of Section 6631 was deferred until after the subject of pseudo-foreign corporations is considered.

§ 6640. Director's right to inspect and copy

The words "and copy" should be deleted from Section 6640 in view of Section 6611 which provides that the right of inspection includes the right to copy and make extracts.

§ 6641. Application of article

Consideration of Section 6641 was deferred until after the subject of pseudo-foreign corporations is considered.

§ 6650. Enforcement of right of inspection; appointment of inspectors or accountants

A provision should be put in Section 6650 giving the court the authority to require a nonprofit corporation which has adopted a bylaw pursuant to Section 6621 but is not complying with such bylaw to comply with it.

The Comment should refer to some of the case law dealing with the showing required by the member in meeting his burden of establishing that the inspection sought is for a proper purpose.

The staff should give additional consideration to the effect, if any, that subdivision (c) may have on the attorney-client privilege or other privileges.

§ 6651. Recovery of reasonable expenses by member or director

Section 6651 was tentatively approved. The Commission noted the difference between the standard in Section 6651 ("failure . . . to comply . . . was arbitrary and completely without justification") and the standard in Section 6529(c)(2) ("willfully failed without justification to comply"), and approved such difference as having a sound policy basis.

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STUDY 77.17C - NONPROFIT CORPORATIONS (SERVICE OF PROCESS)

The Commission considered Memorandum 76-38. The following actions were taken:

- (1) This chapter should be generalized and compiled in new Division 4.
- (2) As so generalized, the chapter was tentatively approved. Section 6731 should be checked to determine whether certified as well as registered mail should be permitted to be used.

STUDY 77.180 - NONPROFIT CORPORATIONS (INVOLUNTARY DISSOLUTION)

The Commission began consideration of Memorandum 76-28 and the attached draft of Chapter 18 relating to involuntary dissolution. The Commission made the following decisions on the sections considered:

§ 6810. Application of chapter

Section 6810 should be deleted in view of proposed Section 5102 (tentatively approved January 1976) which provides that all of Division 2 will apply to every nonprofit corporation unless there is an applicable special provision which is inconsistent with Division 2.

§ 6820. Persons who may commence proceedings

In paragraph (3) of subdivision (a), the word "terminated" should be changed to "expired." The Comment should make a cross-reference to Section 5214(d) (tentatively approved February 1976)(if charter of subordinate body is revoked by national body, subordinate body "shall dissolve"). Note in the Comment that subdivision (b) makes intervention of a member or creditor a matter of right. See Hagan v. Superior Court, 53 Cal.2d 498, 503, 348 P.2d 896, \_\_\_, 2 Cal. Rptr. 288, \_\_\_ (1960).

§ 6821. Grounds for proceedings

Section 6821 should be conformed to Section 1800(b) as amended by AB 2849 (Corporations Code cleanup bill) by deleting from subdivision (b) of Section 6821 the language "or the members have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon election of their successors." The replacement language of AB 2849 should be placed in a separate subdivision of Section 6821, as follows:

(d) The members have failed in an election in which all voting power was exercised at two consecutive annual meetings, to elect successors to directors whose terms have expired or would have expired upon election of their successors.

Subdivisions (d), (e), and (f) of proposed Section 6821 should be redesignated as subdivisions (e), (f), and (g). The word "terminated" in subdivision (f) as thus redesignated should be changed to "expired." The language of subdivision (g) as thus redesignated should be revised to read:

(g) The nonprofit corporation is a subordinate body whose charter has been surrendered to, taken away, or revoked by the head or national body granting it.

The Comment should include a cross-reference to Section 5214(d)(if charter of subordinate body is revoked by national body, subordinate body "shall dissolve").

§ 6822. Appointment of provisional directors

Section 6822 is tentatively approved, but it should be moved out of Article 2 (Proceedings by Directors or Members) and into Article 4 (General Provisions Concerning Involuntary Dissolution), perhaps immediately following Section 6846 (Jurisdiction of the court in proceeding for winding up).

§ 6830. Grounds for proceedings (by state)

Revise subdivision (e) to read:

(e) The nonprofit corporation is a subordinate body whose charter has been surrendered to, taken away, or revoked by the head or national body granting it.

The Comment should include a cross-reference to Section 5214(d)(if charter of subordinate body is revoked by national body, subordinate body "shall dissolve").

§ 6831. Notice to nonprofit corporation

The language ". . . and (2) the nonprofit corporation has failed to institute proceedings to correct it within the 30-day period or thereafter fails to prosecute such proceedings" should be redrafted to make clear that it refers to any and all steps the nonprofit corporation may take to correct the matter, and not merely to judicial proceedings.

§ 6832. Powers of the court

Subdivision (a) of Section 6832 should be moved to Article 4 (General Provisions Concerning Involuntary Dissolution), perhaps following Section 6846 (Jurisdiction of the court in proceeding for winding up). Subdivision (b) should be consolidated with Section 6840 and revised to make clear that the court may appoint a receiver for the purpose of operating the nonprofit corporation and not merely to wind it up. The Comment should note the existence of a general equity power, apart from statute, to appoint a receiver (see Misita v. Distillers Corp., Ltd., 54 Cal. App.2d 244, 250-252, 128 P.2d 888, \_\_\_ (1942)), and nothing in Section 6832 is intended to limit that power.

§ 6833. Service of process

Section 6833 should be revised to read as follows:

6833. In addition to serving process on the nonprofit corporation as provided in Chapter 17, the Attorney General shall publish one time in a newspaper of general circulation in the proper county a notice to the members of the nonprofit corporation.

§ 6840. Appointment of a receiver

Section 6840, which in its current draft form allows the court to appoint a receiver to manage the nonprofit corporation and preserve its property "pending the hearing and determination of the complaint for dissolution," should

be revised to make clear that the court may also appoint a receiver to do the following:

(1) To preserve and operate a going nonprofit corporation, e.g., to cure a fraudulent election.

(2) To wind up the nonprofit corporation after dissolution has been decreed.

Note in the Comment that there is authority in Code of Civil Procedure Sections 564 and 565 for appointment of a receiver, and that there is a general equity power, apart from statute, for such appointment. See Misita v. Distillers Corp. Ltd., supra.

§ 6841. Decrees and orders of the court

The staff should give further consideration to whether the language authorizing the court to "make such orders and decrees and issue such injunctions" is unnecessarily repetitive in view of Code of Civil Procedure Sections 1003 ("[e]very direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order"), 577 ("[a] judgment is the final determination of the rights of the parties in an action or proceeding"), and 1064 ("[a] judgment in a special proceeding is the final determination of the rights of the parties therein").

§ 6842. When proceedings for winding up commence

Section 6842 is tentatively approved.

§ 6843. Persons who shall conduct the winding up

The staff should study further the question of whether the word "directors" may have been used advisedly in the second sentence of Section 1805(b) (General Corporation Law), although the word "board" is used in the immediately preceding sentence.

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STUDY 77.215 - NONPROFIT CORPORATIONS (ENFORCEMENT BY ATTORNEY GENERAL)

The Commission considered Memorandum 76-43.

Chapter 21.5. Enforcement by Attorney General

The proposed chapter 21.5, set out on page 5, of the draft statute attached to the memorandum was approved as drafted.

STUDY 77.220 - NONPROFIT CORPORATIONS (CRIMES AND PENALTIES)

The Commission considered Memorandum 76-43. The Commission reviewed the various provisions relating to crimes and penalties, listed below, and directed the staff to reconsider these provisions and possibly to redraft them to improve their substance. The following matters were raised in connection with the discussion of particular sections.

§ 7200. Failure to keep records or submit financial statements

The question was raised: How do you show you are damaged for the purposes of this section? The section was not approved. Should the Attorney General be the one who brings the action? Should the state be able to intervene? Should the state receive a share of the penalty? Basically the questions involved are: Who should be able to bring the action for the penalty and who should get the penalty if one is imposed?

§§ 7201 and 7202. Penalties

These provisions were not approved. They are to be considered by the staff as a part of the review of the penalty provisions generally.

§ 7254. False report or statement

Consideration should be given to revising subdivision (b) to read:

(b) Knowingly refuses to make any book entry required by law in the manner required by law.

This section was not approved. The penalty was considered an overkill, especially as far as subdivision (b) as contained in the staff draft is concerned.

§ 7255. Fraudulent records; criminal penalty

This section was not approved. The staff is to give the subject matter of the section further consideration.

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STUDY 77.250 - NONPROFIT CORPORATIONS (DIVISION 4 - PROVISIONS  
APPLICABLE TO CORPORATIONS GENERALLY)

The Commission discussed the effect of limiting the application of Division 1 (the General Corporation Law) to certain corporations only. It was noted that 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 if 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 corporations. However, it appears that the effect of Assembly Bill 2849, as amended March 8, will be to make Division 1 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 Section 14200 et seq., or to corporations organized under codes other than the Corporations Code or to corporations organized under special statutes.

The 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 deceptive 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.

The Commission discussed what was the best method of dealing with the problem. One method would be to merely codify comparable provisions in the nonprofit corporation law and leave the problem to be solved in the conforming legislation to clean up on the General Corporation Law. However, the Commission concluded that a better solution would be to add a new division--Division 4--to Title 1 of the Corporations Code to apply to corporations generally and to include in this division those provisions that are not integral parts of the business corporation law or the nonprofit corporation law. This would provide provisions of general application to all corporations (as was the case formerly by application of former Section 119), would avoid the need to duplicate the provisions in the nonprofit corporation law, and would (if the State Bar Committee on Corporations decides that is appropriate) permit the repeal of the provisions in Division 1.

The staff was directed to prepare a draft of a new Division 4 which should include those provisions the staff believes are of general application and are not an integral part of the business or nonprofit corporation law.

STUDY 78.50 - LESSOR-LESSEE RELATIONS (UNLAWFUL DETAINER PROCEEDINGS)

The Commission considered Memorandum 76-34 and the revised staff draft of a recommendation relating to damages in actions for breach of lease. The Commission made the following decisions:

1. The language "given up possession" should be substituted for "surrender of possession" in proposed Civil Code Section 1952.3 in view of decisions requiring the landlord's consent to a "surrender."
2. Proposed Section 1952.3 should be revised to make clear that, when an unlawful detainer proceeding becomes converted to an ordinary civil action by the defendant having given up possession, the defendant is not subject to the compulsory cross-complaint statute (Code Civ. Proc. § 426.30) unless the defendant subsequently files or amends the answer.
3. The Comment should indicate that among the effects of conversion of the action is loss of trial precedence (see Code Civ. Proc. § 1179a).

The staff was directed to bring a revised proposal back to the Commission at a future meeting for approval for distribution for comment.

APPROVED

\_\_\_\_\_ Date

\_\_\_\_\_ Chairman

\_\_\_\_\_ Executive Secretary