

Note: Reservations may be made by telephone agents. For meeting information call (415) 774-2111.

November 11-12, 1976

Time

November 11 - 7:00 p.m. - 10:00 p.m.
November 12 - 8:45 a.m. - 5:00 p.m.

Place

State Bar Building
601 California Street
San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

November 11-12, 1976

1. Minutes of October 21-23, 1976, Meeting (sent 10/29/76)
2. Administrative Matters

Suggested Schedule for Future Meetings

Memorandum 76-97 (enclosed)

3. Study 39.33 - Comprehensive Wage Garnishment Statute

Oral Report on Views of State Bar Committee

4. Study 77 - Nonprofit Corporations

Review of Comments on Division 2

Memorandum 76-90 (sent 10/12/76)

Note. We will start with Section 5530 on page 46.

Second Supplement to Memorandum 76-90 (sent 10/14/76)

Third Supplement to Memorandum 76-90 (sent 10/14/76)

Fourth Supplement to Memorandum 76-90 (enclosed)

Draft of Tentative Recommendation (Parts I and II) (attached to Memorandum 76-83)

Note. Comments on Tentative Recommendation are attached to Memorandum 76-83 and First Supplement thereto.

Review of Comments on Division 4

Memorandum 76-91 (sent 10/12/76)

First Supplement to Memorandum 76-91 (sent 10/29/76)

Review of Comments on Conforming Changes

Memorandum 76-92 (sent 10/13/76)

See also informational items listed on back of this page.

5. Conflict of Interest Code

Memorandum 75-89 (enclosed)

1. Organization of Division

Memorandum 76-98 (enclosed)

2. Cooperatives and Other Special Corporations

Memorandum 76-93 (sent 10/15/76)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
NOVEMBER 11 AND 12, 1976
San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on November 11 and 12, 1976.

Present: John N. McLaurin, Chairman
Howard R. Williams, Vice Chairman
John J. Balluff
John D. Miller
Thomas E. Stanton, Jr., November 11

Absent: Robert S. Stevens, Member of Senate
Alister McAlister, Member of Assembly
Marc Sandstrom

Members of Staff Present:

John H. DeMouilly	Nathaniel Sterling
Stan G. Ulrich	Robert J. Murphy III

Consultants Present:

Peter A. Whitman, Nonprofit Corporations

The following persons were present as observers on days indicated:

November 11

Wells A. Hutchins, California State Automobile Ass'n, San Francisco

November 12

Gregor J. Balough, Department of Corporations, San Francisco
Wells A. Hutchins, California State Automobile Ass'n, San Francisco

ADMINISTRATIVE MATTERS

Minutes of October 21, 22, and 23, 1976, Meeting

The Minutes of the October 21, 22, and 23, 1976, Meeting were approved as submitted by the staff.

Future Meetings

The following schedule was adopted for future meetings:

December 1976 Meeting

December 2 - 7:00 p.m. - 10:00 p.m. San Francisco
December 3 - 9:00 a.m. - 5:00 p.m.
December 4 - 9:00 a.m. - 12:00 noon

January 1977 Meeting

No Meeting in January

February 1977 Meeting

February 3 - 7:00 p.m. - 10:00 p.m. Los Angeles
February 4 - 9:00 a.m. - 5:00 p.m.
February 5 - 9:00 a.m. - 3:00 p.m.

March 1977 Meeting

March 10 - 7:00 p.m. - 10:00 p.m. San Francisco
March 11 - 9:00 a.m. - 5:00 p.m.
March 12 - 9:00 a.m. - 12:00 noon

April 1977 Meeting

April 7 - 7:00 p.m. - 10:00 p.m. Los Angeles
April 8 - 9:00 a.m. - 5:00 p.m.

May 1977 Meeting

May 12 - 7:00 p.m. - 10:00 p.m. San Francisco
May 13 - 9:00 a.m. - 5:00 p.m.

June 1977 Meeting

June 9 - 7:00 p.m. - 10:00 p.m. Los Angeles
June 10 - 9:00 a.m. - 5:00 p.m.
June 11 - 9:00 a.m. - 12:00 noon

July 1977 Meeting

July 7 - 7:00 p.m. - 10:00 p.m. San Francisco
July 8 - 9:00 a.m. - 5:00 p.m.
July 9 - 9:00 a.m. - 4:00 p.m.

Conflict of Interest Code

The Commission considered Memorandum 76-89 and determined that the staff should prepare material necessary to obtain an exemption from the filing of annual disclosure statements. The material is to be presented to the Commission for review and approval before being forwarded to the Fair Political Practices Commission.

Minutes
November 11 and 12, 1976

STUDY 39.33 - CREDITORS' REMEDIES (WAGE GARNISHMENT)

The Commission heard an oral report by the staff on the views of the State Bar Committee re Relations of Debtor and Creditor concerning the wage garnishment recommendation which were expressed at the committee's meeting held on November 5. The Commission considered a letter from Mr. Robert McMahon, Staff Attorney to the State Bar committee, which reported the views of the committee. (A copy of the letter is attached hereto.) The Commission also considered two suggestions of Mr. Carl Olsen, County Clerk of San Francisco, which were reported orally by the staff. The Commission approved the recommendation for printing and introduction in the Legislature, subject to the following changes:

§ 723.026. Levying officer's duty to pay over amounts received

In order to lessen the burden on the levying officer when the employer elects to pay amounts withheld to the levying officer more frequently than once a month, subdivision (a) of Section 723.026 should be revised as follows:

723.026. (a) The levying officer shall receive and account for all amounts received pursuant to Section 723.025 and shall pay ~~each amount~~ the amounts so received over to the person entitled thereto ~~within 15 days after its receipt~~ at least once every 30 days .

This will continue the provisions of existing Section 682.3(c).

§ 723.051. Additional amounts necessary for support exempt

The Commission considered the State Bar committee's suggested revision of Section 723.051 which was appended to Mr. McMahon's letter but declined to change the section. The view was expressed that adding the word "reasonably" before the phrase "necessary for the support of the judgment debtor or the judgment debtor's family" would not be useful since it would not change the meaning of the provision. Moreover, such a change would result in a lack of conformity with the comparable provision, already enacted, in The Attachment Law. Regarding the amendments suggested to be made in the last sentence regarding the station in life test, the view was expressed that the provision would not be clear if the proposed change were to be made.

§ 723.105. Judgment debtor's claim of exemption

Subdivision (f) should be revised to provide that the judgment creditor, rather than the clerk, sets the matter for hearing and gives notice to the judgment debtor of the hearing on the claim of exemption. The judgment creditor should also be required to file proof of service on the judgment debtor. This change will continue the existing practice.

§ 723.122. Notice to employee

A new subdivision (b) should be added to Section 723.122 to read in substance as follows:

(b) The notice to the employee shall contain a statement prepared by the Judicial Council that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, and the procedure for claiming an exemption, and any other information the Judicial Council deems useful to the employee.

THE STATE BAR OF CALIFORNIA



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1230 WEST THIRD STREET
 LOS ANGELES 90017
 TELEPHONE 482-8220
 AREA CODE 213

November 9, 1976

✓ John DeMouilly
 ✓ Stan Ulrich
 California Law Revision Commission
 Stanford Law School
 Stanford, California 94305

Dear Sirs:

I hope that this letter may be considered by the Commission at the November meeting. At the meeting of the State Bar Committee re Relations of Debtor and Creditor last Friday, the Committee decided to stress as strongly as possible its prior recommendations: 1) to delete CCP §723.024, employer's service charge; 2) to amend §723.050 to provide an automatic exemption of 40 times the Federal minimum wage; and 3) to amend §723.103 to provide for service of blank forms upon the debtor. The Committee (assuming Board approval) will seek these amendments in the Legislature if your Commission does not accept them, but will not oppose the bill if they are not adopted.

The Committee also suggests that: 1) CCP §723.025 be amended to state that remittance be made within 15 days after the end of the pay period selected by the employer, whether it be monthly or more frequently; 2) §723.051 be amended as indicated in Exhibit A; 3) §723.075 be amended so that some standard of review for the administrative hearing (presumably the same as for a court hearing) be provided, the last sentence of §723.075(c) be deleted, and the LRC explore the possibilities of such administrative hearing with the Franchise Tax Board; 4) §723.076 and §723.078 be amended so that jeopardy withholding orders (§723.078) and "temporary earnings holding orders" (§723.076(f)) be issued upon application to a court; and 5) §723.105 be amended so that the comment clearly states that extensions of time for service by mail found elsewhere in the codes are not intended to apply and that §723.105(f) be amended to use a specific reasonable time period (three business days) rather than "promptly"; and 6) that §723.122(d) be amended to conform to the Committee's recommendation re service of blank forms under §723.103.

John DeMouilly
Stan Ulrich
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The Committee generally agrees with and supports the balance of the LRC recommendations. However, the Committee will consider whether Labor Code §2929 should be amended in separate legislation and whether pre-levy notice to debtors should be made part of separate legislation at its next meeting. In addition, the Committee believes that its recommendation to amend CC§4701 should be considered by the State Bar Committee on Family Law.

Mr. Stan Ulrich, of your staff, was extremely helpful and informative at our meeting, and I hope that he and/or several members of the State Bar Committee will be able to illuminate the issues raised here at your November meeting.

With best wishes.

Very truly yours,


Robert McMahon
Staff Attorney

RM:cm

cc: Ms. Malugen, Mr. Wright, Mr. Orr
Mr. Eades

enc.

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§723.051. Additional amounts necessary for support exempt.

723.051. Except as provided in Section 723.052 and in Article 4 (commencing with Section 723.070), the portion of the judgment debtor's earnings which the judgment debtor proves is reasonably necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from levy under this chapter unless the debt is incurred for personal services rendered by any employee or former employee of the judgment debtor. ~~Neither the judgment debtor's accustomed standard of living nor a standard of living appropriate to the judgment debtor's station in life is a criterion for measuring the judgment debtor's claim for exemption under this section.~~ In determining "reasonably necessary", the court is not bound by the station in life or accustomed standard of living of the judgment debtor.

EXHIBIT A

(additions underlined; deletions stricken)

Minutes

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STUDY 77 - NONPROFIT CORPORATIONS (RELATIONS WITH
STATE BAR COMMITTEE)

The Commission heard a brief report from Mr. Sterling concerning the meeting of the State Bar Committee on Corporations that he attended on October 29, 1976. Mr. Sterling reported in substance as follows:

The chairman of the meeting, Mr. Clark, requested a report of the schedule of the Law Revision Commission. Mr. Sterling stated that the Commission was sending a letter to the State Bar Committee. Mr. Sterling reported informally that the Law Revision Commission was in the process of reviewing comments received on its tentative recommendation and making necessary revisions. Among the comments received and reviewed was the objection of the State Bar Committee to adoption of a new Division 4 containing provisions of a general character applicable to all types of corporations; in response to this comment, the Commission has withdrawn its suggestion for a Division 4 and is proposing no changes in the new business corporation law. When the process of review and revision is completed, the Commission will print its recommendation and submit it to the Governor and Legislature. A bill will be introduced for the purpose of setting type for the Commission's report, but the hearing schedule has not yet been discussed. (Mr. Clark inquired whether a preprint bill might not serve this purpose, and Mr. Sterling responded that he would investigate that possibility). The Commission's report would be available, on Mr. Sterling's best estimate, in March. The Commission requested the comments of the State Bar Committee or of its individual members on the Commission's proposals, and would consider the comments whenever received, although the sooner, the better.

Mr. Clark then requested a similar report from Professor Hone of the Assembly Select Committee on Revision of the Nonprofit Corporations Code. Professor Hone stated that they were involved in drafting a nonprofit corporation statute and preparing a series of policy papers for presentation to the State Bar Committee. He indicated that they were also doing some work on the unincorporated association law. He requested that the State Bar Committee work with the Assembly Select Committee in preparing its draft of a nonprofit corporation law in the same manner that the business corporation law was prepared.

Mr. Clark then stated that the objective of the State Bar Committee was to get a good nonprofit corporation statute. He noted that the Bar Committee has a statutory obligation to cooperate with the Law Revision Commission, and that it was the intent of the Bar Committee to cooperate with both the Commission and the Assembly Select Committee. He hoped to ultimately have a single

bill that the Bar Committee could support. (At this point, Ms. Gorman of the Assembly Committee staff, stated that it appeared two bills were inevitable.) To this end, Mr. Clark created a subcommittee to be chaired by Carl Leonard and to be composed of members of the Bar Committee, liaison members from the offices of Attorney General, Corporation Commissioner, Secretary of State, and the nonprofit corporations subcommittee of the State Bar Committee on Taxation. Mr. Clark enjoined the subcommittee to establish a time schedule for its work, with the objective of having major policy issues resolved by March, 1977, if possible. Mr. Sterling requested that he be kept informed of the activities of the subcommittee and be furnished with any materials and given notice of any meetings.

Minutes
November 11 and 12, 1976

STUDY 77.400 - NONPROFIT CORPORATIONS (COMMENTS CONCERNING
DIVISION 2--NONPROFIT CORPORATION LAW)

The Commission considered the portions of Memorandum 76-90 and the Second Supplement thereto not previously considered at the October 1976 meeting, reviewing comments received on Division 2 of the Commission's tentative recommendation. The Commission also considered the comments received concerning the tentative recommendation that were attached to the Third and Fourth Supplements to Memorandum 76-90 but which were not analyzed in Memorandum 76-90 or the Second Supplement thereto. The Commission made the following changes in the tentative recommendation:

§ 5168. Proxy

This section was revised to delete the reference to the power to vote "on a matter" and should be rephrased to more closely parallel the definition of proxy in the business corporation law.

§ 5560. Management of charitable property

The Commission determined to delete subdivision (b), which makes reference to the duty of care of a trustee specified in Section 2261 of the Civil Code; instead, a note should be added to the Comment that the statute does not address the extent to which a trustee's duty applies to the directors of a nonprofit corporation in the management of charitable assets and reference made to Lynch v. John M. Redfield Foundation. A new subdivision (b) should be added to the effect that:

(b) A nonprofit corporation and its directors shall not be liable for an action reasonably required:

(1) To carry out the charitable purposes of the nonprofit corporation; or

(2) To comply with the terms of a transfer of property for charitable purposes to the nonprofit corporation.

Chairman McLaurin dissented from this action.

§ 5561. Indefinite purposes

The Comment should note that a nonprofit corporation may receive an indefinite charitable gift or administer a general charitable trust only in a manner which is consistent with the purposes of the nonprofit corporation.

§ 5562. Institutional trustees

Subdivision (a) was revised to refer to both Sections 1500 and 1502 of the Financial Code. Subdivision (b) was revised to refer to transfer of assets "for purposes of investment and reinvestment." Language should be added to the Comment that the provisions of Section 5562 relating to management of corporate assets do not preclude a nonprofit corporation from purchasing custodial services or investment advice or other investment services. A cross-reference should be made to Section 5563(b).

§ 5563. Private foundations

This section was revised as follows:

5563. (a) This section applies to a nonprofit corporation during any period the nonprofit corporation is deemed to be a "private foundation" as defined in Section 509 of the Internal Revenue Code of 1954, and any provision contained in its articles or other governing instrument inconsistent with this section or to the contrary thereof is without effect.

(b) A nonprofit corporation described in subdivision (a) shall distribute its income (and principal, if necessary) for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954 (as modified by paragraph (3) of subsection (1) of Section 101 of the Tax Reform Act of 1969).

(c) A nonprofit corporation described in subdivision (a) shall not do any of the following:

(1) Engage in any act of self-dealing as defined in ~~subdivision~~ subsection (d) of Section 4941 of the Internal Revenue Code of 1954 (as modified by paragraph (2) of subsection (1) of Section 101 of the Tax Reform Act of 1969).

(2) Retain any excess business holdings as defined in ~~subdivision~~ subsection (c) of Section 4943 of the Internal Revenue Code of 1954.

(3) Make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954.

(4) Make any taxable expenditure as defined in ~~subdivision~~ subsection (d) of Section 4945 of the Internal Revenue Code of 1954 (as modified by paragraph (5) of subsection (1) of Section 101 of the Tax Reform Act of 1969).

§ 5564. Attorney General supervision

The Comment to this section should explain the flexibility that subdivision (b) affords the Attorney General in determining whether an action is necessary. Reference should be made to Section 5103 (rules of civil procedure apply to actions under nonprofit corporation law).

§ 5574. Educational institution defined

The phrase "whether or not providing a full-time course of instruction" was added to the end of the sixth line of subdivision (a).

§ 5613. Special meetings

A cross-reference should be made to the provisions of Section 5627 validating actions taken at meetings not properly called or held.

§ 5620. When notice required

Subdivision (b) should be revised to read, in substance:

(b) Except as provided in Section 5628, the provisions of this article are subject to reasonable provisions in the articles or bylaws.

§ 5623. Manner of giving notice

Illustrations should be added to the Comment of reasonable means of giving notice of meetings that may be provided in the bylaws, such as third-class mail in appropriate cases. The Comment should also state:

It should be noted that nothing in subdivision (b) is intended to require address correction service from the United States Postal Service.

§ 5625. Notice of special meeting

The provision of subdivision (b)(2) that the court shall "summarily" order the giving of notice should be qualified by a requirement that the court find that notice was not given.

§ 5627. Validation of defectively noticed meeting

The provision of subdivision (a)(2) requiring that "each person" sign a waiver, consent, or approval should be revised to require the same number as is required for action by written consent.

§ 5628. Notice required for approval of specific proposals

This provision should be extended to actions that adversely affect the voting rights of members.

§ 5630. Application of article

Subdivision (a) was revised to provide that the article applies to a nonprofit corporation except to the extent the articles or bylaws provide otherwise provided that the bylaws may not decrease the number of consents required. Commissioner Miller dissented from this action.

§ 5632. Number of consents required

The phrase "taking into consideration both approvals and disapprovals of the action" should be clarified and returned to the Commission for further consideration.

§ 5635. Notice required for consent

This section was deleted and the substance of the following provisions substituted for it:

5635. No action may be taken by written consent of less than all of the members entitled to vote on such action, unless consent of all persons entitled to vote has been solicited in writing.

This provision should not be subject to a contrary rule in the bylaws. The reasons for this departure from the business corporation law are that the situation in nonprofit corporations is different than in business corporations in which large numbers of votes may be controlled by a few persons, and in which dissenters may receive monetary compensation.

§ 5715. When class vote required

The reference to action that "would adversely affect a substantial property right of the class" was revised to refer to action that "would adversely affect voting or property rights of the class."

§ 5718. Additional vote required by bylaws

The Comment to this section should explain the reason for subdivision (b).

§ 5719. Action taken by policymaking committee

The reference in subdivision (b) to members who are "representative of the membership" was replaced by a reference to members who are "selected by the membership to represent the membership." A cross-reference should be made to the class vote provisions.

§ 5722. Voting of membership standing in name of minor

A provision should be added to this section that the vote of a minor is not subject to disaffirmance by reason of minority.

§ 5723. Voting of membership held by corporation

The Commission determined to substitute the comparable provisions of the business corporation law for this section.

§ 5731. Execution of proxy

A provision should be added that, where the member's name is placed on a proxy by the member's attorney-in-fact, the attorney-in-fact must also sign the proxy and indicate his status.

§ 5732. Form of proxy

This section should apply only to a solicitation of proxies from 10 or more members in a nonprofit corporation having 100 or more members. Subdivision (a) should refer to "a choice among approval, disapproval, or abstention." Subdivision (d) was revised to read:

(d) This section shall not apply to nor preclude the use of general proxies. As used in this section, a general proxy is one where specific proposals or directors to be voted upon as candidates are not set forth.

The staff should give consideration to placing the last sentence of subdivision (d) among the definitions. The Comment should note that a proxy returned "abstain" or "withhold" should be counted, where appropriate, to determine whether an adequate number of votes have been cast on a matter.

§ 5733. Duration of proxy

A cross-reference should be made to the transitional provision enabling proxies executed prior to the operative date to continue in effect in accordance with prior law.

§ 5745. Enforcement of voting agreements

The words "or on other grounds relating to the jurisdiction of a court of equity" were deleted from this section.

§ 5746. Scope of article (new)

The following provision was added to the statute:

5746. Nothing in this article precludes a nonprofit corporation from providing in its bylaws for a voting trust or other vote pooling agreement on such terms and conditions as it deems appropriate.

Comment. Section 5746 makes clear that the provisions of this article are not intended as the exclusive means by which votes in nonprofit corporations may be pooled, nor are they intended to limit the provisions of the bylaws of a nonprofit corporation that provide for a voting trust or other vote pooling agreement.

Defined Terms:

Bylaws, § 5132
Vote, § 5182

Cross-References:

Permitted contents of bylaws, § 5261

§ 5751. Number of inspectors

This section was revised to provide that the chairman of the board may appoint one or three inspectors but must, upon request of any person, appoint three.

§ 5755. Evidentiary effect of report or certificate of inspector

The following provision was added to this section:

On request of the chairman of the meeting or in the case of an election or vote other than at a meeting of members, the chairman of the board, or of a person entitled to vote at the other meeting or election, the inspector of election shall make a report in writing of any challenge, question, or matter determined and execute a certificate of any fact found.

§ 5762. Jurisdiction and venue

A cross-reference should be made to Section 5762 (place where election is held).

§ 5810. Right of member to bring derivative action

The language in the Comment relating to voting trusts should be clarified to avoid an implication that a nonprofit corporation may not provide in its articles or bylaws for a voting trust.

§ 5831. Grounds of motion

Subdivision (b)(2) was revised to require a finding that there is no reasonable possibility that the defendant will be held liable in the action.

§ 5835. Stay of proceedings

The words "or security is posted as provided in Section 5838" were added at the end of the fourth line of this section.

§ 5912. Extension of corporate existence

The references to "continuous activity as to a nonprofit corporation" were deleted from this section.

§ 6011. Sale or transfer of all or substantially all of assets; approval
of members

The following provision was added to this section:

(c) Notwithstanding subdivision (a), a nonprofit corporation may not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its corporate assets to a subsidiary or to another nonprofit corporation having a common parent with the nonprofit corporation, unless the principal terms of the transaction are approved by the members of the subsidiary or other nonprofit corporation by at least 90 percent of the votes entitled to be cast thereon.

Comment. Subdivision (c) is derived from Section 1001(d) (General Corporation Law), but applies to all transfers or dispositions of all or substantially all of the corporate property, and not merely to sales. Subdivision (c) applies to both transactions under subdivision (a) and under Section 6751(c)(7) (powers of board on dissolution).

§ 6012. Notice to Attorney General required in certain cases

Subdivision (b) was deleted from this section. The Comment should note that subdivision (c) excuses compliance for the family foundation whose sole purpose is the annual turnover to charity of the corporate funds accumulated.

§ 6014. Certificate of resolution and approval; effect as evidence

This section should have a provision added to the effect that the certificate shall state, where applicable, that Section 6012 has been complied with.

§ 6110. Merger or consolidation authorized

Subdivision (b) should be deleted unless staff research reveals a good reason to preserve it. The Comment should note that, although merger of a nonprofit corporation with a business corporation is not authorized, it can be accomplished through conversion to a business corporation and subsequent merger. The listing of defined terms at the end of the Comment should be moved to a cross-reference section.

§ 6142. Notice to Attorney General

This section should be revised to require notice to the Attorney General rather than a copy of the agreement of merger or consolidation.

§ 6146. Effect on bequest, devise, gift, etc.

This section was revised to refer to an instrument which "takes effect or remains payable" after the merger or consolidation. A similar change should be made in Section 6245 (division).

§ 6160. Action to test validity of, or enjoin or rescind, merger or consolidation

The reference in subdivision (b) to an action which is "manifestly unfair" should be replaced by a "clear and convincing evidence" test. Subdivision (c) should be amended to refer to an action "other than an action by the Attorney General." The portion of the Comment that notes the absence of dissenters' rights should indicate the reason why dissenters' rights are not provided for. The staff should also consider the possibility of adding a provision to the effect that nothing in the merger chapter should be deemed to limit or affect the power of the Attorney General over charitable corporations.

§ 6210. Division of nonprofit corporation authorized

Subdivision (b) was deleted. The Comment should indicate that, in case of division of a nonprofit corporation holding charitable assets, the assets continue to be impressed with the charitable trust on which they were held.

§ 6211. Contents of plan of division

Subdivision (a)(7) was revised to refer to provisions as "are desired and appropriate."

§ 6214. Name of new corporation

The last sentence of the Comment was deleted.

§ 6215. Equal treatment of members

This section was deleted.

§ 6220. Approval by board and members

This section was revised to read:

6220. (a) The plan of division shall be approved by the board of the dividing nonprofit corporation. Upon approval, the plan shall be signed by the officers as specified in Section 517⁴ on behalf of the dividing nonprofit corporation.

(b) The plan of division shall be approved by the members of the dividing nonprofit corporation holding a majority of the votes entitled to be cast thereon. The approval of the members may be given either before or after the approval of the board.

§ 6242. Notice to Attorney General

This section should be revised to require sending notice rather than a copy of the plan of division to the Attorney General.

§ 6243. Effect of division

The sentence in the Comment relating to the Uniform Fraudulent Conveyances Act should be deleted.

§ 6244. Rights of creditors and liens preserved

The second sentence of this section was deleted. A new provision should be substituted to the effect that a creditor of the dividing nonprofit corporation may recover judgment against any or all of the resulting corporations. The comment should note that this provision would not affect any agreement among the resulting corporations as to liabilities and indemnification between themselves.

§ 6248. Effect of recording plan

The Comment should have added to it a reference to the subject matter of Section 14460 (conversion).

§ 6260. Action to test validity of division or to enjoin or rescind division

This section should parallel Section 6160 (merger or consolidation).

§ 6410 et seq. Bankruptcy reorganizations and arrangements

This chapter was deleted.

§ 6510. Required books and records

Subdivision (a)(2) was revised to require minutes of committees of the board "to the extent they exercise the authority of the board". Either the statute or Comment should make clear that minutes of meetings of a policy-making committee of members are also required. The portion of the Comment relating to the requirement of former law that membership records be kept "forever" should be revised to avoid the implication that this may never be required under the Commission's recommendation.

§ 6512. Failure to keep records or provide financial statements

The following language was added to the Comment:

Nothing in this section limits the authority of the Attorney General to enforce the duties of the directors of nonprofit corporations organized for charitable purposes under authority of Government Code Sections 12580-12597 or other statutory or common law authority.

§ 6523. Additional required information

This section should be revised to provide that, where the annual report has been waived, the information required by this section should be given in the same manner as the annual report should have been given.

§ 6526. Members' right to obtain fiscal information

The definition of "authorized member" in subdivision (a) should be subject to "such lesser authorization as is specified in the articles or bylaws." Under subdivision (b), the written authorization should be filed with the request, and the nonprofit corporation should have 60 days within which to supply the information.

§ 6610. Inspection by agent or attorney; right to copy and make extracts

This section was revised to read:

6610. (a) Inspection under this ~~chapter~~ division may be made in person or by agent or attorney.

(b) The right of inspection under this division includes the right to copy and make extracts.

A provision should be added that, for purposes of inspection of records, where a nonprofit corporation does not have regular business hours, the records must be available "at a reasonable time of day." A provision should also be added that, where a nonprofit corporation makes its records available for inspection at regular meetings (at least 11 times annually), the requirement that the records be available is satisfied.

§ 6622. Member's right to inspect membership record

This section should be revised to make clear that it is the member's own record that is subject to inspection by the member. The five days allowed to the corporation to make the membership record available should be increased to 10 days. The remainder of Section 6622 was revised to read:

(b) A nonprofit corporation may satisfy a demand for inspection under subdivision (a) by any reasonable means that satisfies the purpose of the inspection.

(c) The use of the information obtained pursuant to this section shall be limited to the purpose stated in the demand.

§ 6623. Authorized member's right to inspect or obtain membership list

The five days' demand period of this section should be changed to 10 days.

§ 6624. Judicial supervision

The staff was directed to investigate the possibility of broadening the power of the court to deal equitably with problems that might arise in complying with the inspection of records requirements; the court should be permitted to have flexibility in devising an appropriate remedy under the circumstances of the case.

§ 6626. Requirements for bylaw deemed to satisfy requirements of Section 6625

Subdivision (a)(1), relating to the number of words in the candidate's statement, was revised to permit a greater number of words to be permitted in the "articles, bylaws, or by resolution of the board."

Subdivision (b)(3) was revised to provide a procedure for communication by a nominee "who has been nominated a reasonable time prior to the election."

The words "of the bylaws" were deleted from subdivisions (b) and (c).

The Comment should make clear that Section 6626 is a "safe harbor," which if complied with is deemed to satisfy the requirements of Section 6625.

§ 6628. Authority of court not limited

This section was deleted. The Comment should be preserved as part of the Comment to Section 6625.

§ 6630. Inspection of financial records and minutes

Subdivision (c) was added as follows:

(c) The right of inspection created by this section extends to the financial records and minutes of a subsidiary of a nonprofit corporation subject to this section.

§ 6640. Director's right of inspection

Subdivision (b) was added as follows:

(b) The right of inspection created by this section extends to books, records, documents, and physical properties of a subsidiary of a nonprofit corporation subject to this section.

§ 6652. Recovery of reasonable expenses by member or director

The words "arbitrarily and completely" were deleted from this section.

§ 6710. Persons who may commence action

Subdivision (a)(3)(11) was deleted. The following Comment should be added at the beginning of the chapter:

Where a nonprofit corporation organized for charitable purposes or holding assets on a charitable trust dissolves, notice to the Attorney General may be required under Section 6012.

§ 6711. Grounds for dissolution action

Subdivision (j) was added as follows:

(j) The liquidation is reasonably necessary for the protection of the rights or interests of a substantial number of the members or of the complaining members.

§ 6740. Application of article

Subdivision (b) was added as follows:

(b) A nonprofit corporation that holds assets on a charitable trust shall give written notice to the Attorney General before making any payment to members pursuant to this article.

§ 6750. Cessation of corporate activities; exceptions

Subdivision (b) was deleted.

§ 6772. Return of assets held on condition or by subordinate body

Subdivision (b) was deleted.

§ 6773. Disposition of assets held on trust or by charitable corporations

This section was prefaced by the phrase "Except as provided in Section 6772." The reference in the Comment to property received on "express" trust was deleted. The Comment should also make clear that, under subdivision (b), the Attorney General need only be joined as a party; an appearance by the Attorney General is not a prerequisite to a court order.

§ 6776. Plan of distribution of securities or assets in kind

This section was deleted.

§ 6784. Effect of order discharging directors or other persons appointed to conduct the winding up (new)

Section 6784 was added as follows:

§ 6784. Effect of order discharging directors or other persons appointed to conduct the winding up

6784. Upon the making of the order pursuant to subdivisions (d) and (e) of Section 6780, the directors or other persons appointed to conduct the winding up are thereby discharged from their duties and liabilities except with respect to completion of the winding up, if necessary.

Comment. Section 6784 is the same in substance as subdivision (b) of Section 1808 (General Corporation Law).

§ 6900. Curative provision (new)

The Commission directed the staff to attempt to develop some sort of curative provision to resolve problems of corporate operation where the record of members, for example, is inadequate. Such a provision might include

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validating language after passage of some time after irregularity in a corporate action, as suggested by one commentator, and might also include a provision authorizing a court order permitting what might otherwise be improper action, as suggested in the materials of the Assembly Select Committee on Revision of the Nonprofit Corporations Code.

STUDY 77.400 - NONPROFIT CORPORATIONS (DIVISION 4)

The Commission considered Memorandum 76-91 and the First Supplement to Memorandum 76-91. The following decisions were made:

(1) The Commission decided not to duplicate in the nonprofit corporation law the provisions contained in Division 4 but instead to incorporate by reference the provisions of the General Corporation Law with appropriate modifications. No amendments to the General Corporation Law are to be recommended although it was recognized that some of the provisions in the General Corporation Law are in need of amendment to make them generally applicable to all corporations. The provisions of Chapter 14 (bankruptcy reorganizations and arrangements) of the General Corporation Law, comparable provisions having been deleted from the nonprofit corporation law, should not be incorporated by reference. The provisions of the General Corporation Law on Shareholder Derivative Actions (Chapter 8) should be incorporated by reference with appropriate modification. The provisions prescribing the evidentiary effect to be given to certain corporate documents and instruments should be included in the nonprofit corporation law itself and not incorporated by reference. The Commission concluded that the provisions to be incorporated by reference did not relate to the internal affairs of nonprofit corporations but were provisions of the General Corporation Law that should be of general application to nonprofit corporations as well as those corporations formed under the General Corporation Law. A provision should be included in the nonprofit corporation law that the General Corporation Law does not apply to corporations formed under Division 2 except to the extent expressly provided in Division 2.

(2) The statement of officers, office, and agent for process for a nonprofit corporation should be filed annually as under the General Corporation Law. However, in the case of a nonprofit corporation under Division 2, the statement should contain all of the following:

(a) The names and complete residence addresses of two of the following officers: the chief executive officer, the secretary, the chief financial officer.

(b) The address of the principal executive office and, if such address is not in this state, the principal business office in this state, if any.

(c) The designation of an agent for service of process.

(3) The existing rule that no fee is required for filing the statement of a nonprofit corporation should be continued without change.

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STUDY 77.400 - NONPROFIT CORPORATIONS (CONFORMING CHANGES)

The Commission considered Memorandum 76-92, and the following decision was made: A new Section 6176 was added to the Business and Professions Code, to read:

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.

APPROVED

Date

Chairman

Executive Secretary