

#77.400

10/15/76

Third Supplement to Memorandum 76-90

Subject: Study 77.400 - Nonprofit Corporations (Comments Concerning Division 2--  
Nonprofit Corporation Law)

Attached to this supplementary memorandum are additional letters we have received commenting on the nonprofit corporations tentative recommendation. We plan to raise the matters discussed in the letters in their appropriate places at the October 1976 meeting. We believe you should read Exhibits LXXIII (green--Department of Corporations) and LXXIV (buff) with particular care since they raise fundamental issues relating to the tentative recommendation that will without question be of critical importance during the legislative process.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

EXHIBIT LXXII

*Law Offices of*

Thos. F. Stack

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(415) 574-2648

October 12, 1976

John H. DeMouly, Esq., Executive Secretary  
California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Re: Tentative Recommendation Relating to Nonprofit  
Corporation Law (July 26, 1976)

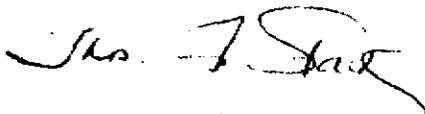
Dear Mr. DeMouly:

In response to your letter of September 22 concerning the Tentative Recommendation Relating to Nonprofit Corporation Law, I found it so voluminous that I was unable to complete any review in detail. Our case load has never been heavier.

The purpose of the revisions of course is commendable. The overlap of the Nonprofit law into the Business Corporation law has caused many omissions or inattentions on behalf of all attorneys who are required to appropriately advise nonprofit clients.

Hopefully, I will be able to complete some review in detail that will permit me to make studious comments.

Very truly yours,



THOS. F. STACK

TFS:njh



## DEPARTMENT OF CORPORATIONS

Sacramento, California  
October 12, 1976

IN REPLY REFER TO:

FILE NO. \_\_\_\_\_

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
Stanford Law School  
Stanford, CA 94305

Dear Mr. DeMouilly:

We apologize for the delay in supplying comments on the Law Revision Commission's July 26, 1976 draft Nonprofit Corporations Law ("Law"). To date we have been unable to give the draft the detailed review it merits and while we include certain comments below, these should be regarded as tentative.

1. At pages 9 and 10, the Commission's report indicates its objective of providing a law with sufficient flexibility to accommodate the widest variety of nonprofit corporations through the device of imposing minimum regulation, permitting more stringent regulation to be selected by individual nonprofit corporations. We are concerned that the focus on those situations least in need of regulation will create a statute open to grave abuse in situations in which the needs for protection are more analogous to the needs of for-profit corporations, even though we recognize the role the Corporate Securities Law plays in dealing with some of these problems. It may be desirable to provide for more specific controls applicable to selected types of nonprofit corporations, specifically those which involve important property rights of members. Alternatively, it may be desirable to strengthen the entire statute with measures applicable to all, perhaps subject to exceptions. It may be argued that the imposition, for example, of such measures as cumulative voting and dissenters' rights would represent but a slight inconvenience in those situations in which such protections are not needed. We are further considering this area and will make specific recommendations.

2. It appears desirable to incorporate a definition of "member" and/or "membership." The failure to do so will necessarily occasion serious uncertainty as to the minimum ingredients in the relationship between an individual and a nonprofit corporation

which are necessary to qualify a person as a "member." We do not feel that the mere use of the term "membership" to describe the relationship should be determinative and we are particularly concerned that persons accorded appropriate proprietary rights and interests in the corporation may find it difficult or impossible to establish their status as members merely because they are not described as such.

We note that Section 115 of the old General Corporations Law defined memberships as the equivalent of shares and that Section 184 of the new General Corporations Law defines shares as the units into which the proprietary interests in a corporation are divided.

3. Both Sections 6160 and 6260 require that the member demonstrate that the transaction is manifestly unfair to a "property right." Section 5715 refers to a "substantial property right." It is unclear whether the term "property right" is sufficiently broad to embrace voting rights and the receipt of services. In addition, we are inclined to question, not solely on the basis that dissenters' rights are not provided for, whether there are not broader interests in nonprofit corporations which warrant protection, such as changes in their purposes.

4. A problem appears to be presented in relation to the Corporate Securities Law by Section 5211(d), which provides that the members of an association automatically become members of a nonprofit corporation created pursuant to Section 5211 unless they file their dissent. Absent an exemption from the provisions of Corporations Code Section 25110, such a transaction would normally be subject to the qualification requirement of that section as a sale of a security.

An additional problem may lie with respect to Section 2511(a), in that the limitations on the term "unincorporated association" are not clear. This is not a defined term and the section is not limited by its terms to nonprofit associations.

Section 5211 appears to suggest that an unincorporated association could be incorporated without either notice to, or the consent of, any of its members.

5. Section 5264(a)(3) requires approval of bylaw amendments by a member only if voting rights are adversely affected. We have not noted a similar protection for "property rights."

6. We are reviewing the provisions of Section 5321 which prohibits cumulative voting for directors in the absence of an express provision in the bylaws. While at page 16 of the Commission's report various considerations are advanced which indicate that there exist situations in which cumulative voting for directors may be inappropriate, it is unclear whether such situations may be regarded as typical and should be controlling in an area of such significance.

7. While Section 5441 seeks to provide due process in the form of notice and hearing upon termination of a membership, it makes no provision for compensation and Section 5263(b) appears to recognize the possibility of a forfeiture.

8. We have as yet arrived at no specific recommendation with respect to the issue raised as to subvention certificates. It should be noted, however, that the provisions of Section 5528 appear inadequate as to the disclosures to be contained in the certificate. Neither the fact nor the terms of subordination are required to be disclosed nor must it be stated that the certificates are not transferable if this is the case.

9. Section 5628 does not refer to Section 5264(a)(3). While we recognize that this section has been incorporated from the new General Corporations Law, further adaptation to the needs of non-profit corporations may be called for.

10. The "division" procedure included in the Law requires further consideration. Preliminarily, we are uncertain as to what might be deemed to fulfill the requirement of Section 6215 that members of each class be treated equally, absent unanimous consent by that class to a different treatment. The report at page 52 suggests that this procedure may be utilized to sever membership factions which cannot agree. It seems reasonable to assume that unanimous consent under such circumstances would be at least improbable, and we are inclined to doubt that the requirement for equal treatment should be deemed satisfied under any circumstances in which each faction of a class of memberships receives memberships in a different entity.

Section 6220 provides for approval of the division by the members of the dividing corporation, though we would suggest that the section be made specific. We are considering recommending that approval also be obtained from the prospective members of each of the constituent corporations.

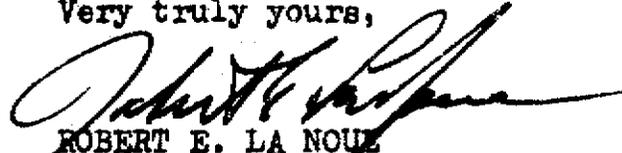
Mr. John H. DeMouilly

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October 12, 1976

If you have any questions with regard to the above, please do not hesitate to contact the undersigned. We are continuing our review of the Commission's draft and will provide further comments.

Very truly yours,



ROBERT E. LA NOUE  
Assistant Commissioner  
(916) 322-3633

REL:bsw

**EXHIBIT LXXIV**

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WALTER L. NOSSAMAN  
1968-1969

October 8, 1976

Dear Mr. DeMouilly:

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford, California 94305

Re: Non-Profit Corporations Law

Dear Mr. DeMouilly:

Thank you for your letter of September 22, 1976 inviting comments regarding the Tentative Recommendations Relating to Non-Profit Corporation Law ("Tentative Recommendations"). I have not previously commented on the proposed drafts or the changes leading up to the Tentative Recommendations because it appeared to me that the Commission rejected my suggestions regarding fair elections in large non-profit organizations. In light of your letter, however, I would not want my silence to be deemed an acquiescence with the Commission's proposals.

The non-profit corporations law covers a variety of diverse non-profit corporations. My interest and experience is primarily with the abuses inherent in large non-profit corporations controlling billions of dollars, in which the members have the right to vote for the Board of Directors.

The most significant problem with this type of non-profit corporation is that they are so structured as to permit the self-perpetuation of management and to exclude the individual members from having any effective voice or vote.

Ironically, this oversight in the existing law is approved rather than corrected in the Tentative Recommendations because the Commission has authorized the self-perpetuation of

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management by allowing the use of corporate funds by management to solicit proxies for management. The Automobile Clubs of California, both Northern and Southern, as well as other large non-profit corporations, spend hundreds of thousands of dollars of corporate funds each year to solicit proxies for management. The Tentative Recommendations would permit this practice to continue but would require a member to solicit proxies at his personal cost of hundreds of thousands of dollars or else not challenge incumbent management. Obviously no member will spend that kind of money and to require such an expenditure is unfair. In Braude v. Havenner, the Court of Appeals thought such election procedures were "unfair and unlawful"; the Superior Court, on retrial, thought such election procedures were "unfair and unlawful"; but the Law Revision Commission apparently thinks such procedures are fair and wishes to make them lawful.

The Tentative Recommendations, of course, provide for an action to determine the validity of contested elections (Section 5760 et seq.) and even purport to codify the rule set forth in Braude v. Havenner. Thus Section 5765 permits the court to do what is reasonable, fair and proper regarding election procedures. But this procedure is hopelessly inadequate. In lieu of setting standards to insure fair election procedures, the Tentative Recommendations sanction existing unfair procedures until and unless a member decides to go to court to change the procedure. The Commission has assumed either that members can always find attorneys who are willing to devote thousands of hours in legal time to a pro bono cause or that members will invest substantial amounts of personal funds for the purpose of challenging unfair election procedures. Such assumptions are false. For example, in the case involving the election procedures of the Northern California Auto Club, the challengers could not appeal an adverse decision because they could neither afford counsel nor find "pro bono" counsel.

I do not intend to comment on each provision of the Tentative Recommendations which individually or collectively result in unfair election procedures in large "member" organizations. I suggest, however, that the Commission be guided by the Findings and Conclusions of the court after retrial in the Braude case, especially Finding of Fact No. 28 which reads as follows:

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"28. In a non-profit corporation with a large membership where each member has one vote, fair and lawful election procedures require that:

"(a) A member who desires to run for election to the Board of Directors must be afforded a reasonable opportunity to be nominated.

"(b) Once nominated, a candidate must have a reasonable opportunity to communicate with members who are entitled to vote and to let those members learn about himself and the reasons why he seeks election.

"(c) All candidates must have an equal opportunity to solicit proxies or votes, and no candidate, including management candidates, may have an advantage over other candidates.

"(d) Every candidate for election as a director should disclose to the members all present or contemplated business relations between the Auto Club and himself or any business of which he is a director, officer, employee, partner or owner of more than 10%."

If the Commission adopts recommendations following the foregoing standards, our Non-Profit Corporation Law should be a model for the nation. (I am enclosing a copy of all of the Findings of Fact and Conclusions of Law for your reference.)

If the Commission desires a more detailed presentation, I would be happy to attend the October 22 or 23 meetings in Los Angeles and specify the provisions which, in my opinion, magnify the injustices inherent in the present law. Otherwise, I will be content to oppose the bill in the Legislature.





1 one of the largest organizations of automobile owners in the  
2 United States, with approximately 1,300,000 master members as of  
3 December 31, 1975.

4 2. The by-laws of the Auto Club in effect on the  
5 dates of trial herein are attached hereto as Appendix I and all  
6 references to by-laws hereafter are a reference to Appendix I.  
7 The by-laws of the Auto Club provide for other classes of members,  
8 but master members are the only class of members who have a  
9 right to vote.

10 3. Plaintiff Braude, since on or about January 1,  
11 1971, and plaintiff Ruddick since prior thereto have been, master  
12 members of the Auto Club.

13 4. Defendants Thomas L. Lowe and Knox Farrand are  
14 directors of defendant Auto Club and are two of the three persons  
15 named in the proxies solicited by the Auto Club. At the time  
16 this case commenced, Joseph Havenner was the third person named  
17 in the proxies solicited by the Auto Club. He has since deceased.  
18 The third person now named in the proxies solicited by the Auto  
19 Club is Harry Cheshire, the current president of the Auto Club.

20 5. At December 31, 1975, the Auto Club had approxi-  
21 mately 79 district offices and employed over 5,000 persons.

22 6. At December 31, 1975, the Auto Club and its  
23 wholly-owned subsidiary ACSC Management Services, Inc., had  
24 consolidated total assets of approximately \$101,700,000. During  
25 the year ended December 31, 1975, the Auto Club had net income of  
26 approximately \$2,700,000 on total income of approximately  
27 \$41,000,000.

28 7. As a service to its members, the Auto Club pro-  
29 vides insurance to its members through the Inter-Insurance Exchange  
30 of the Automobile Club of Southern California, a non-profit  
31 reciprocal insurance exchange organized and existing under the  
32 laws of the State of California. ACSC Management Services

1 acts as the attorney-in-fact for the Inter-Insurance Exchange.  
2 The Board of Governors of the Inter-Insurance Exchange is made up  
3 of some of the members of the Board of Directors of the Auto  
4 Club. At December 31, 1975, the Inter-Insurance Exchange had  
5 total assets of approximately \$343,000,000. For the year ended  
6 December 31, 1975, the Inter-Insurance Exchange had a net oper-  
7 ating loss of \$13,000,000 on total premium and investment income  
8 of approximately \$228,000,000.

9 8. At present the by-laws of the Auto Club provide  
10 for 12 directors. The term of office of each director is three  
11 years. The terms of office are staggered, so that each year the  
12 term expires for one-third of the directors. The by-laws provide  
13 for an annual meeting of the members at which directors are to be  
14 elected for a term of three years to succeed the directors whose  
15 term of office is due to expire.

16 9. The by-laws of the Auto Club provide that each  
17 master member is entitled to one vote at annual meetings, and  
18 that cumulative voting is not allowed. The by-laws provide that  
19 a member may vote by written proxy given to someone else.

20 10. The by-laws of the Auto Club provide for three  
21 methods for nominating directors:

22 (a) A nominating committee composed of five  
23 master members of the Auto Club appointed each year by the Chair-  
24 man of the Board of the Auto Club selects as many nominees as  
25 there are directors to be elected. A master member may submit  
26 names of candidates to the nominating committee for considera-  
27 tion.

28 (b) Nominations may be made by petition in writ-  
29 ing delivered to the Secretary of the Auto Club at least 65 days  
30 prior to the date of the annual meeting signed by not less than  
31 one-tenth of one percent of the total number of master mem-  
32 whose signatures shall have been obtained within 120

1 required date for filing the petition. As of December 31, 1975,  
2 the number of signatures required for nomination by petition was  
3 approximately 1,300.

4 (c) Nominations may be made from the floor at the  
5 annual meeting.

6 11. The Auto Club has no procedures by which members  
7 of the Auto Club seeking to become nominees for director may  
8 solicit petition signatures or proxies from other members or  
9 otherwise communicate with other members of the Auto Club through  
10 Auto Club publications or mailings at the expense of the Auto  
11 Club. Any member desiring to communicate with another member of  
12 the Auto Club is required to do so at his own personal expense.

13 12. The membership list of the Auto Club is kept by  
14 being programmed onto a computer. The data which makes up the  
15 membership list is deemed by the Auto Club to be a trade secret  
16 and confidential business information of the Auto Club and is  
17 maintained by it as such. In order to allow master members to  
18 make use of the membership list without endangering its status as  
19 a trade secret and confidential business information, the Board  
20 of Directors adopted the following Resolution in 1971:

21 "RESOLVED, that the membership list  
22 is confidential and shall not be furnished  
23 or used for commercial or any other pur-  
24 pose that may be detrimental to the Club  
25 or its members. The Executive Vice Pres-  
26 ident is charged with maintaining the con-  
27 fidentiality of the membership list.

28 "Upon written application to the Club  
29 Secretary, a master member may obtain  
30 permission to solicit proxies from the  
31 master membership or a part thereof or  
32 obtain signatures to a petition for nomina-

1 tion of a director or directors from the  
2 master membership or a part thereof by means  
3 of a mailing under the following conditions:

4 "The applicant member shall:

5 "(a) Designate the number of master  
6 members in areas designated by a zip code to  
7 whom mailings shall be directed;

8 "(b) Deposit with the Club a sum which  
9 is estimated by the Club to cover mailing  
10 postage, return postage (based on a 50%  
11 return), mailing envelopes, return envelopes,  
12 labor and computer time, which will be fur-  
13 nished by the Club at cost; total costs when  
14 determined by the Club shall be paid by the  
15 applicant;

16 "(c) Furnish the Club with the material  
17 to be mailed which shall be printed on stan-  
18 dard size paper to fit return envelopes 8 3/4"  
19 x 3 3/4". The Club may refuse to mail any  
20 material which, in its opinion, is inflamma-  
21 tory, inaccurate or not in conformance with  
22 good business practice or not related to the  
23 specific purpose of the mailing as stated above.

24 "If these conditions are met, the Club  
25 will mail the applicant's material to the  
26 requested number of master members in accor-  
27 dance with its standard practice for routine  
28 mailings to the whole or designated part of  
29 the membership.

30 "The return envelopes addressed to a  
31 post office box number shall be delivered  
32 to the Club employees in the presence of the

1 applicant member, or such other master mem-  
2 bers as the applicant may designate, if he so  
3 requests."

4 Assuming a 50% return, the minimum cost would be over \$.30 per  
5 item mailed and the minimum cost for mailing alone which a master  
6 member must personally pay for a communication to all master  
7 members of the Auto Club would be over \$360,000.

8 13. No one has requested petitions from the Auto Club  
9 and no candidate for director has ever been nominated by the  
10 petition procedure provided for in the Auto Club's by-laws since  
11 such procedure was established in October, 1971.

12 14. The Auto Club solicits proxies from master mem-  
13 bers. The proxies solicited are of seven years duration. The  
14 persons entitled to vote such proxies at the dates of trial  
15 herein included defendants Thomas L. Lowe and Knox Farrand.

16 15. Defendants Thomas L. Lowe and Knox Farrand are de-  
17 fendants in this suit solely in their capacity as the holders of  
18 the right to vote the proxies referred to in Finding of Fact No.  
19 14. Plaintiffs and defendants have stipulated, and this Court  
20 finds, that there is no allegation of wrong-doing or improper per-  
21 sonal behavior by defendants Thomas L. Lowe or Knox Farrand, or  
22 by any of the other directors or officers or employees of the  
23 Auto Club. It is solely the election process established in the  
24 by-laws of the Auto Club and as implemented in the past which is  
25 attacked by plaintiff in this action.

26 16. Prior to 1971, when the original complaint in this  
27 action was filed by plaintiffs, the Auto Club solicited proxies  
28 from master members in the following ways:

29 (a) By having an employee of the Auto Club solicit  
30 a proxy from an applicant for membership to the Auto Club at the  
31 time the applicant personally applied, as a part of the appli-  
32 cation process.

1           (b) By soliciting proxies by mail from applicants  
2 who applied for application by mail, as a part of the application  
3 process.

4           (c) By soliciting new proxies from existing mem-  
5 bers by mail upon the expiration of their existing proxies.

6           17. Since approximately November 1, 1971, the Auto  
7 Club has ceased to solicit proxies from applicants for membership  
8 at the time of their application. At the present time, the Auto  
9 Club solicits proxies only from new members who have renewed  
10 their membership for the second year and who do not have valid  
11 proxies on record. The Auto Club presently solicits proxies from  
12 approximately one-seventh of the total number of master members  
13 (approximately 190,000 master members) per year, by mail. The  
14 annual cost incurred by the Auto Club in this solicitation of  
15 proxies from approximately one-seventh of the master members per  
16 year is approximately \$80,000 per year.

17           18. At December 31, 1975, Thomas Lowe, Knox Farrand  
18 and Harry Chesire variously held proxies solicited in the manner  
19 described in Findings of Fact Nos. 16 and 17 from approximately  
20 533,000 members, substantially all of which had been given for a  
21 seven-year period.

22           19. In each annual election for directors since 1970,  
23 all of the proxies held by Joseph Havenner, Thomas Lowe, Knox  
24 Farrand or Harry Chesire have been cast for the candidates nomi-  
25 nated by the nominating committee. No candidate other than one  
26 nominated by the nominating committee has ever been elected to  
27 the Board of Directors of the Auto Club.

28           20. Candidates who are nominated by the nominating  
29 committee are not required to incur any personal expense in order  
30 to be nominated or elected.

31           21. At the annual meeting of the Auto Club held  
32 February 22, 1971, plaintiff Marvin Braude was nominated for

1 director from the floor of the annual meeting. Prior to the  
2 meeting, plaintiff Marvin Braude had, at an expense of approxi-  
3 mately \$3,000, solicited and obtained proxies from approximately  
4 4,687 master members, and this was the number of votes he received  
5 in the election at the annual meeting held on February 22, 1971.  
6 Messrs. Havenner, Lowe and Farrand held more than 728,000 proxies  
7 solicited in the manner described in Finding of Fact No. 16 at  
8 the time of that annual meeting. Each of the three candidates  
9 nominated by the nominating committee received more than 728,000  
10 votes and was therefore elected to the Board of Directors.

11 22. There is no means for a member of the Auto Club to  
12 solicit and obtain signatures of other members in order to be  
13 nominated as a candidate for the Board of Directors except at a  
14 great personal expense or personal solicitation of members.

15 23. The personal expenditure of money and time which a  
16 petition candidate must incur places him at a disadvantage with  
17 respect to the candidate nominated by the nominating committee.

18 24. There is no procedure by which a potential candi-  
19 date or a nominated candidate can express his views to other  
20 members except at his own personal expense.

21 25. The unvarying election as directors of those  
22 nominees chosen by the nominating committee, and the lack of any  
23 other nominees has been contributed to, at least in part, by each  
24 of the following factors:

25 (a) The existing procedures for nomination of  
26 candidates;

27 (b) The lack of reasonable means for master  
28 members seeking election to the Board of Directors to communicate  
29 with other master members;

30 (c) The inability of master members other than  
31 those who are members of the Board of Directors or who are em-  
32 ployed by the Auto Club to have access to the proxy machin-

1 heretofore used by the Auto Club in connection with the election  
2 of directors;

3 (d) The existence of proxies held by proxy holders  
4 appointed by the Auto Club, which proxies are intended to be and  
5 have been voted for nominees of the nominating committee;

6 (e) The use by the Auto Club of its own funds,  
7 employees, records and assets to solicit proxies, while denying  
8 such use to others seeking or who might desire to seek nomination.

9 By reason of the foregoing, the master membership has  
10 been deprived of any fair or effective opportunity to participate  
11 influentially in the choice or selection of candidates for direc-  
12 tor or to vote for candidates for directors other than those  
13 nominated by the nominating committee.

14 26. There is no reasonable means presently provided by  
15 which a petition candidate may solicit proxies or votes except at  
16 his own expense.

17 27. The election procedure followed by the Auto Club  
18 is unfair and unlawful.

19 28. In a non-profit corporation with a large member-  
20 ship where each member has one vote, fair and lawful election  
21 procedures require that:

22 (a) A member who desires to run for election to  
23 the Board of Directors must be afforded a reasonable opportunity  
24 to be nominated.

25 (b) Once nominated, a candidate must have a  
26 reasonable opportunity to communicate with members who are entitled  
27 to vote and to let those members learn about himself and the  
28 reasons why he seeks election.

29 (c) All candidates must have an equal opportunity  
30 to solicit proxies or votes, and no candidate, including manag-  
31 ment candidates, may have an advantage over other candidate

32 (d) Every candidate for election as a d'

1 should disclose to the members all present or contemplated busi-  
2 ness relations between the Auto Club and himself or any business  
3 of which he is a director, officer, employee, partner or owner of  
4 more than 10%.

5 29. The Auto Club can, without significant additional  
6 cost, implement the revised election procedures outlined herein  
7 by the use of the Auto Club's membership publication and other  
8 already existing mailing to members.

9 30. In February, 1971, the Board of Directors of the  
10 Auto Club appointed a By-Law Study Committee, composed of Maynard  
11 Toll, Knox Ferrand and Frederick Larkin, to review the by-laws of  
12 the Auto Club and proposed changes thereto, including changes  
13 proposed by plaintiffs. This committee met on several occasions  
14 and recommended that, among others, the following changes to the  
15 by-laws be made, which changes were adopted at a regular meeting  
16 of the directors on October 17, 1971:

17 (a) The date of the annual meeting was changed  
18 from February to March [§5].

19 (b) The Board of Directors was given more flexi-  
20 bility in setting meetings away from club headquarters [§5].

21 (c) A specific requirement was established that  
22 proxies be filed at least fourteen (14) days before the annual  
23 meeting date [§5].

24 (d) Instead of publication, it was established  
25 that notice of the annual meeting is to be mailed to each master  
26 member at least thirty (30) days prior to the meeting. Such  
27 notice in the Club's Pictorial was specifically made sufficient  
28 [§6].

29 (e) The notice is to name all candidates, and  
30 include a brief biographical description, stating whether they  
31 were nominated by the nominating committee or by petition [§6].

32 (f) The provisions relating to the nominatir

1 committee were changed only in detail. Specific provision was  
2 made for master members to suggest names to the nominating com-  
3 mittee [§25].

4 (g) Provision for nomination of candidates by  
5 petition was added. The petitions must (i) be in writing, (ii)  
6 be delivered to the Club Secretary at least sixty-five (65) days  
7 prior to the annual meeting date, (iii) be signed by a number of  
8 master members equal to .1% of the Club's membership, within 120  
9 days of the annual meeting date [§25].

10 31. A fair election cannot result unless all existing  
11 proxies are voided.

12 32. In order to assure a fair election, it is neces-  
13 sary to enjoin the voting of all proxies in connection with the  
14 election to the Board of Directors of the Auto Club. Existing  
15 proxies may be used for corporate business other than the elec-  
16 tion of directors until the beginning of the next annual meeting  
17 at which time all proxies solicited prior to the effective date  
18 of this judgment will be deemed void.

19 33. The provision of Section 21 of the by-laws of the  
20 Auto Club (requiring a director of the Auto Club to be a master  
21 member, a resident of the territory served by the Club, and less  
22 than 72 years of age, and disqualifying as a director members  
23 whose business consists primarily of specified businesses which  
24 might conflict with the Auto Club's purposes or members holding  
25 elective office) does not result in an unfair or unlawful election.

26 34. The provisions of Section 5(c) of the by-laws that  
27 cumulative voting shall not be allowed does not result in an  
28 unfair or unlawful election.

29 35. The provision of Section 24 of the by-laws that  
30 directors shall be elected for a term of three years or until the  
31 election of a successor does not result in unfair or unlawful  
32 elections.

1           36. The provision of Section 24 of the by-laws that  
2 there shall be three classes of directors, the terms of each  
3 class expiring in different years, does not result in unfair or  
4 unlawful elections.

5           37. In accordance with Sections 2236-2238 of the Cali-  
6 fornia Corporations Code, this action is equitable in nature.  
7 This action has commenced and been maintained for the benefit of  
8 all of the members of the Auto Club. Plaintiffs' action in  
9 bringing this action has resulted in a disposition that has  
10 conferred substantial benefits upon the Auto Club and its mem-  
11 bers, in that the basic right of suffrage has been restored to  
12 the members of the Auto Club. As a result of this case, crucial  
13 adjustments have been made to the election procedures of the Auto  
14 Club which will ensure to the members the meaningful right to  
15 express themselves in the election of directors. As a result of  
16 the foregoing, plaintiffs are entitled to recover from defendant  
17 Auto Club reasonable attorneys' fees in connection with the  
18 original trial before this Court, the subsequent appeal to the  
19 Court of Appeal, and the further trial before this Court upon  
20 remand by the Court of Appeal, *which fees the Court finds to be*  
21 *\$90,000.*

22           38. The Conclusions of Law hereinafter set forth are  
23 incorporated herein as findings of fact by reference.

24 CONCLUSIONS OF LAW

25           1. The provision of Section 21 of the by-laws of the  
26 Auto Club (requiring a director of the Auto Club to be a master  
27 member, a resident of the territory served by the Club, and less  
28 than 72 years of age, and disqualifying as a director members  
29 whose business consists primarily of specified businesses which  
30 might conflict with the Auto Club's purposes or members holding  
31 elective office) are reasonable, and the Auto Club may continue  
32 to require candidates for director to meet the requirements of  
Section 21.

1           2.    The provisions of Section 5(c) of the by-laws that  
2 cumulative voting shall not be allowed is a reasonable exercise  
3 of corporate judgment by the Board of Directors and does not  
4 result in an unfair or unlawful election.

5           3.    The provision of Section 24 of the by-laws that  
6 directors shall be elected for a term of three years or until the  
7 election of a successor is reasonable and does not result in  
8 unfair or unlawful elections.

9           4.    The provision of Section 24 of the by-laws that  
10 there shall be three classes of directors, the terms of each  
11 class expiring in different years, is reasonable and does not  
12 result in unfair or unlawful elections.

13           5.    The provision of Section 25(a) of the by-laws con-  
14 cerning the nomination of directors by a nominating committee is  
15 not inherently unreasonable but is reasonable only in conjunction  
16 with the additional nominating procedures hereinafter provided.

17           6.    The election procedures of the Auto Club do not  
18 provide members who wish to seek election to the Board of Direc-  
19 tors with a reasonable means or opportunity to be nominated or  
20 elected, and such procedures are therefore unfair and unlawful.

21           7.    Master members seeking election to the Board of  
22 Directors should be able to communicate with other members of the  
23 Auto Club with the same facility and lack of personal expense as  
24 is presently accorded to candidates nominated by the nominating  
25 committee.

26           8.    It is unfair and unlawful for candidates nominated  
27 by the nominating committee to enter an election with a sub-  
28 stantial percentage of the votes of members assured by means of  
29 proxies obtained by the procedures described in Finding of Fact  
30 No. 17.

31           9.    In its election procedures, the Auto Club must  
32 provide each candidate with a reasonable opportunity and che

1 (a) to be nominated, (b) to make his candidacy, his qualifica-  
2 tions and his reasons for seeking office known to the voting  
3 members, (c) to solicit proxies or votes, and (d) to be elected  
4 by an election procedure which does not tend to operate in favor  
5 of any one candidate or group of candidates.

6 10. The following election procedures must be imple-  
7 mented by the Auto Club in order to provide fair and lawful  
8 election procedures:

9 (a) A suitable time ahead of each annual elec-  
10 tion, each master member must be advised, either by notice printed  
11 in the Auto Club's membership publication (the "Auto Club Picto-  
12 rial") and mailed to each master member, or by means of other  
13 notice given by mail, of the fact that an election for directors  
14 is forthcoming and of the steps that should be taken by any  
15 member to avail himself of the opportunity to run for office.

16 (b) The procedures set forth hereafter must be  
17 made available to any potential candidate otherwise qualified  
18 submitting to the Secretary of the Auto Club a notice of candi-  
19 dacy signed by not less than 50 master members indicating that  
20 they support the potential candidacy of the member.

21 (c) Once such a notice of candidacy is properly  
22 submitted, the potential candidate shall have the right to have a  
23 preliminary notice of his candidacy announced to the members in  
24 the Auto Club's membership publication mailed to each master  
25 member or, at the option of the Board of Directors, by means of  
26 other reasonable notice mailed to each master member. In such  
27 announcement the potential candidate must be allowed to state his  
28 qualifications for office and/or his reasons for wanting to be  
29 nominated to the Board of Directors, in 150 words or less. A  
30 photograph of the potential candidate need not be required to be  
31 included in the announcement, but a photograph may be allowed  
32 the discretion of the Board of Directors. Included as a r

1 such announcement must be a nomination coupon for each potential  
2 candidate, addressed as designated by the potential candidate, by  
3 which members may sign their name in support of the nomination of  
4 the potential candidate.

5 (d) In addition, signatures on a nominating  
6 petition may be solicited by any potential candidate in any other  
7 lawful manner, including solicitation at any of the offices of  
8 the Auto Club and use of the Auto Club's membership list pursuant  
9 to the resolution of the Board of Directors adopted November 18,  
10 1971 (Exhibit "T" on remand).

11 (e) Any otherwise qualified member who has secured  
12 signatures of master members aggregating one-tenth of one percent  
13 of the total number of master members of the Auto Club since the  
14 date of the last election and who has complied with the other  
15 provisions of the by-laws of the Auto Club shall be a duly nom-  
16 inated candidate for election as a director.

17 (f) Notice of the annual meeting must be given to  
18 each master member a suitable time ahead of each annual meeting,  
19 either by notice printed in the Auto Club membership publication  
20 and mailed to each master member, or by means of other notice  
21 mailed to each master member. The notice must contain (in alpha-  
22 betical order) the name of each nominee for election to the Board  
23 of Directors and the phrase "nominated by the nominating com-  
24 mittee" or "nominated by petition" as applicable. All candidates  
25 (including those nominated by the nominating committee) must be  
26 given the opportunity, but shall not be required, to have the  
27 notice of annual meeting include a photograph of themselves, a  
28 biographical description not exceeding 75 words, and a statement  
29 of their views or reasons why they want to be elected not  
30 exceeding 250 words. Such statement may not be altered or modi-  
31 fied by the Auto Club without court permission except to elimi-  
32 nate items which in the written opinion of counsel would expose

1 Auto Club to a substantial risk of liability such as matter which  
2 is libelous. Each candidate must be required to also set forth a  
3 separate statement listing all present or contemplated business  
4 relations between the Auto Club and himself or any business of  
5 which he is a director, officer, employee, partner or owner of  
6 more than 10%.

7 (g) Voting for directors must be by means of a  
8 ballot mailed to each master member. The ballot must set forth  
9 (in alphabetical order) the names of the nominees for election,  
10 and must provide a means for the master member to indicate the  
11 nominees for which he wishes to vote. The failure of a master  
12 member to vote may not be deemed to be a vote for any candidate.  
13 Proxies may not be used to vote for directors.

14 (h) The ballot may provide a means for a master  
15 member to appoint a proxy to vote on any matters (other than  
16 election for directors) put to the members at the next annual  
17 meeting and at any time thereafter prior to the next following  
18 annual meeting.

19 (i) The cost of all of the foregoing procedures,  
20 except for the procedure set forth in subparagraphs (b), (d) and  
21 (e) above, and except for cost of return postage on the nomi-  
22 nating coupon shall be borne by the Auto Club.

23 11. No proxies may be used to vote in any election for  
24 the Board of Directors since a fair election or vote of the  
25 members cannot otherwise result; provided, however, proxies may  
26 be used for any lawful corporate purpose other than the election  
27 of directors or modification of election procedures.

28 12. It is not necessary to fair and lawful election  
29 procedures to require that the entire Board be elected at the  
30 first meeting at which the new election rules are implemented.  
31 The present directors of the Auto Club may continue to serve  
32 until the expiration of their current respective terms.

1           13. Each election for directors to the Auto Club here-  
2 after will be conducted substantially in the manner set forth  
3 herein, unless and until election procedures are changed by vote  
4 of the membership specifically authorizing such changes. Attached  
5 hereto as Appendix II are the specific by-law changes which this  
6 Court finds necessary to carry out its findings and conclusions,  
7 and which this Court hereby orders the Board of Directors of the  
8 Auto Club to adopt at the next regular monthly meeting of the Board  
9 of Directors. Said by-laws may subsequently be amended provided  
10 any such amendment is consistent with these findings and conclusions  
11 and does not favor incumbent directors in the election process.

12           14. All findings of fact hereinabove set forth are  
13 incorporated herein as conclusions of law by reference.

14           15. Nothing herein or in the judgment shall either  
15 preclude or permit the use of the Club funds or staff in con-  
16 nection with supporting or opposing election of particular direc-  
17 tors since this issue need not be decided in this proceeding.

18           16. The next annual meeting and election for directors  
19 of the Auto Club shall be held in accordance with the procedures  
20 set forth herein.

21           17. This Court shall retain jurisdiction of this  
22 matter for the purpose of resolving any disputes or controversies  
23 between the parties in respect of the manner of nominating or  
24 electing directors.

25           18. Plaintiffs are entitled to recover their costs of  
26 suit herein against the Auto Club.

27           19. In order to advise all members of the Auto Club of  
28 the results of this litigation, the Auto Club shall as soon as  
29  
30  
31

32 // // //

1 practicable publish the Findings of Fact, Conclusions of Law and  
2 Judgment in this matter in the Auto Club's membership publication  
3 mailed to each master member.

4 DATED: Apr. 23, 1976

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6                     COLE                      
7 JOHN L. COLE  
8 Judge, Superior Court

8 Approved as to form:  
9 Adams, Duque and Hazeltine

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11 By \_\_\_\_\_  
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# ARTICLES OF INCORPORATION AND BY-LAWS OF THE AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

IN EFFECT MAY 1, 1975

## ARTICLES OF INCORPORATION

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, a majority of whom are residents of the State of California, have this day associated ourselves together for the purpose of forming a corporation under the laws of the State of California.

AND WE HEREBY CERTIFY:

FIRST: The name of the said corporation shall be AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

SECOND: The specific and primary purposes for which this corporation is formed are:

(a) To promote the construction, improvement, and maintenance of good roads, to make, publish and dispense all maps of touring or other information consistent with the uses of the Club and to provide for the adequate connecting, marking of roads and highways;

(b) To promote just and uniform highway or other legislation in any way pertaining to motor vehicles or the ownership or use thereof;

(c) To promote and protect the interests of, to combine and prevent fraud or imposition upon, and to encourage association and consultation of, all persons owning or operating automobiles. Also to advise with and assist members of this corporation in the protection and enforcement of their rights in any matter connected with their ownership or use of automobiles;

(d) To procure or to provide for members of this corporation or the general public, within the state of California or elsewhere and in any manner whatsoever, such services, assistance, facilities or commodities as may appear desirable, including, but not limited to, travel services of all types, finance services, retail or wholesale buying or selling, instructional services, and generally any other service or activity which the Board of Directors of this corporation may deem desirable to further the interests of the corporation, its members or the public;

(e) To engage in any or all activities which are in the general interest of the motoring public in any manner whatsoever as the corporation may deem desirable; to produce and to disseminate information and materials of benefit to the community at large.

As an incident to the primary purposes, the general purposes and powers are:

(f) To procure and provide for members of this corporation in any manner whatsoever, all kinds of insurance and in so doing, act as agent or broker of any insurance company or other concern;

(g) To solicit and contract for and give publicity to all kinds of advertising, materials, and information likely to advance the interests of this corporation, its business, purposes, departments, any of its members;

(h) To borrow or loan money and to buy, sell or otherwise acquire in any manner whatsoever, all kinds of personal property including stocks, bonds, and evidences of indebtedness, which the corporation may deem necessary or convenient for the purposes of its business;

To purchase, lease or otherwise acquire, such real estate improved or unimproved, situated anywhere, and to build, construct or otherwise acquire such buildings thereon, as the corporation may deem desirable and to dispose of any property owned or acquired.

THIRD: The county where the principal office for the transaction of business of the corporation is located is the County of Los Angeles, State of California.

FOURTH: The existence of said corporation shall be perpetual.

FIFTH: (a) The number of Directors of said corporation shall be nine.

(b) The names and addresses of the persons who were named to act as the first directors of this corporation were:

Russell D. Holabird, L.A., Cal.	William K. Cowan, L.A., Cal.
Lee Chamberlain, L.A., Cal.	Harry C. Turner, L.A., Cal.
William Lambert, L.A., Cal.	Edward T. Off, L.A., Cal.
Homer Laughlin, L.A., Cal.	Arthur L. Hawes, L.A., Cal.
Walter D. Wise, L.A., Cal.	

SIXTH: This corporation is organized pursuant to the General Nonprofit Corporation Law of the State of California and, not having for its object pecuniary profit, shall have no capital stock.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 31st day of October, 1900.

Russell D. Holabird	Lee Chamberlain
John H. Martindale	William K. Cowan
Harry C. Turner	William Lambert
Homer Laughlin	Edward T. Off
Walter D. Wise	Arthur L. Hawes

## BY-LAWS

### MEMBERSHIP

Section 1. There shall be three classes of members as follows:

#### (a) MASTER MEMBERS

Master members shall be admitted upon written application made upon the membership form furnished by the Club and accompanied by the required fees and dues. Applications shall be subject to approval and acceptance by the Board of Directors or any person or persons designated by them.

Master memberships shall expire one year from the date of issuance. Master members are the only members who have a right to vote.

#### (b) ASSOCIATE MEMBERS

Associate membership is limited to (1) the spouse of a master member and (2) the dependent relatives, under the age of 21, of a master or complimentary member, who are residents of the same household. A master or complimentary member, on payment of the required fees, may apply for associate memberships. A master or complimentary member shall be accountable to the Club for the conduct and service demands of associate members for whom he has obtained memberships. Associate members have no voting or other rights but shall enjoy all of the privileges of Club service. Associate Memberships shall expire on the same date as the master or complimentary membership.

#### (c) COMPLIMENTARY MEMBERS

Complimentary members shall be persons who have performed service, for a period of not less than twenty-five (25) years, as employees of the Club, and the spouse of any such person, if a resident of the same household. Persons qualified shall enjoy the privileges of the Club at the discretion of the President under authority granted by the Board of Directors. They shall be exempt from membership fees and dues.

Complimentary memberships shall expire one year from the date of issuance.

### Section 2. TERMINATION OF MEMBERSHIP

A membership may be terminated as follows:

(a) A member may at any time voluntarily resign by delivering a written notice to the Secretary.

(b) When the Secretary receives notification of the death of a member, the membership shall be considered automatically terminated.

(c) The Board of Directors may terminate a member for conduct deemed by them harmful to the welfare, standing or best interest of the Club.

## OFFICERS

Section 10. The officers of the Club shall be a Chairman of the Board and a Vice Chairman of the Board, each of whom shall be elected from the members of the Board of Directors and who shall serve without compensation, and such additional officers as hereinafter designated. There shall be a President, one or more Vice Presidents as designated and described by the Board, a General Counsel, a Secretary, a Treasurer and Assistant Secretaries and Treasurers as may be deemed necessary by the Board of Directors.

The Board of Directors shall determine and fix the salaries of the officers. The Board of Directors shall elect the required officers of the Club at the first meeting of said Board after the annual meeting of members and said officers shall serve until the election and qualification of their successors.

Section 11. A person may not serve for more than two successive full terms as Chairman of the Board. If a person has served two full terms as Chairman of the Board, he will not be eligible for election again until two years have elapsed since his last term.

Section 12. The Board of Directors is hereby authorized to elect any person who has served on the Board of Directors to the position of Honorary Director. Such Honorary Director shall not be a member of the Board of Directors, nor have any of the powers and duties of a Director. He shall be entitled to attend meetings of the Board of Directors and any committee thereof and may be given the privilege of the floor at any such meeting, but shall not be entitled to vote.

Section 13. All vacancies which occur in any of the offices of the Club may be filled by the Board of Directors for the unexpired term, and said Board shall have power to remove any officer by a two-thirds vote of the entire membership of the Board.

Section 14. The Chairman of the Board shall preside at all meetings of the Board of Directors.

He may appoint such special committees as he may deem desirable to study and report upon any matter of interest to the Club or its members.

At the first regular meeting of the Board of Directors held after each annual election of officers, he shall appoint the following Standing Committees, composed of Board Members, to serve for the ensuing year, and the Chairman of each:

- (1) Public Service Committee
- (2) Finance & Audit Committee
- (3) Highway & Transportation Committee
- (4) Building Committee
- (5) Member Service Committee.

Section 15. The Vice Chairman of the Board shall assist the Chairman of the Board in the discharge of his duties when called upon and in his absence shall succeed to the functions and perform the duties which would be required of the Chairman of the Board if he were present.

Section 16. The President shall have general supervision of the business of the Club, of all its departments and subdepartments, and the employees thereof. He shall maintain, or cause to be maintained, appropriate accounts relative to the financial condition of the Club. He shall report to the Board of Directors from time to time in reference to the financial condition of the Club and the activities and procedures of the several departments of the Club. He shall cause to be kept a correct roll of the membership of the Club, but in the interests of the membership shall not give access thereto for any reason whatsoever unless required by the Board of Directors. He shall also perform such other duties as may be incidental to his office or may be required of him by the Board of Directors.

Section 17. The Secretary shall keep a true record of all the acts and proceedings of the meetings of the Club and of the meetings of the Board of Directors.

The Assistant Secretaries shall assist the Secretary in the discharge of his duties when called upon, and in his absence shall succeed to the functions and perform the duties which would be required of the Secretary if he were present.

Section 18. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Club and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned him by the Chairman or by the Board of Directors.

1) The Board of Directors by resolution may vest in the President or someone designated by him in writing, authority to terminate memberships if the conduct of the member or his demands for service are excessive to the extent that they are detrimental to the welfare, standing and best interest of the Club or to other members. The termination may be effected by either (1) refusal to accept payment for membership renewal, or (2) upon written notice of termination being mailed to said member.

Termination shall entitle the member, if in good standing and not in arrears or indebted to the Club, to a return of any unearned dues, calculated on a pro rata basis, provided all membership cards are surrendered.

## ENTRANCE FEES AND DUES

Section 3. The amount of the enrollment fees, if any, the amount of the annual dues for master and associate members, the amount of transfer fees and the conditions under which said fees shall be paid or waived shall be established from time to time by resolution of the Board of Directors.

Section 4. Any member whose dues for the following year are not received by the Club on or before the expiration date of his membership shall be deemed delinquent. A delinquent member shall have no right to vote and any service of the Club may be refused to such member. Subsequent restoration to membership of a delinquent member shall be upon such terms and conditions as may be prescribed by the Board of Directors or at the discretion of any person or persons designated by the Board.

## MEETINGS

### Section 5. ANNUAL MEETINGS

(a) The annual meeting of the members of the Automobile Club of Southern California shall be held on the second Monday of March of each year, if not a legal holiday, or if a legal holiday, then on the next succeeding business day, at a place to be designated and set by the Board of Directors.

(b) The order of business shall be determined by the presiding officer.

(c) Voting may be by ballot or voice vote as determined by the presiding officer. Cumulative voting shall not be allowed.

If a member desires to vote by proxy, such proxy, to be counted at the meeting, must be signed by the member, duly dated and filed with the Club Secretary not less than fourteen (14) days prior to the date of the meeting.

A vote by the holder of any proxy or proxies, certified by the Club Secretary as being properly filed with the Club, shall be taken to be as many votes as there are proxies held by him.

Section 6. NOTICE OF THE ANNUAL MEETING shall be mailed to each master member not less than thirty (30) days in advance of the meeting. Notice of the meeting printed in the Club's membership publication and mailed to each master member not less than thirty (30) days in advance of the meeting shall be sufficient notice.

The notice shall contain the following:

1. Date, time and location of the annual meeting of members.
2. General purposes of the meeting.
3. Names of nominees selected by the Nominating Committee or nominated by petition with brief biographical description.

Section 7. SPECIAL MEETINGS of members may be called by the Chairman of the Board in his discretion, and shall be called by the Chairman of the Board upon request of two-thirds (2/3) of the Board of Directors or upon petition filed with the Club and signed by one percent (1%) of the master members. The publication of notice and the conduct of special meetings shall be the same as prescribed in Sections 5 and 6 for Annual Meetings.

Section 8. A QUORUM shall consist of five percent (5%) of the master members present in person or by proxy and no business may be transacted at any meeting of members unless a quorum is present.

In the absence of a quorum, by a majority vote, the members present in person or by proxy may adjourn the meeting from time to time without further notice.

Section 9. The Board of Directors may appoint an Election Committee consisting of a Chairman and two ballot clerks, to conduct the voting at any meeting of members. They may also appoint an Inspector of Elections in advance of any meeting of members.

The Assistant Treasurers shall assist the Treasurer in the discharge of his duties when called upon, and in his absence shall see to the functions and perform the duties which would be performed by the Treasurer if he were present.

Section 19. The General Council shall have general supervision over the legal affairs of the Club.

Section 20. The Vice Presidents, as designated and described by the Board, shall assist the President in the discharge of his duties and in so doing shall have supervision over affairs of the Club pertaining to such matters as may be directed by the Board of Directors or the President.

#### DIRECTORS

Section 21. To be elected a Director of the Club a person shall be:

1. A master member;
2. A resident of the territory served by the Club; and
3. Less than 72 years of age.

A person elected may continue to serve for his full term of office although attaining the age of 72 years.

No member shall be elected a Director if his business consists primarily of the manufacturing, financing or selling of automobiles; producing or selling gasoline or oil products; constructing roads or highways. No member shall be elected as a Director or continue to serve if so elected, if holding a Federal, state, county, or city public elective office.

The purpose of the foregoing is to remove any conflict of interest and to keep the Club free of political ties.

No more than four directors may be residents of a county or counties other than the county in which the principal place of business of the Club is located, except that if a director transfers his residence from such county to another county within the territory served by the Club at a time when four other directors reside outside such county, he shall be deemed qualified to serve the balance of his term.

Section 22. The number of directors of this Corporation shall be not less than nine nor more than twelve until changed by amendment of the Articles of Incorporation or by a by-law duly adopted by the members amending this section. The exact number of directors shall be fixed from time to time, within the limits specified in this section, by a by-law or amendment thereof duly adopted by the Board of Directors.

Section 23. The exact number of directors of this corporation shall be twelve until changed by a by-law or amendment thereof duly adopted by the Board of Directors.

Section 24. Directors shall be elected at the annual meeting of members for terms of three years (3), or until election of their successors.

There shall be three (3) classes of directors. Each director when elected, shall be designated as of the class of the particular year in which his term of office is fixed to expire. At each annual meeting the members shall elect a number of directors equal to the number of directors in the class whose terms expire at such meeting.

At this time the present members of the Board of Directors are assigned to classes as follows:

##### CLASS OF 76

J. Leland Atwood  
Knox Farrand  
Thomas L. Lowe  
Walter B. Gerken

##### CLASS OF 77

A. A. Milligan  
Maynard J. Toll  
Norman Barker, Jr.  
Roger S. Woolley

##### CLASS OF 78

Frederick G. Larkin, Jr.  
Joseph B. Platt  
Albert C. Martin  
William M. Garland

Each master member shall be entitled to cast one vote in person or by proxy, as provided in Section 5, for each office to be filled. The persons, equal in number to the number of offices to be filled, receiving the highest number of votes shall be elected.

#### Section 25. NOMINATIONS OF DIRECTORS

At any meeting of members no person shall be eligible for election to the Board unless nominated in accordance with the provisions of this section.

(a) At least ninety (90) days in advance of the date of the annual meeting the Chairman of the Board shall appoint a Nominating Committee composed of five (5) master members of the Club.

The Nominating Committee shall at least sixty-five (65) days prior to the annual meeting submit to the Secretary a list of nominees which shall contain as many names as there are directors to be elected. The names of such nominees shall be shown on the ballot (if there are other nominations) as nominated by the Nominating Committee. A master member may submit the name and qualifications of a candidate to the Nominating Committee for their consideration by supplying the Club Secretary with the necessary information.

(b) Nominations for the number of directorships to be filled at such annual meeting may also be made by petition, provided that to be valid any such petition for nomination shall be (1) in writing, (2) delivered to the Secretary at least sixty-five (65) days prior to the date of the annual meeting, (3) signed by master members whose signatures shall have been obtained within one hundred twenty (120) days of the required date for filing the petition with the Secretary, and (4) signed by master members who shall have voting rights at the time of such delivery to the Secretary and who shall constitute in number not less than one-tenth of one percent (.1%) of the total number of master members in good standing at that time. The names of such nominees shall be furnished to all master members as provided in Section 6, and shall be shown on the ballot as being nominated by petition.

(c) A master member may submit other nominations at the annual meeting of the Club, which together with the nominations made by the Nominating Committee and by petition shall be voted upon at said meeting.

Section 26. Any vacancy occurring on the Board of Directors, as such term is defined in California law, may be filled by a majority of the remaining directors, though less than a quorum.

The Board of Directors, at the time of filling the vacancy, shall designate and assign the new director to a class as defined in Section 24.

Section 27. Regular meetings of the Board of Directors shall be held at the office of the Club, or at any such place as may be designated by the Chairman of the Board, at three-thirty o'clock in the afternoon on the third Thursday of each month.

Section 28. The Chairman of the Board may call special meetings of the Board of Directors at a time and place to be designated by the Chairman and must call a special meeting upon the written request of two members of the Board.

Section 29. The Secretary shall notify each member of the Board of Directors of a special meeting by mailing to his last known post office address, postage prepaid, at least two days before any such meeting, a written or printed notice thereof, giving the time, place and object of such meeting. Special meetings may be held at any time or place without notice by unanimous consent of the Board, entered in the minutes.

Section 30. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all members of the Board individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of the directors.

Section 31. Five Directors shall constitute a quorum for the transaction of business, and every resolution passed by a vote of a majority of directors present when duly assembled shall be a valid, corporate act. Unless a quorum is present, no business may be transacted.

Section 32. The Board of Directors may appoint an Advisory Board which shall consist of one or more persons residing in each county in the territory served by the Automobile Club of Southern California. The members shall be recommended by the Chairman of the Board and shall serve for terms of three years, but for no more than two consecutive terms.

To be appointed a member of the Advisory Board, a person shall be:

1. a master member,
2. a resident of the county that he is appointed to represent, and
3. less than 72 years of age.

If a member ceases to be a master member or transfers his residence from the county of his appointment, he is disqualified from office.

The President shall prepare and maintain a sequential schedule for the terms of office of the members from each county so that no more than one term per county shall expire in the same year. The expiration dates of the terms of incumbent members shall be adjusted in accordance with the schedule and approved by the Board.

Members of the Advisory Board shall direct to the attention of the Board of Directors and to the President their points of view and advice concerning the policies of the Club and other matters which affect the motoring public and the progressive development and welfare of the Club in their respective counties.

Section 32. The Board of Directors shall have power:

(a) To appoint any committee it may deem necessary for the transaction of any business which may be referred to it by the Board, or for any purpose whereby the best interests of the Club will be promoted;

(b) To adopt rules and regulations for the transaction of the business of the Club, the business of the Board of Directors or of any committee;

(c) To enforce or remit penalties for any violation of these By-Laws by a member or for any conduct which is detrimental to the welfare of the Club;

(d) To remit the fees or dues of any member whenever the Board considers the same necessary or desirable for the promotion of the best interest of the Club, and to delegate such power to the extent the Board may deem appropriate;

(e) To elect members as provided in these By-Laws;

(f) To change at any time the services rendered or to be rendered to members;

(g) To perform all other lawful duties and functions devolving upon them as directors.

Section 34. The Member Service Committee shall have jurisdiction over matters pertaining to direct services offered to members of the Club. The Member Service Committee may also make such investigation of persons proposed for membership or of any member concerning whom complaint is made as shall be ordered by the Board of Directors or in the absence of such order, the Committee shall make such investigation as it may deem necessary.

Section 35. The Building Committee shall have jurisdiction of all matters concerning the acquisition, design, construction, sale, rental or improvement and equipment of real property utilized in the operations of the Club, and shall make recommendations thereon to the Board of Directors.

Section 36. The Public Service Committee shall have jurisdiction over all matters relating to public and community service activities of the Club except such matters as fall within the jurisdiction of the Highway & Transportation Committee as provided in these By-Laws.

Section 37. The Finance & Audit Committee shall have general supervision of the finances of the Club and shall make recommendations to the Board of Directors as the Committee may consider necessary to keep the finances of the Club in a safe and prosperous condition with full power and authority to invest from time to time the available funds of the Automobile Club of Southern California in such amounts as they deem advisable.

The Committee shall also have jurisdiction over all matters relating to the preparation and submission of an annual operating and capital forecast to the Board of Directors for approval.

The Committee shall review policies relating to facilities and operations, shall review the salaries of officers and executives of the Club, and shall make recommendations thereon to the Board of Directors.

The Committee shall have jurisdiction to direct and supervise audits conducted by independent public accountants and shall annually recommend to the Board of Directors a firm of certified public accountants to be selected by the Board to conduct the annual audit.

The Committee shall review audit reports and recommendations received from the auditors and report thereon to the Board of Directors with such recommendations as it may deem appropriate.

Section 38. The Highway & Transportation Committee shall have jurisdiction of all matters connected with proposed or existing roads and highways and which may concern their financing, construction, maintenance, or proper signposting, and matters relating to public transportation.

## GENERAL PROVISIONS

Section 39. All moneys belonging to the Club shall be deposited in its name with a bank or banks to be designated by the Board of Directors, and shall be disbursed only by check signed by such officers or employees of the Club as may be authorized so to do by the Board of Directors;

Section 40. A Club emblem may be adopted by the Board of Directors and offered to members on such terms as it shall determine.

Section 41. Except as otherwise provided in the By-Laws, all notices, required by law or these By-Laws, may be given to members by any one of the following methods as decided upon by the Board of Directors.

(a) By mailing such notice to each master member enclosed in a stamped envelope addressed to the last known address of such member as shown by the records of the Club, or

(b) By publishing such notice in the AUTO CLUB NEWS PICTORIAL or that publication which is the official organ of the Automobile Club of Southern California and by mailing a copy of such publication in which said notice was published to each master member.

Section 42. These By-Laws may be amended or repealed, or new By-Laws may be adopted, by a vote of two-thirds of the members of the Board of Directors present at any regular, special, or adjourned meeting of said Board.

Section 43. Indemnification of Directors, Officers and Employees. The Board of Directors shall authorize the corporation to pay the expenses incurred by a present or former director, officer or employee of the corporation in any action threatened or brought against such person to impose a liability or penalty for an act alleged to have been committed by such person while a director, officer or employee, or committed by the corporation, or by both, or satisfy any judgment or fine rendered or levied therein, unless the Board of Directors determines that the alleged act was committed by such director, officer or employee fraudulently or in bad faith.

Such authorization shall extend to and cover all costs imposed or expenses incurred in any such action or proceeding, including reasonable attorneys' fees and reasonable settlements or compromises. This agreement by the corporation is binding upon the corporation, its successors and assigns, and shall inure to the benefit of the heirs, executors and administrators of any such director, officer, or employee, but shall not be exclusive of any other rights to which any director, officer, or employee may be entitled as a matter of law.

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EXHIBIT LXIV

SECTIONS OF AUTO CLUB BY-LAWS AS  
REVISED TO IMPLEMENT NEW ELECTION PROCEDURES

**Section 5. ANNUAL MEETINGS**

(a) The annual meeting of the members of the Automobile Club of Southern California shall be held on the second Monday of March of each year, if not a legal holiday, or if a legal holiday, then on the next succeeding business day, at a place to be designated and set by the Board of Directors.

(b) The order of business shall be determined by the presiding officer.

(c) Cumulative voting shall not be allowed.

(d) The election of directors shall take place during the annual meeting and shall be by a ballot mailed by the Club to each master member not less than thirty (30) days prior to the meeting.

(e) Ballots cast for the election of directors must be received by the Secretary prior to the close of the annual meeting and if so received shall be taken to be prima facie valid and shall be counted as votes at the annual meeting.

(f) The validity of all ballots, the rightful exercise thereof by the voting member and the results of the voting, shall be subject to later verification and certification by the Secretary and the Inspector of Elections. If the Secretary and the Inspector of Elections certify that because of invalidity of ballots there were insufficient votes validly cast to support the result of any voting, the result of such voting shall be null and void.

(g) Voting on any matter other than for the election of directors may be by ballot or voice vote as determined by the presiding officer.

(h) Voting on any matter other than for the election of directors or modification of procedures for the nomination or election of directors may be by proxy.

**Section 6. NOTICE OF THE ANNUAL MEETING** shall be mailed to each master member not less than thirty (30) days in advance of the meeting. Notice of the meeting may be given by any method provided for in Section 41.

(a) The notice shall contain the following:

1. Date, time and location of the annual meeting of members.

2. General purpose of the meeting.

3. The name of each nominee for the Board of Directors nominated by the Nominating Committee or nominated by petition, in alphabetical order.

4. The statement "nominated by nominating committee" or "nominated by petition", as the case may be, a biographical description of each nominee for the Board of Directors not exceeding seventy-five (75) words, a statement of each nominee's goals and objectives not to exceed two hundred fifty (250) words, a separate statement listing all present or contemplated business relations between the Club and each nominee or any business of which he is a director, officer, employee, partner or owner of more than 10% and a photograph of each nominee for the Board of Directors.

Each nominee shall submit to the Secretary the foregoing material not less than seventy-five (75) days prior to the date

of the annual meeting. Such biographical description and statement of goals and objectives may not be altered or modified by the Club without court permission except to eliminate items which in the written opinion of counsel would expose the Club to a substantial risk of liability such as matter which is libelous.

If a nominee fails to submit any of the foregoing material other than a photograph within the time required, his nomination, either by the Nominating Committee or by petition, shall be deemed abandoned, and his name shall not be contained in the notice or ballot.

(b) The notice of the annual meeting shall contain or be accompanied by a ballot form for the election of directors and a proxy form prepared by the Secretary.

At the discretion of the Club, the ballot and proxy may be combined into one form.

(c) The ballot form shall:

1. Bear the title "Annual Ballot for Election of Directors".

2. Provide a space for the signature, address and membership number of the master member and a space for the date the ballot is completed.

3. List in alphabetical order the names of the nominees with instructions to vote for no more than the number of vacancies to be filled and to mail or deliver the ballot completed, dated and signed by the master member to the Secretary, at a specified address, in time to be received no later than the close of the annual meeting.

4. Provide a means for the master member to indicate the nominees for whom he wishes to vote.

5. Have (or be accompanied by an envelope which has) the return address printed thereon.

(d) The proxy form shall:

1. Provide a space for the signature, address and membership number of a master member and a space for the date the proxy is completed.

2. Provide a means for the master member to confer or withhold the conferring of discretion to vote on any matter which may arise at the annual meeting or at a special meeting.

3. Provide space for the master member to designate the name(s) of the person(s) upon whom he wishes to confer his proxy.

4. Provide that in the absence of a designation by the master member of another person as his proxy, the proxy shall be deemed to have been granted by the master member to a person(s) designated by the Board of Directors and named in the proxy form.

5. Be completed, dated and signed by the master member, and filed with the Secretary not less than fourteen (14) days prior to the date of the meeting. Such proxy shall be valid for that annual meeting and any special meeting as provided for in Section 7 that may be called prior to the next annual meeting unless revoked in writing filed with the Secretary. A vote by the holder of any proxy or proxies, certified by the Secretary as being properly filed with the Club, shall be taken to be as many votes as there are proxies held by him.

**Section 8.** A QUORUM shall consist of five percent (5%) of the master members present in person or by proxy and no business may be transacted at any meeting of members unless a quorum is present, /s/ [by the Court] provided, however, for the purpose of electing directors a quorum shall consist of 5% of the master members present in person or by ballot.

In the absence of a quorum, by a majority vote, the members present in person or by proxy may adjourn the meeting from time to time without further notice.

In an election for directors, if the total number of ballot votes cast for all nominees shall be less than five percent (5%) of the master members eligible to vote in the election, the result of such voting shall be null and void.

#### **Section 24. ELECTION OF DIRECTORS.**

Directors shall be elected at the annual meeting of members for terms of three (3) years, or until election of their successors.

There shall be three (3) classes of directors.

Each director, when elected, shall be designated as of the class of the particular year in which his term of office is fixed to expire. At each annual meeting the members shall elect a number of directors equal to the number of directors in the class whose terms expire at such meeting.

At this time the present members of the Board of Directors are assigned to classes as follows:

Class of 1977

A. A. Milligan  
Maynard J. Toll  
Norman Barker, Jr.  
Roger S. Woolley

Class of 1978

Frederick G. Larkin, Jr.  
Albert C. Martin  
Joseph B. Platt  
Ruth H. Kodani

Class of 1979

J. Leland Atwood  
Knox Farrand  
Thomas L. Lowe  
Walter B. Gerken

Each master member shall be entitled to cast one vote by ballot, as provided in Section 5, for each office to be filled. Subject to the provision of Section 8 the persons, equal in number to the number of offices to be filled, receiving the highest number of votes shall be declared elected. However, if there are no nominees by petition, neither ballots nor voting shall be required and the nominees nominated by the Nominating Committee shall be deemed elected.

**Section 25. NOMINATIONS OF DIRECTORS.**

At any meeting of members no person shall be eligible for election to the board unless nominated in accordance with the provisions of this section.

(a) At least one hundred twenty (120) days in advance of the date of the annual meeting the Chairman of the Board shall appoint a Nominating Committee composed of five (5) master members of the Club.

The Nominating Committee shall at least ninety (90) days prior to the annual meeting submit to the Secretary a list of nominees which shall contain as many names as there are directors to be elected.

A master member may submit the name and qualifications of a candidate to the Nominating Committee for its consideration by supplying the Secretary with the necessary information. The names of nominees

selected by the Nominating Committee shall be promptly provided to any master member who requests them from the Club's Secretary.

(b) Nominations for directorships to be filled at such annual meeting may also be made by petition, provided that to be valid any such petition for nomination

shall be (1) in writing, (2) delivered to the Secretary at least ninety (90) days prior to the date of the annual meeting, (3) signed by master members whose signatures shall have been obtained since the date of the last election, and (4) signed by master members who shall have voting rights at the time of such delivery to the Secretary and who shall constitute in number not less than one-tenth of one percent (0.1%) of the total number of master members in good standing at the time the petition is filed.

Qualified master members who have signed a candidate's declaration of candidacy as provided in sub-section (d) below shall be deemed to have signed the candidate's petition for nomination. The names of such nominees shall be furnished to all master members as provided in Section 6. A petition for nomination may be with respect to and include more than one candidate for nomination but not more candidates than there are directors to be elected.

(c) Not less than two hundred seventy (270) days prior to the date of the annual meeting, notice shall be given to each master member in the manner provided in Section 41 advising that an election for directors is forthcoming and explaining the steps that should be taken by any master member to avail himself of the opportunity to run for office.

(d) A master member who meets the eligibility qualifications set forth in Section 21 may request the Secretary to furnish forms for a declaration of candidacy to enable such member to obtain the name, address, membership number, signature, and the date of signing of fifty (50) master members then in good standing to support his candidacy for election as a director at the next annual meeting. All declarations of candidacy shall be delivered to the Secretary not less than two hundred ten (210) days prior to the date of the annual meeting. The Secretary upon verifying the number and qualifications of the signatories shall, not less than one hundred fifty (150) days prior to the date of the annual meeting, give notice to each master member in the manner provided in Section 41 of the potential candidate's name, address and telephone number and notice of his desire to obtain signatures on a petition for nomination. The notice shall contain a statement of qualifications and objectives not exceeding 150 words if and as submitted by the potential candidate to the Club Secretary with his declaration of candidacy. A coupon shall be printed with the notice so that those master members desiring the person named to be nominated as a candidate may

sign the coupon and mail it to the candidate or to such other addressee as the candidate may specify to the Club's Secretary. A signature on a nominating coupon shall be deemed to be a signature on a petition for nomination for the purposes of sub-section (b) above.

(e) A potential candidate may solicit signatures of master members on the petition for nomination by any lawful manner, including the use of the Club's membership list pursuant to and subject to the provisions of sub-section (f).

(f) Upon written application to the Secretary, a master member may solicit signatures to a petition for nomination of a director or directors from the master membership or a part thereof by means of a mailing if the applicant member shall:

1. State the number of master members in areas designated by a zip code to whom mailings shall be directed;
2. Deposit with the Club a sum which is estimated by the Club to cover mailing postage, return postage (based on a 50% return), mailing envelopes,

return envelopes, labor and computer time, which will be furnished by the Club at cost; total costs when determined by the Club shall be paid by the applicant; and

3. Furnish the Club with the material to be mailed which shall be printed on standard size paper to fit return envelopes 8 3/4" x 3 3/4". The Club may refuse to mail any material which, in its opinion, is inflammatory, inaccurate or not in conformance with good business practice or not related to the specific purpose of the mailing as stated above.

If these conditions are met, the Club will mail the applicant's material to the requested number of master members in accordance with its standard practice for routine mailings to the whole or designated part of the membership.

The return envelopes addressed to a post office box number shall be delivered to the Secretary in the presence of the applicant member, or such other master members as the applicant may designate, if he so requests.

EXHIBIT LXXV

Dubin & Grosberg

*Attorneys at Law*

1901 AVENUE OF THE STARS, SUITE 400  
LOS ANGELES, CALIFORNIA 90067

LEONARD R. DUBIN  
LAWRENCE S. GROSBERG  
BRUCE BENJAMIN

(213) 553-2915

October 11, 1976

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Re: Revised Nonprofit Corporation Law

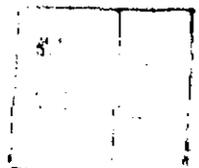
Gentlemen:

Thank you for forwarding me the tentative recommendations relating to nonprofit corporation law. My interest in this matter arises from representing several nonprofit corporations, and I was particularly concerned with clarification on the matter of election and removal of directors.

I would prefer to see a specific clarification as to the non-applicability of Corporation Code Section 810 to by-law provisions of nonprofit corporations as to removal of directors. This matter was somewhat unresolved and confusing from the Code and cases decided thereunder until such time as the California Attorney General's Office issued an opinion in August of 1973, which I believe is cited as 56 Attorney General's Opinions 318.

The August, 1973, Attorney General's opinion seemed to clarify the meaning of Corporations Code Section 9302 as to the broad latitude that nonprofit corporations' by-laws can have in reference to electing and establishing terms for the Board of Directors. The further explanation in 56 Attorney General's Opinions 318 indicated that by inference this would also apply to removal of directors.

I would, however, prefer to have more clear wording in the Nonprofit Corporations Code as to the right of the corporation to adopt by-laws establishing a means for removal of directors



nonprofit corporation is limited to one year under Corporations Code section 805, or whether such may be for a longer period pursuant to provisions of the General Nonprofit Corporation Law.

The conclusion is:

The General Nonprofit Corporation Law permits nonprofit corporations to provide for the term of office of directors in their articles or bylaws without limitation as to the length of the term. The limitations contained in Corporations Code section 805 apply only where they do not conflict with such provisions, as in those cases where the articles and bylaws of a nonprofit corporation fail to provide for the term of office of its directors.

#### ANALYSIS

A California nonprofit corporation organized exclusively for charitable purposes wishes to provide for election of its directors to two-year staggered terms. Corporations Code section 805<sup>1</sup> provides as follows:

"Directors named in the articles shall hold office until the next annual meeting<sup>2</sup> of shareholders and until their successors are elected, either at an annual or a special meeting of shareholders. Directors, other than those named in the articles, shall hold office until the next annual meeting, unless the articles provide for a shorter term, and until their successors are elected. (Stats. 1947, c. 1038, p. 2319, §§ 805.)"

This section was enacted in 1947 as part of the General Corporation Law of the newly created Corporations Code, and was based on former Civil Code section 304 substantially without change. These provisions have generally been interpreted as a restriction on the terms of directors to a period not to exceed one year. *Kinard v. Ward*, 21 Cal. App. 92, 95 (1913); *Ballantine & Sterling*, Vol. 1, § 36, p. 74; *Witkin, Summary of California Law*, Vol. 3, p. 2330.

It is generally acknowledged that the purpose of enacting such provisions was to eliminate the system of staggered and lengthy terms of directors of stock corporations, a system which tended to dilute and weaken the rights of minority shareholders otherwise protected by cumulative voting. *Fletcher Cyclopaedia Corporations*, Perm. Ed., Vol. 2, § 334.1, p. 126. That such protection was unwarranted in the case of nonprofit corporations is reflected in the widespread adoption of provisions of the Model Nonprofit Corporation Act permitting directors of nonprofit corporations to serve for terms of up to three years. *Fletcher, supra*, Vol. 1, § 2.4, fn. 45.51.

Although California has not adopted the Uniform Nonprofit Corporation Act which had been patterned after the Model Act, the Legislature nevertheless has enacted a comprehensive statutory scheme for nonprofit corporations. Known as

<sup>1</sup> All references are to the Corporations Code unless otherwise specified.

<sup>2</sup> In the case of stock corporations, annual meetings of shareholders are required pursuant to section 2200, and election of directors at such meetings is mandated by section 2201.

LOS ANGELES COUNTY  
SHERIFF'S OFFICE

EXHIBIT LXXVI

CLYDE R. ROCKWELL  
ALEXANDER S. KEENAN  
WILBUR F. MATHEWSON

ROCKWELL, KEENAN & MATHEWSON

ATTORNEYS AT LAW

608 MARKET STREET, SUITE 1009  
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE  
952-1510  
AREA CODE 415

California Law Revision Commission  
Stanford Law School  
Stanford, CA 94305

October 14, 1976

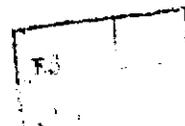
Attention: Mat Sterling

Re: Tentative Recommendation  
relating to  
Nonprofit Corporation Law

Dear Mr. Sterling:

This will confirm our conversation of Friday, October 8, 1976, relating to the recommendations and particularly to Section 6772 (b). This section continues the last sentence of former Section 9802 which provides for the delivery of assets from a defunct subordinate chapter to the head or national body.

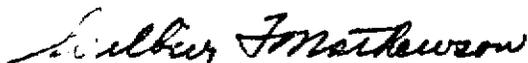
I am on the bylaws committee of a nonprofit corporation incorporated under the laws of California. It has roughly 7000 members and 35 subordinate chapters, eleven in California and 24 in the states of Oregon, Washington, Nevada, Utah, Colorado, Nebraska, Iowa and Hawaii. Over the years the subordinate chapters have expressed their dislike of the provision. Those subordinate chapters located outside the State of California have uniformly taken the view that the laws of the states in which the out of state subordinate chapters are located (and most of them are incorporated in such states) are governed by the laws of such states, not the laws of the State of California. It is the view of the subordinate chapters that upon a chapter becoming defunct, all property, other than the records and paraphernalia, should be disposed of in accordance with the local law and should not be delivered to the head or national chapter. Other than seeing that the surviving or liquidating members of defunct chapters do not personally profit from the assets of the subordinate chapter, the head or national chapter has no interest in taking over such assets that might remain. In some cases this could run into the tens of thousands of dollars.



It is the feeling that if or rather since the assets in most cases were accumulated from activities in the local community for charitable purposes that they should be used for that purpose in the community, not be sent to California for use by the national chapter.

It is my opinion that this whole matter should be the subject of a national or head chapter bylaw that could be more accurately adapted to the requirements and wishes of the subordinate chapters.

Yours truly,



Wilbur F. Mathewson

WFM/m

cc: Paul Hentzell

the General Nonprofit Corporation Law, it is contained in title 1 of division 1 part 1 of the Corporations Code, and consists of sections 9000-9802.<sup>3</sup>

Section 9002 provides:

"The provisions of the General Corporation Law, Division 1 of this title, apply to corporations formed under this part except as to matters specifically otherwise provided for in this part."

Stated differently, but necessarily correlative to the direct language of section 9002, it has been held that provisions of the General Corporation Law may apply to nonprofit corporations only to the extent that they do not conflict with provisions of the General Nonprofit Corporation Law. See *Coon v. Freeman*, 1 Cal. 3d 542, 545-546 (1970); see, also, Corp. Code § 119.

With respect to nonprofit corporations, section 9302 provides:

"The articles or by-laws may provide for the number and tenure of office of the directors and may specify their powers, duties, compensation, and the manner in which they shall be chosen and removed from office."

Also, section 9401 provides that the bylaws of a nonprofit corporation may make provisions for:

". . . . .

"(c) Subject to any provisions in the articles, the number, time and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensation of the directors and other officers."

It is significant that in discussing the term of office of directors neither section 9302 nor section 9401 imposes any restrictions other than those provided by the nonprofit corporation in its articles and bylaws.

The conclusion that the restrictions of section 805 do not apply to nonprofit corporations is strengthened by sections 9503<sup>4</sup> and 9600<sup>5</sup> which provide that meetings of directors (§ 9503) and members (§ 9600) of nonprofit corporations, subject to provisions of the articles and bylaws, shall be called and held as ordered by the directors or members, as the case may be. Since there is no requirement of annual meetings of directors or members of a nonprofit corporation, it follows that the term of office of directors of such organizations is not limited to one year as it is in the case of stock corporations under section 805.

In *Burnett v. Banker*, 130 Cal. App. 2d 631, 634-635 (1955), there was a factual question as to whether the nonprofit corporation had validly adopted bylaws

<sup>3</sup> Additional provisions for particular types of nonprofit corporations set forth under Parts 2, 3, 3.5, 4 and 5 do not appear to have any bearing on the question presented herein.

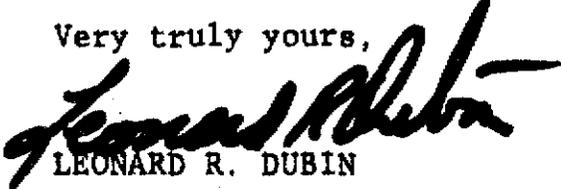
<sup>4</sup> "Subject to any provisions of the articles or bylaws, meetings of directors of nonprofit corporations shall be called and held as may be ordered by the directors."

<sup>5</sup> "Subject to any provisions of the articles or bylaws, meetings of members of nonprofit corporations shall be called and held as may be ordered by the directors or by members holding not less than one-tenth of the voting power of members."

California Law Revision Commission  
October 11, 1976  
Page Two

indicating that the criteria would not be subject to Corporations Code 810 as far as necessary votes, which seems to be implied by the Attorney General's opinion I have cited. A copy of the Attorney General's opinion I have referred to is attached to this letter.

Very truly yours,



LEONARD R. DUBIN

LRD:kf

Enclosure