ANALYSIS OF THE OPINION OF THE ATTORNEY GENERAL OF CALIFORNIA ON THE REGISTRATION OF NAMES OF FAMILY ASSOCIATIONS BY THE SECRETARY OF STATE

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THE ATTORNEY GENERAL'S OPINION ON THE REGISTRATION OF NAMES OF FAMILY ASSOCIATIONS IS CLEARLY ERRONEOUS

I
INTRODUCTION

On December 13, 1990, the Family Diversity Project held a press conference at the State Building in Los Angeles to announce the availability of an administrative system for family associations to register with the California Secretary of State.[1]

Seven families attended the press conference. They included members of a foster family, a single-parent guardianship family, a stepfamily, an unmarried couple, a family of two men and a family of two women. Each of the families had registered with the Secretary of State as an unincorporated nonprofit association. Each had received an official ornate certificate acknowledging that the families had registered their names. The style of name registration used by the families was "Family of John Doe and Jane Roe." Those with children also included the names of the children in the name of the family association.

The registration system, and its use by so-called "nontraditional" families, sparked a considerable amount of national media attention.[2] In response to media

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[1]The Family Diversity Project is operated by Spectrum Institute, a nonprofit California corporation. Spectrum engages in research and educational activities designed to promote recognition of, and respect for, human diversity, especially in the context of family relationships.

[2]Laurie Becklund, "The Word 'Family' Gains New Meaning," Los Angeles, Times, December 13, 1990; Tupper Hall, "State Lets Gay Couples Register," San Francisco Examiner, December 15, 1990 (national edition); Tamar Lewin, "Nontraditional Families Register in California in Bid to Get Benefits," New York Times, December 17, 1990; Elizabeth Groat, "Unmarried Couples Use Law to Put Relationships on Record," Los Angeles Daily Journal, December 19, 1990 (AP Release); Lynn Smith, "Not Kin But Kindred, Pair Will Put Official Seal on Their Status," Los Angeles Times, December 25, 1990 (Orange County Edition).

inquiries, Anthony Miller, chief deputy Secretary of State, explained that the registration had no known tax or legal consequences and conferred no automatic benefits beyond the sentimental.

After nearly two months of positive press, the registration procedure came under attack by extremely conservative religious and political leaders and groups.[3] The first official sign of challenge emerged on January 17, 1991, when state Senator Newton Russell (R-Glendale) introduced SB 192, a "spot bill" intended to redefine the term "association" used in the Corporations Code Section pertaining to associational name registration.[4] The same day he sent a memo to the Legislative Counsel asking for an opinion on the legality of the registration system.[5]

On February 19, 1991, the Legislative Counsel issued an opinion to Senator Russell.[6] The opinion noted that "[N]o formalities are required for the formation of an unincorporated nonprofit association (*Law v. Crist*, 41 Cal.App.2d 862, 865)." It also observed that the registration of the name of an association does not, in itself, create the association or create any automatic rights or obligations. The opinion contained three other basic conclusions:

> -- "A group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family may form a nonprofit association to formalize that relationship. However, many rights traditionally granted to family members may be unavailable if based solely on the association."

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[3]Over the course of about two months, beginning in January 1991, the Secretary of State received about 1,000 letters of protest insisting that she stop the registration of the names of family associations. The letter-writing campaign was orchestrated by a national religious group known as "Focus on the Family." The group has a daily radio audience through hundreds of religiously-oriented radio stations across the nation.

[4]Senate Bill 192, introduced on January 17, 1991.

[5]Letter of January 17, 1991 from Senator Russell to Legislative Counsel Bion Gregory. The Western Center for Law and Religious Freedom had a hand in drafting this letter. (See letter of March 4, 1991, from the Western Center to the Secretary of State.)

[6]Legislative Counsel's Opinion (Family Association - #2151) dated February 19, 1991.

-- "The state does not have any potential liability if it fails to inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association."

-- "A group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family are not entitled to register the name of their 'association' with the Secretary of State under Section 21301 of the Corporations Code under a style such as 'Family of John Doe and Jane Roe.'"

This third conclusion was based on the Legislative Counsel's opinion that the law does not permit organizations to gain exclusive use of surnames or generic words such as "family" by registering them with the Secretary of State.

Armed with the Legislative Counsel's opinion that family associations could not register their names with the state, on February 20, 1991, Senator Russell wrote to the Secretary of State demanding that she revoke the previously registered names and terminate further registration.[7]

On February 22, 1991, a coalition of extremely conservative religious and political leaders convened a so-called "Family Congress" in Sacramento.[8] One of the key focal points of the "Family Congress" was a "Family Bill of Rights" drafted by David Llewellen of the Western Center for Law and Religious Freedom. Conferees also discussed strategies to dismantle the family registration system operated by the Secretary of State. Attorney General Dan Lungren attended the conference and made a major presentation to this group.[9] A summary of the Attorney General's remarks to the group were not made available to the public.[10]

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[7]Letter of February 20, 1991, from Senator Russell to Secretary of State March Fong Eu.

[8]Bill Geiger, "'Family Bill of Rights' Targets Pro-Gay Legislation," *Frontiers*, March 15, 1991.

[9]Michael Bowman, "Family Congress: Uniting of the Pro-Family Movement," *California Citizen*, April 1991.

[10]The Family Diversity Project called the Attorney General's press secretary and asked for a copy of the Attorney General's remarks. The project was informed that neither a verbatim transcript nor a summary were available.

Having gained support and momentum from the "Family Congress," the Western Center for Law and Religious Freedom sent a letter to the Secretary of State on March 4, 1991, demanding that she terminate the registration of the names of family associations.[11] A week later, the Western Center indicated to the press that it was considering a legal challenge to the registration system.[12]

On March 11, 1991, the Secretary of State issued an opinion in which she concluded that the registration of the names of associations using the term "family" in their title was a lawful ministerial duty that she would continue.[13] She advised Senator Russell that her office would act in accordance with the legal analysis of her chief legal counsel. In that opinion, Chief Counsel Anthony Miller agreed with most of the conclusions of the Legislative Counsel, but disagreed with the ultimate opinion that the names of family associations could not be registered. The Secretary of State construed Section 21301 to "provide for the ministerial registration of the names of unincorporated nonprofit associations upon proper application and the issuance of certificates accordingly even if the names include the word 'family' or one or more 'surnames.'" The legal opinion of her office added, in relevant parts:

> "In his opinion, the Legislative Counsel concludes that a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family may form an unincorporated nonprofit association to formalize that relationship. *We agree.* Legislative Counsel concludes that no formalities are required for the formation of such an incorporated nonprofit association. *We agree.* Legislative Counsel appears to conclude that an association described above can assume a name under a style such as "Family of John Doe and Jane Roe." *We agree.* Although not essential to our analysis of the duties of this office, Legislative Counsel concludes that 'family' has many varied meanings and that it may include individuals not related by blood or married who are living together in the intimate and mutual interdependence of a single home or

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[11]Letter of Western Center to Secretary of State dated March 4, 1991.

[12]J.P. Tremblay, "State Will Continue to Recognize Homosexual 'Families,'" *Sacramento Union*, March 12, 1991.

[13]Letter from March Fong Eu to Senator Newton Russell dated March 11, 1991.

> household. *We agree.* Notwithstanding the foregoing, Legislative Counsel concludes that an unincorporated nonprofit association which has assumed a name in the style of 'Family of John Doe and Jane Roe' cannot register that name pursuant to Corporations Code section 21301. *We disagree.*" (emphasis added)

After a lengthy exposition of statutory language, relevant case law, and legislative intent, and a thorough discussion of the mistaken analysis of the Legislative Counsel, the Secretary of State's legal opinion concluded that the registration of the names of family associations was legally appropriate, adding:

> "We need not address various constitutional issues which Legislative Counsel's conclusion, if correct, would raise. These issues would include, but probably not be limited to, the rights of association, free speech, privacy, due process and equal protection which are provided for in varying degrees by the Constitutions of the United States and of California. These significant issues would have to be engaged only if the statutes were to be read to preclude the registration of the names of only one category of association, e.g., an association with a name that included the word 'family' and a surname. We believe the contrary to be true.
>
> "This office always gives considerable weight to the Opinions of Legislative Counsel. In the instant case, however, the Secretary of State is, ultimately responsible for the implementation of the laws that are within the jurisdiction of her office and she must independently determine what those laws require her to do."

Apparently dissatisfied with the response from the Secretary of State, Senator Russell asked Attorney General Dan Lungren for an opinion on March 18, 1991.[14] For nearly two months it was uncertain whether the Attorney General would agree to issue an opinion on the subject. It had been a longstanding policy within the Attorney General's Office not to issue an opinion if litigation on the issue was pending or might be initiated in the near future. This policy against issuing an

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[14]Letter from Senator Russell to Dan Lungren on March 18, 1991.

opinion was even stronger if a potential party to such litigation might be a state agency.

In April 1991, Attorney General Dan Lungren was advised that litigation on the subject of "family registration" was likely to occur and that the Secretary of State would be a party to such a lawsuit.[15] However, overruling the advice of the Chief of his Opinion Unit and other attorneys in his office, Attorney General Dan Lungren decided to issue an opinion in response to Senator Russell's request.

On May 14, 1991, the Chief of the Attorney General's Opinion Unit sent a letter to interested organizations advising them that the Attorney General would issue an opinion on the following question:[16]

> "May individuals register themselves as a 'family' with the Secretary of State under the provisions pertaining to unincorporated nonprofit associations? If so, what rights follow from such registration?"

The duty of researching and writing the opinion was delegated to Deputy Attorney General Ronald Weiskopf in the Attorney General's San Diego office. Beginning in September, 1991, the Family Diversity periodically contacted the Attorney General's Office to check on the status of the opinion. In December 1991, the project was informed by two separate sources in the Attorney General's office that the delay in issuing the opinion was unusual and that the draft of the opinion had been on Dan Lungren's desk for several months.

The Attorney General's opinion was finally released on January 16, 1992.[17] It bears the name of Anthony S. DaVigo as its author. The opinion concludes:

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[15]Letter to Assistant Attorney General Nelson Kempsky from Chief Deputy Secretary of State Anthony Miller, dated April 24, 1991. In addition to the threat of a lawsuit by the Western Center, as reported in the *Sacramento Union*, the Secretary of State advised the Attorney General that it was likely that a lawsuit might be initiated by the ACLU or even by the Secretary of State herself. The Attorney General was advised that the Secretary of State might request the Attorney General to provide legal representation should such a lawsuit occur. In previous administrations, these manifestations of potential lawsuits would have been more than sufficient reason for the Attorney General to decline to render an opinion on a subject that would lie at the heart of such litigation.

[16]Letter of Assistant Attorney General Nelson Kempsky to attorney Thomas F. Coleman, dated May 14, 1991.

[17]Opinion No. 910505, January 16, 1992.

> "Under the law pertaining to unincorporated nonprofit associations, the Secretary of State may not issue a certificate of registration as a 'family' to any two or more individuals who share a common residence."

It is noteworthy that the question answered by the Attorney General is different from that asked by Senator Russell and is also different from that announced to the public by the Attorney General's Office on May 14, 1991. The criteria of sharing a common residence was not included in Senator Russell's request to the Attorney General on March 18, 1991. It was also not included in the question which the Attorney General announced on May 14, 1991 that he would answer.[18]

To be properly understood, the Attorney General's opinion must be viewed within the historical, administrative, and political context in which it was written. The introduction to this memorandum has attempted to explain this complex and highly-charged political context. The remainder of this memorandum analyzes the conclusions and reasoning of the Attorney General's opinion. It concludes that the Attorney General's opinion is legally flawed in many ways. In the final analysis, the Secretary of State's construction of the relevant statutory scheme is correct and should be adopted by the courts in any subsequent litigation.

I(a)
Legal Authority Of The Opinion of the Attorney General

The courts have clearly and consistently held that "when an administrative agency is charged with enforcing a particular statute, its interpretation of the statute will be accorded great respect by the courts 'and will be followed if not clearly erroneous.'" *Judson Steel Corp v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 668 [150 Cal.Rptr. 250, 586 P.2d 564] (quoting *Bodison Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 325-26 [109 P.2d 935]); *City of Fremont v. Board of Administration* (1989) 214 Cal.App.3d 1026, 1033 [263 Cal.Rptr. 164]; *California*

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[18]It is also noteworthy that the Attorney General's opinion does not acknowledge the existence of opinions of the Legislative Counsel or the Secretary of State on the same subject. It does not adopt the approach or reasoning of the Legislative Counsel. Nor does it address or attempt to demonstrate how the Secretary of State may have erred in her analysis.

Ass'n of Dispensing Opticians v. Pearle Vision Center, Inc. (1983) 143 Cal.App.3d 419, 428 [191 Cal.Rptr. 762]. As demonstrated by this memorandum and its attachments, the Secretary of State's legal analysis of the relevant statutory scheme is far from "clearly erroneous," in fact it is clearly correct, and therefore her interpretation should be followed.

The "clearly erroneous" standard that applies to administrative construction contrasts with the standard governing opinions of the attorney general, which, while entitled to great respect, are not controlling as to the meaning of a statute. *Unger v. Superior Court* (1980) 102 Cal.App.3d 681, 688 [162 Cal.Rptr. 611] (citing *Smith v. Municipal Court* (1959) 167 Cal.App.2d 534, 539 [334 P.2d 931]. Courts have consistently held that opinions of the Attorney General are advisory only, and do not carry the force of law. *Jimmy Swaggart Ministries v. State Bd. of Equalization* (1988) 204 Cal.App.3d 1269, 1285 n.14 [250 Cal.Rptr. 891]; *People v. Vallerga* (1977) 67 Cal.App.3d 847, 870 [136 Cal.Rptr. 429] Furthermore, opinions of the Attorney General are to be issued in response to "specific questions posed by state legislators, officers and agencies" and are not to be issued gratuitously. *Jimmy Swaggart Ministries, supra*, 204 Cal.App.3d at p. 1285 n.14. The Supreme Court has been critical of, and refused to follow attorney general opinions which are unreasoned, or make assumptions without sufficient analysis. *People v. Woodhead* (1987) 43 Cal.3d 1002, 1013 [239 Cal.Rptr. 656, 741 P.2d 154]

The Attorney General's opinion here clearly falls into the latter category. The opinion poses questions which were never asked by the Senator requesting the opinion, and strays well beyond the legislative scheme provided for in the Corporations Code. For the reasons discussed below, the opinion provides no authoritative guidance on the issue of the registration of names of unincorporated associations that happen to use the word "family."

I(b)
The Attorney General's Opinion

The opinion, issued on January 16, 1992, is reported at 92 Daily Journal D.A.R. 992 (Jan. 23, 1992). It begins by revealing that the Attorney General had again rephrased the already revised questions from the original inquiries submitted by Senator Russell, this time adding a substantive issue that had never appeared before in any version of the previous questions: "May the Secretary of State issue a certificate of registration as a 'family' to any two or more individuals who share

a common residence?" There is no indication of where the "common residence" language came from, and it defies the rule that opinions of the Attorney General are to be issued in response to specific questions posed by legislators. *Jimmy Swaggart Ministries, supra*, 204 Cal.App.3d at p. 1285 n.14. One of the questions raised by the Attorney General's continuous process of revising Senator Russell's questions before answering them is whether the purpose of the revisions was to predetermine the outcome of the opinion. In other words, the constant revisions of the questions give the appearance that the Attorney General had an opinion he wanted to express and needed a vehicle to express it. In the final analysis, the outcome of the opinion seems to hinge largely on the introduction of extraneous issues such as the sharing of a common residence.

In reaching its conclusion that the Secretary of State may not issue a certificate of registration as a "family" to persons who share a common residence, the opinion first answers still another unasked question: whether two or more persons who share a common residence would constitute a family. It is unclear why this question is relevant to any legal issue presented. As discussed in more detail below, the statute in question does not confer any rights on those registering the name of their association except the right to use their name exclusively. Thus, it is the name, not the nature of the association that is the Secretary's concern.[19] Nevertheless, the opinion asserts that the answer to this question is yes, based on dictionary definitions and the early California Supreme Court case of *Moore Shipbuilding Corp. v. Industrial Accident Comm.* (1921) 185 Cal. 200, 207.

After concluding that persons sharing a common residence may constitute a family, the opinion next analyzes the language of the statute, and concludes that families who share a common residence are unlike the other kinds of associations which have been specified in the statute. Based on the doctrine of *ejusdem generis*, the opinion states that the word "other" in the statute must be read as "other such like." Under the Attorney General's interpretation of this doctrine, since the Legislature listed some kinds of associations, the use of the words "or any other society, organization or association," was intended to be read restrictively. The opinion then notes that the context surrounding section 21301 makes it clear that

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[19]In her correspondence to Senator Russell on March 11, 1991, Secretary of State March Fong Eu made it clear that her office does not register families or issue certificates of name registration to families, as such, but merely implements a ministerial duty by issuing a certificate of name registration to any unincorporated association. The fact that the association's name happens to include the term "family" and one or more surnames is irrelevant to her statutory duty. She emphasized that the Legislature has provided for the registration of the names of <u>any</u> unincorporated association.

the purpose of the section is to preclude unfair and deceptive practices by preserving the name, goodwill and reputation of an association against misappropriation and unfair competition. Since the Attorney General could discern no social or public policy in preserving a family's name for its exclusive use, the opinion concludes that registration of family names falls outside the scope of the statute.

Assuming arguendo this were correct, this should have ended the opinion, since it addressed the threshold legal question which had been posed of whether registration of family names is permitted, finding in the negative. But the opinion continues, striking off into an area which not only fails to have any relationship to the questions proposed, but is legally incorrect. The opinion asserts that if families were permitted to register their relationships, registration by "traditional" nuclear families would conflict with the provisions of the Family Law Act, Civil Code section 4000 et seq.

II
ANALYSIS

II(a)
The Doctrine Of *Ejusdem Generis* Is Incorrectly Applied Here

The opinion relies heavily on the doctrine of *ejusdem generis*, which holds that where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The doctrine is primarily applicable to the interpretation of wills, rather than statutes, as illustrated by the case cited in the opinion, *Estate of Stober* (1980) 108 Cal.App.3d 591, 599 [166 Cal.Rptr. 628].

In cases where it has been used in statutory interpretation, though, the general words used have been very different than those in the Corporations Code. The word "association" is clearly defined in Corporations Code section 21300 subdivision (a):

> "'Association' *includes any* lodge, order, beneficial association, fraternal or beneficial society or association,

> historical, military, or veterans organization, labor union, foundation, or federation, *or any other society, organization or association*, or degree, branch, subordinate lodge, or auxiliary." (emphasis added)

The statute is inordinately broad in its inclusiveness, and the emphasized language could not be broader. Compare this with the statute at issue in *Sears Roebuck & Co. v. San Diego County District Council of Carpenters* (1979) 25 Cal.3d 317, 330-31 [158 Cal.Rptr. 370, 599 P.2d 676], a case cited by the Attorney General's opinion. In that case, the Supreme Court used the doctrine of *ejusdem generis* to limit the words "conduct that is unlawful" as used in the Moscone Act. The provision at issue provided:

> "It is not the intent of this section to permit conduct that is unlawful including breach of the peace, disorderly conduct, the unlawful blocking of access or egress to premises where a labor dispute exists, or other similar unlawful activity"

The court found that the rather inclusive phrase "conduct that is unlawful" was restricted by other limiting terminology in the statute itself. *Id.* at p. 331. By its own terms, the statute required that the prohibited unlawful activity be "similar" to the examples cited therein. Furthermore, the phrase "conduct that is unlawful" is vastly distinguishable from the words at issue here, "any other society, organization or association," since it is not, by its own terms, open-ended, as is the case with the language in the Corporations Code.

The same is true in *Scally v. Pacific Gas & Electric Co.* (1972) 23 Cal.App.3d 806 [100 Cal.Rptr. 501], where the court held that an electric transmission line was not "any other device which may kindle a fire," as set out in Public Resources Code section 4161.5. That section provided that "If any fire originates from the operation or use of any engine, machine, barbecue, incinerator, railroad rolling stock, chimney, or any other device which may kindle a fire. . . " then the occurrence of the fire is prima facie evidence of negligence. *Id.* at p. 818-19. As in *Sears Roebuck*, the general words were, themselves, limited in their scope.

Further, in both *Sears Roebuck* and *Scally*, the enumerating lists were reasonably susceptible of limitation. The list in *Sears Roebuck* enumerated breach of the peace, disorderly conduct and the unlawful blocking of access or egress to premises where a labor dispute exists. As the court noted, these all either involve violence or would substantially impair the rights of others. *Sears Roebuck, supra*, 25

Cal.3d at p. 331. Thus, construing the phrase "conduct that is unlawful" to include nonviolent and nonthreatening conduct would have gone beyond the factors the enumerated items had in common. And in *Scally*, the court was careful to point out that the particular things mentioned in the statute had common characteristics that electric transmission lines do not have: they all constituted fire hazards in their ordinary use, which was not true of electric transmission lines. *Scally*, *supra*, 23 Cal.App.3d at p. 819.

In the present case, though, there is little, if anything, that the enumerated associations have in common, and the Attorney General's opinion makes no effort to find a common denominator. Rather, the opinion proceeds from the opposite direction, starting with an association it wishes to exclude, and then trying to find a factor, such as common residence, that it then finds lacking in the enumerated associations.

But the language of the statute resists such an analysis. A labor union, a historical society, a Moose Lodge, a fan club, and a federation of the descendants of Martin Luther King constitutes as broad a range of groups as could be imagined. And what is to distinguish the last group if it chooses to denominate itself a family rather than a federation? The terms of the statute require the Secretary to make no such distinction. As discussed more fully in section III below, the distinguishing factor could be whether the family decided to live together--the answered but unasked question in this opinion. But the statute does not require the Secretary to inquire into the domestic arrangements of a registering association--whether a family or not. Thus, it appears the only way the Attorney General's opinion could conceivably reach the conclusion excluding registration of family associations was to read into the statute a legislative intent to distinguish domestic or residential associations from all others.

II(b)
Fundamental Rules Of Statutory Construction Require Relying On The Statute's Language To Determine Legislative Intent

In fact, there is no need to use extrinsic rules of construction such as the doctrine of *ejusdem generis* if there is no ambiguity in the statute, itself, and here there is none. In determining legislative intent, a court first looks to the language of the statute, giving effect to its plain meaning. *Kimmel v. Goland* (1990) 51 Cal.3d

202, 208-209 [271 Cal.Rptr. 191, 793 P.2d 524]; *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 132 [142 Cal.Rptr. 325] Words in a statute are to be given their ordinary meaning, and if they are reasonably free from ambiguity, the courts will not look beyond them for legislative intent. *People v. Mel Mack Co.* (1975) 53 Cal.App.3d 621, 626 [126 Cal.Rptr. 505].

When interpreting statutes, it is impermissible "to impute a particular intention to the legislature when nothing in the language employed implies such an intention." *Struckman v. Board of Trustees* (1940) 38 Cal.App.2d 373, 376. "If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. Certainly the court is not at liberty to seek hidden meanings not suggested by the statute . . ." *Hogya v. Superior Court, supra*, 75 Cal.App.3d at p. 133 (citations omitted) The Attorney General's opinion leaps over these first principles. It ignores the plain meaning of the statutes in question, reading words and intentions into them that are absent, thus creating an artificial need to apply secondary interpretative tools.

The intent of the Legislature with respect to the registration of associational names could not have been expressed any more clearly. Corporations Code Section 21301 declares that "*Any* association" whose purposes are not repugnant to state or federal laws may register its name or insignia with the Secretary of State. In the process of judicial construction, words should be given the meaning they bear in ordinary use. *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798. The word "any" means without limit and no matter what kind. (*Ibid.*) To limit the scope of the statute, the Attorney General's opinion ignores the Legislature's use of this broad terminology in both relevant statutes. Sections 21300, 21301.

To read the words "any other" to mean "other such like," as suggested by the Attorney General's opinion, would thwart legislative intent by limiting the kinds of associations which could register their names. This is in direct opposition to the clear language used by the Legislature, which explicitly places no restrictions on the kind of associations which may choose to register.

The language in section 21300 should be compared to the language used in Business and Professions Code section 14492, which enumerates a nearly identical list of associations, albeit for-profit organizations, that may register their names with the Secretary of State. In this context, the list includes:

> ". . . any lodge, order, beneficial association, fraternal or beneficial society or association, historical, military, or

> veterans organization, labor union, or any other *similar* society, organization or association, or degree, branch, subordinate lodge, or auxiliary thereof." (emphasis added)

The list is virtually identical to that used in the Corporations Code with the exception that the Legislature limited the authorization to register to other organizations "similar" to those enumerated. Thus, it is clear that when the Legislature intends to limit the word "any" to mean any "similar" organization it says so in plain language. Possibly the Attorney General's opinion may have reached a different conclusion had it taken note of Business and Professions Code Section 21300.

The language of the Business and Professions Code with respect to for-profit associations uses the very word the Attorney General asserts here should exist in the Corporations Code. The Legislature's choice to use a broader phrase in the Corporations Code with respect to nonprofit associations makes it plain that the Legislature did not intend the word "other" to mean "other similar" or "other such like" organizations in connection with nonprofit associations. Such a reading would defeat the plain meaning of the words the Legislature did use.

Corporations Code Section 24000 provides another example of methods used by the Legislature when it wants to limit the use of the term "any" in connection with unincorporated associations. There, the statute says "unincorporated association" means "any partnership or other unincorporated organization of two or more persons, whether organized for profit or not, *but does not include* a government or governmental subdivision or agency." (emphasis added)

Section 21300(a) uses other broad language in its definition of "association." It states that "[a]ssociation *includes* any . . . or any other society, organization, or association . . . ." (emphasis added) The term "includes" is ordinarily a word of enlargement and not of limitation. *People v. Horner* (1970) 9 Cal.App.3d 23, 27. [87 Cal.Rptr. 917] The Attorney General's opinion overlooks this point.

Inclusive language is also used in Section 21000 which defines the term "nonprofit association," also cited by the Attorney General:

> "A nonprofit association is an unincorporated association of natural persons for religious, scientific, social, literary, educational, recreational, benevolent, *or other purpose* not that of pecuniary profit." (emphasis added)

The registration procedure appears in Part 2 of the Corporations Code governing such nonprofit associations, and it is again clear that the primary concern is not with the form of such associations, nor is there any indication regarding domestic arrangements. Rather, the concern is with the fact that the association not be formed for pecuniary profit, a factor clearly evident in family associations not formed for business purposes.

Under the ordinary rules of statutory construction, each section is to be read *in pari materia* with the other relevant sections and construed as one cohesive law. *Isobe v. Unemployment Ins. Appeals Bd.* (1974) 12 Cal.3d 584, 590-91 [116 Cal.Rptr. 376, 526 P.2d 528]; *Kendall-Brief Co. v. Superior Court* (1976} 60 Cal.App.3d 462, 466 [131 Cal.Rptr. 515]. Taken together, the provisions of section 21000, 21300 (a) (Association "includes any" lodge, order, etc., "or any other society, organization or association") and 21301 ("Any association" not repugnant to law may register its name or insignia) demonstrate a cohesive and consistent intent to permit a non-exclusive array of non-business associations to register their names.

And even assuming an attempt to limit the phrase "or other purpose" in section 21000 to "or other similar purpose," it should be beyond dispute that family associations, whether they are "traditional" or "nontraditional" are formed of natural persons for social, educational and other benevolent purposes (including religious ones), and that these purposes fall squarely within the stated definition.

The words used are, without exception broad. The list of associations "*includes* any lodge, order, beneficial association, fraternal or beneficial society or association, historical, military, or veterans organization, labor union, foundation, or federation, *or any other society, organization or association*, or degree, branch, subordinate lodge, or auxiliary." Nonprofit associations are formed "of natural persons for religious, scientific, social, literary, educational, recreational, benevolent, *or other purpose* not that of pecuniary profit." "*Any association*, the principles and activities of which are not repugnant to the Constitution or laws of the United States or of this State" may register its name.

Therefore, since the words used in the code are consistently broad and inclusive, and since the Secretary's authority to question registration is explicitly limited to two circumstances (associations which are repugnant to law, and associational names that are deceptively similar to already registered names), the legislative intent was to allow, rather than prohibit the registration of the names of any kind of unincorporated nonbusiness association. There is no reason in the statute to conclude that family associations may not register their names with the Secretary of State.

II(c)
The Family Law Act Is Irrelevant To Any Issue Related to the Registration of Association Names

After determining that the Legislature did not intend to permit the registration of family associations, the opinion continues by examining what it believes to be a conflict between such registration and the provisions of the Family Law Act, Civil Code section 4000 et seq. According to the opinion, since "traditional" families are covered by the Family Law Act, permitting family registration would create a conflict with that act.

This is initially wrong as a matter of law. Section 21301 provides for nothing more than the registration of names, a provision which occurs nowhere in the Family Law Act. Therefore, there is no statutory conflict at all. And it is beyond question that registration with the Secretary of State confers no substantive legal rights on the association beyond the right to prevent unauthorized use of the association's name. The Legislative Counsel's analysis made this abundantly clear.

The Family Law Act is designed to provide and protect the substantive rights of certain clearly defined family relationships, and only those relationships. The Corporations Code section at issue provides no substantive rights except the right to exclusive use of a name. Yet the Attorney General's opinion indulges in a parade of horribles, enumerating the substantive provisions of the Family Law Act respecting earnings and community property, dissolution, liability for debts, etc. that could come into conflict if families could register their names. But if the relevant sections of the Corporations Code provide no substantive rights except the right to use a name, a conclusion by the Legislative Counsel which has never been questioned, it is unclear what conflict would arise with the Family Law Act.

It is unquestioned that spouses and/or their adult children can form corporations for profit, nonprofit corporations, general and limited partnerships and joint ventures. The Attorney General's opinion ignores this reality and fails to explain why unincorporated associations should be treated any differently. If the Attorney General's opinion on the registration of family associations were to prevail on the theory of statutory conflict, then family members would not be allowed to form these other types of organizations because the laws governing their operations and dissolution are different than the Family Law Act.

Moreover, even if there were such a conflicting provision in the Family Law Act permitting the registration of family names, it would only conflict for those families which come under the provisions of that act. The Legislative Counsel made it plain that the Family Law Act would not apply to many families who would register their family associations. Therefore, there would be no conflict if two siblings, an aunt and nephew, grandparents and grandchildren, or other extended family members registered the name of a family association, since none of these relationship come within the provisions of the Family Law Act.

III
THE CONCERNS EXPRESSED IN THE OPINION, AND THE EVENTS LEADING TO IT, DEMONSTRATE THAT THE QUESTIONS ADDRESSED HAVE LITTLE TO DO WITH THE LEGAL ASPECTS OF THIS INQUIRY

It should be clear from the number of irrelevant questions posed and then answered in the opinion, and the nature of the perceived problems, that the opinion is concerned with far more than the single legal issue being presented of whether the Secretary of State has the authority to issue registration certificates to family associations who decide to register their own chosen family names and insignias. A brief examination of these concerns casts some light on the reason this procedure is being challenged in the first place.

Many of these extra-legal concerns can be traced back to the correspondence which initiated this challenge, from Senator Newton Russell to the Legislative Counsel, dated January 17, 1991. Senator Russell expressed concern that those registering their family names with the Secretary of State by using the provisions of Corporations Code section 21301 were doing so "in order to gain a perceived status of a family through the color of law."[20] This concern goes, not to the provisions of the Corporations Code, but to the motives of those who register, an inquiry nowhere mentioned in the Code. A second concern was that registration might somehow subject the state to "lawsuits and liability." While potential lawsuits did present a question which needed to be addressed, the question of whether two or more people

[20]Letter of Senator Russell to the Legislative Counsel dated January 17, 1991.

choose to designate themselves as a family and then register their name has nothing to do with such potential liability.

The Secretary's concern under the statute is whether the names being registered are deceptively similar to already registered names, or whether the associations are repugnant to the law. Corp. Code §§ 21301-02. The California Supreme Court has long held that the decision to live in a nontraditional family is protected under the California Constitution, and that such decisions, far from being "repugnant" to California law are embraced by and protected under it. *City of Santa Barbara v. Adamson*, (1980) 27 Cal.3d 123 [164 Cal.Rptr. 539, 610 P.2d 436] Therefore, the only legal question was whether the statute permitting registration placed any limitations on those who choose to register, or would impose any liability on the State.

As discussed above, the statute uses language that is as open-ended as is possible. The language contemplates virtually no limitations on the kinds of associations that may register their names. Of all of these potential associations, though, it is only with regard to associations which call themselves families that Senator Russell has become concerned. The statute does not require the Secretary of State to investigate the choice of any group of natural persons to register the name of their association with her office. As a matter of legal duty, the Secretary is required to remain indifferent under the statute, whether the registering association styles itself The Benevolent Order to Preserve Ball Point Pens, The Elvis Presley Is Alive Club, or the Society of Cork Collectors.

In his letter requesting the Legislative Counsel's analysis, Senator Russell formulated ten questions for the Legislative Counsel to answer based on the State's potential liability and the potential legal rights of registered families. Although it only answered three of Senator Russell's questions, the bottom line answer was that family associations could not register their names if they included the term "family" or a surname in the title of the associational name because surnames and the word "family" are of common usage, and words of common usage are not property that can be registered.

The Legislative Counsel's conclusion that registration is improper, however, does not follow from the Legislative Counsel's analysis. The only potential violation of law was the assertion that since the word "family" is in common usage, the Secretary of State could not register associations using the word "family" in their names. This conclusion is plainly wrong. The words "corporation," "association," "organization," and many more are equally within common usage. If anyone were to register their association simply as "Family" or "Association," the Legislative

Counsel's analysis would potentially apply.

But when those words are used in combination with other words, such as "The Fraternal Association of Descendants of George Washington Carver," or "The Family of John Doe and Jane Roe," a unique and identifiable name has been created which can be registered. The case cited by the Legislative Counsel makes exactly this point: while words in common usage may not, by themselves, be registered, such common words "may be used . . . in combination with other descriptive words, provided they are not used in combination with such other words or symbols or designs as to render it probable that they would mislead persons possessing ordinary powers of perception." *American Automobile Association v. American Automobile Owners Association* (1932) 216 Cal. 125, 131; see also *Cebu Association of California, inc. v. Santa Nino de Cebu Association of U.S.A.* (1979) 95 Cal.App.3d 129 [157 Cal.Rptr. 102] (while a court cannot enjoin use of the single word "Cebu," it may properly enjoin the use of composite and distinct phrases using the word "Cebu")

As noted, the motive of those registering associations with the Secretary of State is irrelevant to any legal issue. The statute does not require the Secretary to inquire into an association's motivation for registering, or its form. Corporations Code section 21301 provides only:

> "Any association, the principles and activities of which are not repugnant to the Constitution or laws of the United States or of this State, may register in the office of the Secretary of State a facsimile or description of its name or insignia and may by reregistration alter or cancel it."

The Secretary is mandated to issue registration certificates to those associations which choose to take advantage of this section. Corp. Code Section 21305. Absent some indication that the registering association is repugnant to the law, there is only one situation in which the Secretary may refuse registration. Corporations Code section 21302 codifies the Supreme Court's rule in the *American Automobile Association* case that the Secretary may not register names that are misleadingly or deceptively similar. The legislation contains no other restriction on the Secretary's authority to register names.

Therefore, it appears that the real concern behind this entire effort has been an attempt to prohibit so-called "nontraditional" families from creating any public record of their existence. That is, in fact, all these provisions provide for--a public record. Any doubt that this is a driving concern here is resolved in Senator Russell's

letter of March 18, 1991, requesting the Attorney General's opinion. He states:

> "I am writing to request an opinion from the office of the Attorney General on the legality of the practice of the Secretary of State issuing unincorporated nonprofit association registration certificates to individuals who register themselves as 'families' *and then use the registration as official evidence of their 'family' status.*" (emphasis added)

The underlined section is plainly unrelated to the legal question of the Secretary's authority. The evidentiary status of a registration certificate is entirely divorced from any legal consideration about the Secretary's legislative mandate to issue the certificates. Senator Russell seems to be spearheading an effort by a political constituency that is seeking to make sure there is no public record that so-called "nontraditional" families may point to as evidence of their intentions to be a family unit.

It is unchallenged that the existence of a certificate of registration itself creates no automatic rights for association members. There is no question that the state creates no liability for itself by allowing associations to register their names. The only question is whether some associations--those who associate because of mutual love, affection, support and respect and call themselves families--can be prevented from registering their names which include the word "family." What they do with such registrations is legally irrelevant in the statute, whether it is a family or a fraternity. The statute provides they may use it to enforce their right to exclusive use of their association's name, but any use beyond that is neither proscribed, encouraged, or anywhere mentioned in the statute.

And again, the linchpin of the Attorney General's opinion on excluding registration of family associations is the fact that the members share a common residence. It should again be stressed that the Attorney General was never asked a question that focused on persons who share a common residence. There is no indication, either in Senator Russell's correspondence to the Attorney General, or in the Attorney General's letter to Thomas F. Coleman of May 14, 1991 that the registering family's domestic arrangements was in any way involved. Yet the opinion relies heavily on whether registering families live together.

The sudden appearance of this "common residence" factor suggests that it was not the legal issue of registration which concerned the Attorney General, but a much more focused political agenda regarding families. This clearly undermines any

authority the opinion may have. Opinions of the Attorney General are to be issued in response to "specific questions posed by state legislators, officers and agencies" and are not to be issued gratuitously. *Jimmy Swaggart Ministries v. State Bd. of Equalization* (1988) 204 Cal.App.3d 1269, 1285 n.14 [250 Cal.Rptr. 891] Since the statute uses the broadest and most inclusive language possible, the introduction of this new and unrequired inquiry attempts to place duties on the Secretary of State that are far beyond the authority granted her by the Legislature.

It should also be noted in closing that it is questionable whether the Attorney General should have undertaken this opinion in the first place. In a letter dated April 24, 1991, Anthony Miller, Chief Deputy to the Secretary of State notified the Attorney General's office that the Secretary of State was aware of at least two potential lawsuits regarding the registration procedure, and that in the event either suit was filed, the Secretary of State might require legal representation by the Attorney General. Thus, the choice to go ahead with the opinion despite this clear potential conflict of interest presents serious problems regarding the Attorney General's ability to provide competent legal representation to one of its clients, an important state agency. By taking a position on a contested issue regarding the Secretary of State while aware of threatened litigation against the Secretary's office, the Attorney General decided to abandon its duty to defend state officials in litigated matters. Gov. Code § 12512.

February 4, 1992

-- Thomas F. Coleman
David F. Link

Family Diversity Project
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APPENDICES

Display 1991-1992 Bill Text - INFORMATION
BILL NUMBER: SB 192

BILL TEXT

INTRODUCED BY Senator Russell

JANUARY 17, 1991

An act to amend Section 21300 of the Corporations Code, relating to nonprofit associations.

LEGISLATIVE COUNSEL'S DIGEST

SB 192, as introduced, Russell. Nonprofit associations.

Existing law provides that any association whose principles and activities are not repugnant to the Constitution or laws of the United States or this state, may register a facsimile or description of its name or insignia with the Secretary of State. For purposes of this law, "association" includes any lodge, order, beneficial association, fraternal or beneficial society or association, historical, military, or veterans organization, labor union, foundation, or federation, or any other society, organization, or association, or degree, branch, subordinate lodge, or auxiliary thereof.

This bill would provide that "association" includes, but is not limited to, the above listed entities.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 21300 of the Corporations Code is amended to read:

21300. As used in this chapter, the following terms have the meanings set forth in this section, unless the context otherwise requires:

(a) "Association" ~~includes~~ shall include, but is not limited to, any lodge, order, beneficial association, fraternal or beneficial society or association, historical, military, or veterans organization, labor union, foundation, or federation, or any other society, organization, or association, or degree, branch, subordinate lodge, or auxiliary thereof.

(b) "Insignia" includes badge, motto, button, decoration, charm, emblem, or Rosette.

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California State Senate

NEWTON R. RUSSELL
SENATOR, TWENTY-FIRST DISTRICT

MINORITY WHIP

January 17, 1991

TO: Bion Gregory

FROM: Senator Newton Russell

RE: Registration of Family Associations under Corporation Code Section 21301

Pursuant to Corporation Code sections 21301, 21302 and 21305, the Secretary of State, upon the filing of a properly completed application and the payment of the applicable fees, may register the name of any unincorporated nonprofit association and issue a certificate of registration to that effect, provided that the name does not so resemble another registered name as may be likely to deceive.

The Secretary of State has issued a "Certificate of Registration of Unincorporated Nonprofit Association" to Rebecca A. Tapia and Jennifer L Baughman registered as Fraternal Name No. 4309 and listed their association by using the words "FAMILY OF REBECCA A. TAPIA AND JENNIFER L. BAUGHMAN". A similar certificate has been issued by the Secretary of State to Thomas F. Coleman and Michael A. Vasquez registered as Fraternal Name No.4302 and listed their association by using the words "FAMILY OF THOMAS F. COLEMAN AND MICHAEL A. VASQUEZ".

These people have registered as the "FAMILY OF ___" in order to gain a perceived status of a family through the color of law. See the memorandum prepared by Thomas F. Coleman and presented to Secretary of State March Fong Eu and attached herewith at (page 7, footnote 28).

I am concerned that this may be an improper use of the above code sections and may subject the State of California to potential lawsuits and liability. Therefore, I am requesting a Legislative Counsel's opinion based on the following issues and questions which raise serious doubt and legal question as to the validity of the above-described practice:

(1) Whether the State of California may incur potential liability to people who register as an unincorporated nonprofit association "FAMILY" for the unintended legal consequences of their registration, for failure to inform these people of the potential legal consequences of the formation of an unincorporated nonprofit association "FAMILY" since unincorporated nonprofit associations operate under laws that are distinctly different from the laws that govern typical family relationships?

(2) Whether people who register as an unincorporated nonprofit association "FAMILY" must be informed by the state of California concerning the implications of acting under unincorporated nonprofit association law? Indeed, how will members of the "FAMILY" know when they are acting as individuals or when they are acting as an unincorporated nonprofit association? Will this be an additional issue to be litigated in unincorporated nonprofit association "FAMILY" dissolutions?

(3) Whether the use of the unincorporated nonprofit association registration to register otherwise unrelated people as a "FAMILY" is consistent with the statutory authority of Corporation Code section 21300 et seq. or whether it intrudes upon areas governed by other law such as partnership law, family law, including the law of marriage, and criminal law?

(4) Whether the statute as applied would open the law to permit (a) two men and a woman or (b) two women and a man or (c) a single man or woman and a unrelated minor boy or girl,or (d) a single parent and minor child or (e) a polygamous relationship or (f) a palimony relationship or (g) a "group marriage" relationship (such as the "Manson Family") or (h) a homosexual relationship or (i) any other combination to register as a "family"?

(5) Whether all members of a registered unincorporated nonprofit association "FAMILY" are liable for tortious conduct of other members of the "FAMILY" when acting under unincorporated nonprofit association law?

(6) Whether all members of a registered unincorporated nonprofit association "FAMILY" are liable for contractual obligations and or damages incurred by other members of the "FAMILY" when acting under unincorporated nonprofit association law?

(7) Whether property owned in the name of a registered unincorporated nonprofit association "FAMILY" will pass to the members of the "FAMILY" by intestate succession (or otherwise by inheritance) or whether it will escheat to the state as the property of a defunct unincorporated nonprofit association? Can such property be probated?

(8) Whether registration as an unincorporated nonprofit

association "FAMILY" will have the effect of waiving the statutory protections of parents for financial liability for the acts of their minor children?

(9) Whether the use of unincorporated nonprofit association law affects the legal obligations of an unincorporated nonprofit association "FAMILY" in other ways?

(10) Whether there are in fact no legal consequences, benefits or obligations resulting to people who register as an unincorporated nonprofit association "FAMILY" or whether there exist substantial legal consequences to property rights, legal liability in general or other legal considerations? (The Coleman memorandum asserts that there are no legal consequences.)

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Sacramento, California
February 19, 1991

Honorable Newton R. Russell
5061 State Capitol

Family Associations - #2151

Dear Senator Russell:

QUESTION NO. 1

Are a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family entitled to register the name of their "association" with the Secretary of State under Section 21301 of the Corporations Code under a style such as "Family of John Doe and Jane Roe"?

OPINION NO. 1

A group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family are not entitled to register the name of their "association" with the Secretary of State under Section 21301 of the Corporations Code under a style such as "Family of John Doe and Jane Roe."

ANALYSIS NO. 1

Section 21301 of the Corporations Code provides for the registration of associations, as follows:

> "21301. Any association, the principles and activities of which are not repugnant to the Constitution or laws of the United States or of this State, may register in the office of the Secretary of State a facsimile or description of its name or insignia and may by reregistration alter or cancel it."

Upon registration, the Secretary of State issues a certificate of registration. Section 21307 of the Corporations Code then prohibits any unauthorized person from using the association's registered name, as follows:

> "21307. Any person who willfully wears, exhibits, or uses for any purpose a name or insignia registered under this chapter, unless he is entitled to use, wear, or exhibit the name or insignia under the constitution, bylaws, or rules of the association which registered it, is guilty of a misdemeanor punishable by fine of not to exceed two hundred dollars ($200) or by imprisonment in the county jail for a period not to exceed 60 days."

Thus, registration under Section 21301 creates an exclusive right to use a name or insignia. An exclusive right to use a name cannot be granted to words in common use since those words are regarded by the law as common property (American Assn. v. Automobile O. Assn., 216 Cal. 125, 131). Similarly, a family name cannot be the subject of an exclusive right so as to prohibit another from using his or her name (Tomsky v. Clark, 73 Cal. App. 412, 418).

The registration of an association under a name such as "Family of John Doe and Jane Roe" would give that association an exclusive right to use that name and would prohibit others from using that name, under threat of criminal penalty (Sec. 21307, Corp. C.). Similar names, such as "The Doe Family" could be appropriated, and other "Doe Families" would thereafter be prohibited from using that name, even, arguably, in such cases as on holiday cards. These problems arise from the fact that "family" is a word in common use, and therefore cannot be made a title subject to the exclusive use of another. The association of it with a surname does not help since a family name cannot be the subject of an exclusive right-to-use. Thus, under Section 21301, the registration of such a name would be repugnant to the laws of the state that permit people to use common words and family names without restriction.

We do not imply that an association cannot be formed for that purpose in appropriate cases. However, no formalities are required for the formation of an unincorporated nonprofit association (Law v. Crist, 41 Cal. App. 2d 862, 865). The only purpose of registration is protection of the registered name.

Accordingly, it is our opinion that a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family are not entitled to register the name of their "association" with the Secretary of State under Section 21301 of the Corporations Code under a style such as "Family of John Doe and Jane Roe."

QUESTION NO. 2

May a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family form an association to formalize that relationship?

OPINION NO. 2

A group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family may form a nonprofit association to formalize that relationship. However, many rights traditionally granted to family members may be unavailable if based solely on the association.

ANALYSIS NO. 2

A nonprofit association is defined by Section 21000 of the Corporations Code, as follows:

> "21000. A nonprofit association is an unincorporated association of natural persons for religious, scientific, social, literary, educational, recreational, benevolent, or other purpose not that of pecuniary profit."

The rights and duties of members of an association are basically determined by the contract of the association, such as its constitution or bylaws, although the agreement of association need not be formal or in writing (Law v. Crist, supra, at 865). In essence, the agreement to associate is contractual and the rights under it are contractual (Lawson v. Hewell, 118 Cal. 613, 618-619).

Accordingly, a group of people may obtain rights similar to that of a family by forming an association if those rights may be obtained by contract.

However, in determining what those rights are, it must be borne in mind that "family" is not a word of precise legal meaning. It may refer to spouses, it may refer to parents and children, it may refer to siblings, it may refer to a combination of these relationships, or it may refer to even more extended relationships. Indeed, in Moore S. Corp. v. Industrial Acc. Com, 185 Cal. 200, at 207, the court stated as follows:

> "There is little to be gained by reviewing the numerous definitions given by the courts and lexicographers of the words 'family' and 'household.' They mean different things under different circumstances. The family, for instance, may be an entire group of people of the same ancestry, whether living together or widely separated; or it may be a particular group of people related by blood or marriage, or not related at all, who are living together in the intimate and mutual interdependence of a single home or household."

Since "family" has so many varied meanings, it is difficult to definitively determine the characteristics that would be shared by a "family association." They may vary from association to association, depending on the nature of the "family relationship" that is involved.

However, not all rights inherent in a family relationship could be obtained by forming an association. For example, a contractual relationship between persons living together without marrying is not enforceable under the Family Law Act (Marvin v. Marvin, 18 Cal. 3d 660, 665 and 681). However, at least to the extent that contracts are not based upon an illicit consideration of sexual services, contracts between nonmarital partners will be enforced (Id., at 672). Accordingly, members of an association could contract to pool their earnings in a manner similar to that done by a husband and wife under the community property statutes. Of course, since the Family Law Act is inapplicable, recourse in the event of a breach of contract would not be under the Family Law Act but would be limited to contractual remedies.

With respect to an association that was formed to have functions similar to a parent and child relationship, it may be that an adult could undertake a duty of support to a child similar to that owed by a parent (Sec. 196, Civ. C.). However, a minor

does not usually have the capacity to enter into a contract that cannot be disaffirmed (Sec. 35, Civ. C.). In addition, the relationship of parent and child is subject to very substantial statutory regulation (see, for example, Title 2 (commencing with Sec. 196), Pt. 3, Div. 1, Civ. C.). For example, a change in the parent-child relationship requires compliance with specific requirements (for example, Ch. 2 (commencing with Sec. 221), Title 2, Pt. 3, Div. 1, Civ. C. (adoption)). Thus, that aspect of the parent-child relationship could not be established by merely forming an association. Of course, we are not informed of the particular types of rights and duties that are intended to be created by such an association.

However, any of these rights would arise solely because of the contractual relationship of members of the association, and not because they have somehow become spouses (or children and parents) by entering into the association. In Marvin v. Marvin, supra, the court held that the Family Law Act is inapplicable to nonmarital partners, even though a contractual relationship had some of the same characteristics as a marital relationship. Similarly, membership in a "family association" will not, in itself, create a relationship of spouse or parent and child. The law prescribes the prerequisites for these relationships (for example, Sec. 221 and following, Civ. C. (adoption); Title 1 (commencing with Sec. 4000), Pt. 5, Div. 4, Civ. C. (marriage)). In the absence of compliance with requirements applicable to establish a spousal or parent and child relationship, the rights of members of a family association will be limited to those contractual rights established under the association's charter, bylaws, or other governing provisions, and then only to the extent not prohibited by law.

Thus, for example, members of the association may leave property to other members in their wills. However, in the absence of such an intentional disposition, membership in the association will not establish a right to property under the laws governing intestate succession (Pt. 2 (commencing with Sec. 6400), Div. 6, Prob. C.).

So far, we have discussed limits on the ability of a nonprofit association to obtain rights and obligations similar to those present in a traditional family relationship. Conversely, membership in a nonprofit association may impose obligations that are not usually present in a traditional family relationship.

Section 388 of the Code of Civil Procedure provides as follows:

> "388. (a) Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.
>
> "(b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint and several, or several."

Thus, the association can be sued as an association, while spouses, though they may be joined in the same suit on occasions, are not sued in the name of the family.

In addition, members of a nonprofit association are not generally liable for contractual debts of the association unless the member has personally assumed that debt (Secs. 21100 and 21101, Corp. C.). However, members of a nonprofit association may, in some instances, be liable for the tort liability of other members in pursuing the purposes of the association (Steuer v. Phelps, 41 Cal. App. 3d 468, 472). This liability will depend upon the facts, such as whether the individual members authorized the activity that gave rise to the injury (Id.), and whether there were officers or directors to whom liability could be imputed (White v. Cox, 17 Cal. App. 3d 824).

It is difficult to apply these principles to all possible types of family associations. As stated previously, the nature of family relationships are so varied that it is impossible to find a simple characterization that can be applied to all. In addition, since the nature of an association will necessarily depend upon the terms of the agreement between its members, a "family association" is an entity that may take numerous forms.

Thus, it is our opinion that a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family may form a nonprofit association to formalize that relationship. However, many rights traditionally granted to family members may be unavailable if based solely on the association.

QUESTION NO. 3

Does the state have any potential liability if it does not inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association?

OPINION NO. 3

The state does not have any potential liability if it fails to inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association.

ANALYSIS NO. 3

There is no statutory or regulatory requirement that the state inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association.

Since there is no statutory or regulatory duty to inform registrants of potential problems, no liability arises from a failure to discharge a mandatory duty (Sec. 815.6, Gov. C.). Thus, any duty to inform must arise under the common law (see Davidson v. Westminster, 32 Cal. 3d 197, 202).

In the absence of a special relationship, the state is under no duty to warn others of potential hazards that may be caused by others (Tarasoff v. Regents of University of California, 17 Cal. 3d 425, 435; Davidson v. City of Westminster, supra, 203). A special relationship that gives rise to a duty to warn or otherwise exercise care may arise when a public official voluntarily assumes a duty to exercise care, when there is an express or implied promise to exercise care, or when the official created or increased the peril to the victim (Jackson v. Clements, 146 Cal. App. 3d 983, 988) and the peril was not readily foreseeable by the victim (Johnson v. State of California, 69 Cal. 2d. 782, 786).

In the case of the registration of an association's name, there is no voluntary assumption of a duty to protect a victim or an express or implied promise to care for a victim. Accordingly, any duty to inform or warn must be based on the creation or aggravation of a risk that is not reasonably foreseeable by a victim. However, the registration of the name of

the association does not create the association but only registers its name. Thus, the registration does not create or increase the peril. It is the creation of the association by its members that creates the peril, if any, not the registration of the association's name.

In addition, the state, by registering the name, does not have sufficient information to fully assess the nature of any potential liabilities since the registration does not disclose the terms of association membership. The members of the association are in a far better position to understand the rights and duties that they have imposed on themselves. Thus, the risk of forming the association is more readily foreseeable by members of the association than by the state.

Accordingly, it is our opinion that the state does not have any potential liability if it fails to inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association.

Very truly yours,

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WKS:dfb