York Mutual Fire Co. of Maine
Portland
Insurance opinion
Coole

May 26, 1965

M. Donald Gardner, Esq.
Masonic Building
Portland, Maine

Re: Merger Between a Domestic and a Foreign Company

Dear Brother Gardner:

Your opinion of April 29, 1965, on the question of merger between a domestic and foreign mutual company has been carefully considered. In our judgment such a merger is not permitted under the Maine Statutes.

As you have noted, 24 M.R.S.A 508 is the only statutory provision in the insurance section which specifically mentions the merger of mutual companies and, furthermore, limits its operation exclusively to domestic mutuals. Inasmuch as this section falls under the chapter heading Organization and Operation and under the subchapter I heading General Provisions, it would appear that if the legislature intended to include the merger of a domestic with a foreign company, such merger would have been expressly included within the above chapter or subchapter particularly when the 500 section of Title 24 contains provisions affecting both domestic and foreign companies. It must be remembered that a domestic mutual is a particular class of a corporation and therefore its proper treatment lies well within Title 24, the title containing laws governing the operations of insurance companies.

It is our belief that since the legislature has expressly provided for the merger of domestic mutuals and not for the merger of a domestic with a foreign company, the legislature intended to prohibit the merger of a domestic mutual with a foreign company. This conclusion is rendered necessary by the maxim expressio unius est exclusio alterius. Whereas 24 M.R.S.A 504 affirmatively designates a form of conduct, the manner of its performance and operation and the kind of corporation to be included, there is an inference that all omissions were intended by the legislature. Therefore, by limiting its expression of merger solely to the merger of domestic mutual companies, it would appear that the legislature intended to prohibit the merger of a domestic mutual with a foreign mutual company. This view is borne out by statements made by one of the original draftsmen of this legislation.

You apparently cite 24 M.R.S.A 651 in the belief that this section brings the merger of a domestic and a foreign insurance company within the general laws governing corporations, as set-out in Title 13. However, section 651 comes within subchapter III which is entitled Issue of Contract by Incorporated Companies. In addition, section 651 bears the heading "Incorporation required; Lloyd's". These specific headings have nothing whatsoever to do with the power to merge or consolidate which, as you have pointed out, exists only by virtue of plain legislative enactment. As we interpret section 651 it is expressly limited to those powers relating to the issuance of insurance contracts and cannot be construed liberally so as to give rise to the implication that it is permissive for a domestic to merge with a foreign corporation as otherwise provided for in another title.

If I may, I would like to cite 15 Fletcher Cyclopedia of the law of Private Corporation 7066, which contains language supporting our position: "Corporations can consolidate or merge only where the legislature has expressly authorized them to do so by some statutory or charter provision, and where no such statutory or charter authorization exists, any attempt to consolidate or merge is ultra vires and void. So it follows that if the statute expressly limits the right to consolidate to domestic corporations, a domestic and a foreign corporation cannot be consolidated thereunder. And statutes authorizing the consolidation of domestic with foreign corporations to not, of course, authorize the consolidation of two or more domestic corporations."

If there should be any questions or need for further clarification of our position in this matter, I would be happy to consider them.

Very truly yours,

John B. Wlodkowski
Ass't Attorney General

JBW/jms