

MAINE STATE LEGISLATURE

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STATE OF MAINE

80-4

Inter-Departmental Memorandum Date, January 10, 1980

To James Henderson, Deputy Dept. Secretary of State

From Steven Wright, Assistant Dept. Attorney General

Subject Merger of Islesboro Associates with the Tarratine Club of Dark Harbor

You have asked whether the Islesboro Associates, a corporation created by Private and Special Law 1945, c. 39 may merge with the Tarratine Club of Dark Harbor, leaving the Tarratine Club of Dark Harbor as the surviving corporation. We answer in the affirmative.

In pertinent part PL 1945, c. 39 provides:

Sec. 7. Grant of authority to Islesboro Inn Company, Tarratine Club of Dark Harbor and Islesboro Golf Links Trust to merge with Islesboro Associates. Islesboro Inn Company, Tarratine Club of Dark Harbor and Islesboro Golf Links Trust and each of them are hereby authorized to merge with the Islesboro Associates as hereinafter provided.

Sec. 8. Merger with other corporations and trusts; how affected. Merger with Islesboro Inn Company may be effected in the manner provided for the merger of corporations under the general laws of the state; merger with Tarratine Club of Dark Harbor, a non-stock corporation organized under chapter 62 of the revised statutes of 1916, may be effected in the same manner as with a corporation having capital stock, the members thereof to stand in the place of and to have the same rights as stockholders in corporations having capital stock and all proceedings with relation to such merger shall be had in said manner and with the same effect as though said Tarratine Club of Dark Harbor were a corporation having capital stock; merger with Islesboro Golf Links Trust also may be had and effected in the same manner, treating the shareholders in said trust as though they were stockholders in a corporation having capital stock, provided, however, that before any merger with such trust is effected it must first be authorized by and all proceedings therefor approved by the trustees of Islesboro Golf Links Trust.

It is important to note that throughout this law, the term "merge" is used by the legislature to describe its grant of authority

to these various corporations to combine or consolidate. Consolidate was the general term used to describe both consolidation and merger, as those terms are used in the present corporation laws. Consolidation is the act of combining two or more corporations into a single new corporation. Merger is the act of combining two or more corporations into one of the existing corporations; the result of a consolidation being a "new corporation", the result of a merger being a "surviving corporation". See, 13-MRSA §901, et seq. and 13-B MRSA §§901, 902. Compare these provisions with MRS 1944, c. 49, §2 which provides in relevant part:

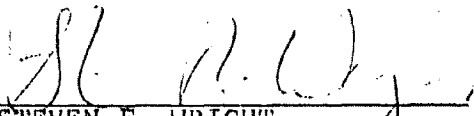
[A]ny two or more corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state, may consolidate into a corporation which may be any one of said corporations, or a new corporation organized under the laws of this state to be formed by means of such consolidation... (emphasis added)

The nonstock or nonprofit corporation law that existed at that time contained an almost identical provision. See MRS 1944, c. 50, §9. Additionally, the laws governing corporations created by private and special laws which existed at the time of the enactment of P & SL 1945, c. 39 contain no provisions obligating such corporations to combine in any way other than that provided in the general corporation laws. See, MRS 1944, c. 49, §§3-7.

Viewing the private and special law establishing Islesboro Associates in the context of the statutes then existing which governed consolidations and mergers, it appears clear that the legislature afforded these corporations a great deal of flexibility in determining the details of when and how best to combine their corporate viabilities, as long as such combinations were "effected in the manner provided for the merger of corporations under the general laws of the state". P & SL 1945, c. 39, §8. The utilization of the term "merger" when "consolidate" was the generic term in the public law for corporate combinations may imply, however, a legislative intent that one of the enumerated four corporations, i.e. Islesboro Associates, Islesboro Inn Company, Tarratine Club of Dark Harbor, or Islesboro Golf Links Trust, emerge of the reorganization as a "surviving corporation". Whether the legislature intended such a specific result need not be discussed further because, as stated earlier, the instant reorganization would result in the Tarratine Club of Dark Harbor as the remaining or surviving corporation.

Therefore, it is our conclusion that there is no legal impediment to the proposed merger of Islesboro Associates with the Tarratine Club of Dark Harbor.

If you have any additional questions on this matter, please feel free to contact me.


 STEVEN F. WRIGHT
 Assistant Attorney General