

Whenever the employes of the county department of public welfare are brought under the Public Employes' Retirement Fund by action of the county council, all expenses including both the original membership cost and continuing expenses allocable to such employes should be appropriated and paid from the county welfare fund in like manner as other administrative expenses are paid from such fund.

As stated in the third clause of the opinion above quoted, there is doubt as to who should execute the contracts with the Public Employes' Retirement Fund and it is, therefore, recommended that in regard to public welfare employes the contract should be executed by the county council, county commissioners and the county department of public welfare.

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#### OFFICIAL OPINION NO. 46

May 15, 1946.

Hon. Rue J. Alexander,  
Secretary of State,  
State House,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 4 which is as follows:

"Articles have been presented to the Secretary of State merging an Indiana corporation, the non-survivor, into an Illinois corporation, pursuant to section 69 (a) of Chapter 192 of the Acts of 1937 (Section 25-314a BRS 1933 Supplement).

"The aggregate number of shares which the corporation is authorized to issue upon consummation of the merger is 530,000, of which 33,600 shares will represent the shares of stock of the non-surviving corporation, whose authorized capital stock is 15,000 shares. The assets of the Indiana corporation constitute all that will be owned in Indiana by the surviving Illinois corporation, which has not previously conducted business in Indiana.

"Attorneys for the constituent corporations contend that the filing fee should be computed under section 2 (c) of Chapter 219 of the Acts of 1929, as amended (section 25-602 (c) BRS 1933 Supplement) rather than under section 2 (e), on the basis that a foreign corporation applying for admission to transact business in Indiana would be required to pay a filing fee based only on its issued and outstanding capital stock represented in this State.

"This Department has quoted a fee computed at one cent per share or \$5306.50, which includes a fee of \$6.50 for filing and certificate, pursuant to section 2 (e) whereas attorneys contend the correct amount is \$342.50 in accordance with section 2 (c), which likewise includes the above item of \$6.50.

"Your official opinion as to the correct amount of fee to be assessed is requested."

Section 25-314a B.R.S. 1933 Supplement in part provides in substance that any one or more corporations organized under the provisions of the Indiana Law may merge or consolidate with one or more corporations organized under the laws of any other state. That all the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the merger or consolidation and other matters. This agreement properly executed with other papers shall be filed in the office of the Secretary of State and shall then be taken and deemed to be the agreement and article of merger or consolidation for all purposes of the laws of Indiana. I assume that the articles referred to by you in the first paragraph of your letter are in accordance with this section of the statute.

Clause (c) of Section 25-602 B.R.S. 1933 pamphlet part is as follows:

"For filing with the secretary of state the application of a foreign corporation for profit with a proportion of its issued and outstanding capital stock, represented in this state, of one thousand (1,000) shares or less, whether par value or no par value, ten dollars (\$10.00). If the proportion of its issued and outstanding capital

stock, represented in this state, is over one thousand (1,000) shares, whether par value or no par value, one cent (1c) per share."

Clause (e) of the same section is as follows:

"For filing with the secretary of state the articles of agreement, or a certified copy or duplicate thereof, of any consolidation, merger, or union, of a domestic corporation, with another corporation, either foreign or domestic, organized for profit and having capital stock, the secretary of state shall charge the same fees in each case for filing such articles of agreement, or certified copies or duplicates thereof, as is hereinbefore set forth, for filing articles of incorporation, or certified copies or duplicates thereof, of a domestic corporation for profit, having the same amount of capital stock as the resulting or remaining corporation into or with which the other corporations have been consolidated, merged, or united, as aforesaid; but shall deduct therefrom and allow full credit for all fees theretofore paid by any domestic corporation included in such consolidation, merger, or union, with respect to the shares authorized prior to such consolidation, merger, or union, if the surviving corporation in case of a merger or the consolidated corporation in case of a consolidation is or becomes thereby a domestic corporation under the laws of the state of Indiana."

In my opinion Clause (e) is directed specifically to the fees for filing the articles of agreement of any consolidation or merger of a domestic corporation with another corporation either foreign or domestic organized for profit and having capital stock and therefore is the clause under which the fees should be determined for the filing of articles of agreement of such a merger as that described in your letter.

Paragraph (c) on the other hand seems to be directed primarily to the filing of an application by a foreign corporation for a profit to do business in this state under Section 25-304 B.R.S. 1933.