

Later on in the same opinion, the Court uses the following language, quoting from P. 395:

“The evidence shows that the appellant was also teaching in other schools, and it is argued that, if one teaching for less than the full time of the school can acquire tenure status, then tenure rights may be acquired in two school corporations. But there is nothing in the statute that forbids it.”

I think it is very clear that under the facts as stated and as assumed, such teacher is a tenure teacher.

SECRETARY OF STATE: Whether a foreign corporation into which domestic corporation is merged, in order to do business in Indiana, must qualify under general admission provisions of Indiana Act.

December 16, 1942.

Mr. Warren Day,
Corporation Counsel,
Office of Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion based upon the following brief statement of facts:

“An Indiana corporation desires to merge with an Ohio corporation pursuant to the provisions of Chapter 192 of the Acts of 1937 (Sec. 25-410 Burns' Statutes, 1933). The Ohio corporation will be the surviving corporation after the merger, and will transact a part of its business in the State of Indiana.

Upon the above brief statement of facts you propound the following question:

“Will it be necessary for the surviving Ohio corporation to qualify as a foreign corporation in the

State of Indiana, or is it qualified to do business in the State of Indiana by virtue of having complied with the provisions of Chapter 192 of the Acts of 1937, and having paid the fees required by Chapter 88 of the Acts of 1939?"

Chapter 192 of the Acts of 1937 referred to above is Section 25-410 of the June, 1942, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated (1933), and will hereafter be referred to as Section 25-410. Chapter 88 of the Acts of 1939 referred to above is Section 25-602 of the June, 1942, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated (1933), and will hereafter be referred to as Section 25-602.

Section 25-410 provides the method for the merger of domestic corporations with foreign corporations. However, an examination of this section fails to reveal in explicit terms, at least, the exact status of a foreign corporation which has become the surviving corporation as the result of such a merger. My attention has been called, however, to the following provision of the section, which it has been suggested is sufficient to avoid the necessity for the ordinary application for authority of the foreign corporation to do business in the State of Indiana. The portion of the act referred to reads as follows:

"The agreement so authorized, adopted, approved, signed and acknowledged together with certified copies, in triplicate, of the laws of the foreign state or states applicable to such merger or consolidation and affecting the corporation or corporations not organized under the laws of this state, executed by the secretary of state of such state or states and under the seal thereof shall be filed in the office of the secretary of state and such agreement shall thenceforth be taken and deemed to be the agreement and act of merger or consolidation of such constituent corporations for all purposes of the laws of this state."

The careful analysis of the above language, however, in my opinion shows clearly that such language is entirely inadequate to authorize a foreign corporation to do business

in the State of Indiana without complying with the general statute upon that subject. The language does not say that such agreement, when filed as therein set out, shall authorize the surviving corporation to do business in the State of Indiana. All that is said is simply that when the documents referred to are filed they are to be taken and deemed to be "*the agreement and act of merger * * ** for all purposes of the laws of this state." My attention is also called to the fact that provision is made whereby the secretary of state becomes the agent for the acceptance of process in certain actions. This appointment, however, is quite limited and does not fulfill the purpose of the appointment of a resident agent as required by law for the admission of a foreign corporation. Note the language of Section 25-410 on this subject:

"If the corporation surviving or resulting from such merger or consolidation is to be governed by the laws of any state other than the laws of this state, it shall agree that it may be served with process in this state in any proceeding for the enforcement of any obligation of any constituent corporation of this state."

The appointment of the secretary of state, therefore, is limited by the above language to proceedings for the enforcement of any obligation of any constituent corporation of *this state*. It does not seem to contemplate general obligations against the surviving corporation. In the absence of more direct provisions than I have been able to find, I think that in the case assumed by you we have simply the ordinary case of a foreign corporation desiring to do business in this state, and in order to effect such authority it is necessary to comply with the general laws applying to the admission of foreign corporations. I think this answers your question.