INSURANCE: An Indiana stock legal reserve company merging with a fraternal assessment association may not, after the merger, exercise the association's right to make assessments or levy liens.

The charter of an Indiana company cannot be expanded or enlarged by virtue of its merging with a foreign fraternal benefit association.

September 29, 1941.

Hon. Frank J. Viehmann,
Insurance Commissioner,
Dept. of Insurance,
State House,
Indianapolis, Indiana.

Dear Mr. Viehmann:

I have before me your request that an official opinion issue in response to the following inquiry:

"The X Company, an Indiana corporation, incorporated under the Insurance Code of 1935, as a stock legal reserve life insurance company, desires to reinsure in its entirety the Y Association, a non-admitted mutual life insurance company of Nebraska. The Y Association was originally incorporated as a beneficial society on the fraternal basis. The certificates of the Y Association contained the provisions usual in fraternal certificates to the effect that in case the mortality fund becomes depleted or the expense fund impaired an assessment may be levied or premiums raised, or other action taken to maintain the solvency of the certificates.

"We are submitting a copy of the proposed agreement between the X Company and the Y Association.

"The proposed agreement between the Company and the Association assumes that the Company could levy liens, raise premiums, and take such other action with reference to the certificates of the Y Association as the Y Association itself would have been able to take if no merger had taken place. Further, the agreement calls for the dissolution of the Y Association.

"We are anxious to ascertain whether or not the X Company, a legal reserve life insurance company, could exercise the same powers that the Y Association had previously exercised with reference to the making of assessments, etc."
My response must be in the negative. Section 115 of the Indiana Insurance Code of 1935 provides:

"Sec. 155. Nothing contained in this article shall be construed to enlarge the corporate powers of any insurance company, nor to authorize any insurance company to engage in any kind or kinds of insurance business not authorized by its articles of incorporation, nor to authorize any foreign insurance company to engage in any kind or kinds of insurance business in this state not covered by its certificate of authority to do business in this state."

8 Burns' Indiana Statutes Annotated (1933 Ed.), 39-3902.

An examination of the Merger Agreement submitted with your inquiry indicates that it attempts to confer upon the X Company the rights possessed by the fraternal association to levy liens or make assessments and to raise premiums and to "possess the same rights, options and privileges in connection with all such policies and matters as would have been had and possessed by "Y" of the Ancient Order of "Z" if they or either of them had continued in business as a fraternal or mutual going life insurance company."

X Company being a stock legal reserve life insurance company cannot levy liens or make assessments. Any attempt to confer upon it any such right, power or duty is an attempt to enlarge its corporate powers. This is specifically prohibited by Section 115 of Article V of Chapter 162 of the Indiana Acts of 1935 (at page 652) quoted above. X Company cannot exercise such powers.