The above case was a case involving the attempted merging of two fraternal beneficiary associations.

See also the case of Whaley v. Bankers' Union of the World, (Tex.), 88 S. W. 259, another case of the attempted merger of two fraternal beneficiary associations. Many other cases can be cited holding as above with reference to corporations generally.

Unless, therefore, the right of domestic fraternal beneficiary associations to merge or consolidate is either expressly or by necessary implication granted by the statutes of the state or by their charters, I think it must be held that no such right exists.

An examination of the statutes authorizing such associations and regulating their operation reveals that no express authority exists for the consolidation of domestic fraternal insurance associations with stock life companies, nor is there anything in such statutes from which such authority may be implied. Provision is expressly made for the merger of like associations or societies and the transfer of membership and funds of one such society to another similar society. Burns Annotated Indiana Statutes of 1926, sections 9242 and 9262. This express grant of authority as between similar societies, and expressly limited to similar societies, I think, is persuasive of the fact that there was no intention to authorize the merger of such an association with the ordinary life company, and I so hold.

ACCOUNTS, BOARD OF: Whether the salaries of the officials fixed by chapter 67 of acts of general assembly 1932, special session, will be affected by the provisions of chapter 70.

January 7, 1933.

Hon. Lawrence F. Orr,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter as follows:

"On August 26th the auditor of Vanderburgh County directed a letter to this department, seeking an interpretation of chapter 67 and chapter 70. A definite
answer not being given, we are today confronted with the same question.

"Chapter 67 is a specific salary bill for Vanderburgh County, while chapter 70 is an act pertaining to all salaries. The question raised is, Will the salaries of the officials fixed by chapter 67, be affected by the provisions of chapter 70?"

While you do not so designate them, it is evident that you refer to chapters 67 and 70, of the acts of the general assembly at the special session in 1932. Chapter 70 is entitled, "An act concerning the salaries, wages and compensation of public officers and employees", and purports to be a general act providing for a graduated reduction of the salaries of all public officers and employees, paid from public funds. To accomplish this purpose, provision is made for the application of a prescribed method of computation to the salary or compensation of all such officers as of January 1, 1932, which is referred to as the "salary basis," from which computation the new salary is obtained. The intent to use the salary as of January 1, 1932, as the "salary basis" is evident throughout the act. Section 2 provides in part that:

"The salary of each such officer shall be an amount equivalent to a certain percentage of the salary of such officer on the first day of January, 1932, as fixed by the statutes of the State of Indiana, or otherwise, such percentage to be determined in the following manner:"

(Our italics.)


Section 2 (a) provides that "the salary of any such officer as fixed by law or otherwise on January 1, 1932, shall be referred to herein as 'salary basis.'" Acts of 1932, page 272. Section 3 (c) provides that:

"If any officer shall have been elected, appointed or employed after January 1, 1932, the salary or compensation for such officer, or the office, or employment he shall have been elected, appointed or employed to fill, on January 1, 1932, as fixed by statute or otherwise shall be the basis of computing the salary for such officer as fixed by this act; otherwise the salary fixed by lawful authority at the time of election, appointment
or employment shall be the basis of such computation and new salary.”


Section 7 of said act provides as follows:

“It is hereby declared to be the intention of the legislature to recognize, adopt and appropriate, as a basis of fixing salaries and compensation by this act, where such basis is necessary, such provisions of the statutes of the State of Indiana now in force in this state, relating to the salaries, fees and compensation of public officers, as grade the compensation of such officers in proportion to population and the necessary services required, together with the salaries, fees and compensation in such laws provided and in force on January 1, 1932; and upon such basis, and taking into consideration the change in general economic conditions which has developed since such other fee and salary laws were passed, to compute and fix a schedule of salaries and compensation for such officers, by applying a reasonable, uniform and graduated reduction from the amounts of the several salaries so fixed by such salary laws of the State of Indiana in force on said date.”

(Our italics.)


Chapter 67 is entitled:

“An act to provide for fixing of compensations and expenses of certain public officers and their deputies and assistants in counties having a population of not less than one hundred thousand nor more than one hundred forty thousand, and having one or more cities each with a population of eighty-five thousand or more, according to the last preceding census of the United States, and in judicial circuits co-extensive with such counties, prescribing the manner of appointment of such deputies and assistants, the disposition of fees, interest, penalties, emoluments, costs, fines and forfeitures, and repealing all laws and parts of laws in conflict therewith.”

It will be observed that this act is so drawn as to apply at the present time to Vanderburgh County, and fixes the salaries for the officers therein named in amounts different from the salaries for the same officers as fixed by chapter 70, if the salaries as of January 1, 1932, are to be used as a basis for the computation provided in said chapter 70. Both acts were approved on the same day and neither contains an emergency clause.

The repeal of statutes by implication is not favored, and this is especially true in the case of statutes enacted by the same session of the legislature. It is presumed, in the absence of an irreconcilable conflict, that the legislature in such a case intended both acts to be operative, which gives rise to the further rule of construction, that courts will construe contemporaneous acts of the legislature on the same subject *in pari materia* and so as to preserve, if possible, the effectiveness of all of them.

Huff v. Fetch, 194 Ind. 570, at pp. 577-579;  
City of New Albany v. Lemon, 198 Ind. 127, at p. 133;  

However, if two acts passed by the same session are irreconcilable, the rule obtains that the one which was approved last will prevail.


But this rule is of no particular significance in a case such as the one now under consideration, where both acts were approved on the same day.

There is another rule, however, which I think points the way to the intention of the legislature under the above circumstances. It is said in City of New Albany v. Lemon, 198 Ind. 127, at page 134, that:

"It is an established rule of statutory construction that so far as specific provisions contained in an act having special reference to a limited and definite part of the subject-matter of a general act passed at the same time are inconsistent with provisions of such general act which purport to embrace the entire subject, the specific provisions of the act covering only a limited part of such subject will control."
While both of the above acts are general in form at least, it is apparent, as already stated, that at the present time chapter 67 applies only to the one county, and conformably with the above principle, should be held to control insofar as it is inconsistent with the provisions of chapter 70. It should be noted, however, that section 16 of chapter 67 provides that:

"The provisions of this act shall not apply to the present county officials during their present term for which they have each been elected."


As to such officials, there is, of course, no conflict between the two chapters, so that Chapter 70 applies, the inconsistency being solely with respect to the new county officials of Vanderburgh County.

It may be argued that such a construction has the effect of making chapter 70 a special law, in that the county of Vanderburgh is thereby omitted from its provisions, but I do not think such argument is sound. Chapter 70 is a general law and does, in fact, include Vanderburgh County within its provisions, but said act is modified by said chapter 67. Such a construction has the effect of leaving both chapters in effect and operative within their respective spheres, except that chapter 70 is modified as above by chapter 67. On the other hand, any construction which would have the effect of making a double reduction as to salaries in Vanderburgh County would require the use of a "salary basis" for the establishment of salaries in said county, pursuant to chapter 70 in direct conflict with its express provisions; and to establish the salaries in said county using the salaries of January 1, 1932, as the "salary basis" would operate to entirely ignore the provisions of section 1 of chapter 67. I do not think such a result is necessary. In my opinion, the two chapters should be construed together and when so construed, the salaries as fixed by chapter 67, supra, insofar as they apply to the new county officials of Vanderburgh County are not affected by chapter 70, supra. As to the old officials, chapter 70 applies.