SECRETARY OF STATE: Corporations—Fees for merger or consolidation of domestic and foreign corporations.

June 13, 1938.

Hon. Joseph O. Hoffmann,
Deputy Secretary of State,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of June 9, in which you asked as to the proper fee chargeable in a merger or consolidation of a domestic and of a foreign corporation.

In reply to this inquiry, your attention is directed to chapter 192, Acts of the Indiana General Assembly of 1937, which provides for the merger or consolidation of domestic or foreign corporations. This section reads in part as follows:

"* * * Any one or more corporations organized or reorganized under the provisions of this Act, may merge or consolidate with one or more other corporations organized under the laws of any other state, or states of the United States of America, if the laws under which such corporation or corporations are formed shall permit such merger or consolidation. The constituent corporations may merge into a single corporation, which may be any one of such constituent corporations, or they may consolidate to form a new corporation, which may be a corporation of the state of incorporation of any one of such constituent corporations as shall be specified in the agreement hereinafter required. * * *"

It will be noted from a reading of the above statute that a consolidation of such corporation forms a new corporation. As was said by the Supreme Court of Illinois, in the case of W. Scheidel Coil Co. v. Rose, 90 N. E. 221:

"* * * The effect of such consolidation is the dissolution of the constituent companies. They cease to exist as legal entities. A new corporation comes into existence having all the property, rights, power and franchises, and subject to all the duties and obligations, of both the constituent companies. Ohio & Mississippi Railway Co. v. People, 123 Ill. 467, 14 N. E. 874; People v. Louisville & Nashville Railroad Co., 120 Ill. 48, 10
N. E. 657. The capital stock, corporate name and organization, and board of directors, officers, and managers of such new corporation will be such as may be determined by the articles of consolidation. When the consolidation is accomplished by the filing of the certificate of the action of the stockholders, and not until then, the new corporation is organized under the laws of the state. The filing of the certificate is therefore subject to the provision of the statute in regard to the payment of fees.

It is said that it is not the new corporation which it is proposed to organize that is asking to have the certificate filed, but is the petitioner, a corporation which has been organized for years and has paid the fees for its incorporation. The certificate is presented to be filed for the purpose of organizing a corporation, and, under the statute, before such filing can be permitted the fees must be paid. The fact that the constituent companies have paid their incorporation fees is immaterial. When it is sought to organize a new corporation, the statute authorizes no exemption from the payment of fees because the corporation is to be organized by the consolidation of two corporations which have paid fees on their capital stock. Corporations cannot consolidate without statutory authority, and the Legislature, in granting such authority, may impose such terms as it sees fit. * * *"

This same proposition was discussed in the case of Chicago Title & Trust Co. v. Doyle, 102 N. E. 790, in which the court used the following language:

"* * * The Chicago, Santa Fe & California Railway Company purchased the property, stock, and franchises of the Chicago & St. Louis Railway Company and issued its stock, dollar for dollar, in exchange for the stock of the St. Louis company. It was contended that the transaction was a purchase and not a consolidation; but the court said there was no magic in words, and calling a transaction a purchase and sale would not prevent it from being a consolidation; that the St. Louis company was left without property, corporate rights, franchises, or stockholders; that it was a consolidation, but the
purchasing company continued in existence with enlarged powers, franchises, and property rights. The court stated the general rule that a new corporation is created by consolidation, but said that the rule was subject to exceptions, depending upon the statute, and in that case the statute very clearly contemplated the continued existence of the purchasing company. The same condition existed in the case of Chicago & Eastern Illinois Railroad Co. v. Doyle, 256 Ill. 514, 100 N. E. 278, where there was a consolidation under the same statute of 1885 authorizing the purchase. Under such a statute the purchase of the property, corporate rights, and franchises of a corporation merges that corporation into the one with which it is consolidated, and no new corporation is created. * * *"

Whether the proposed consolidation is in fact a consolidation or merger, as suggested in the last above quotation, would, under the laws of Indiana, be immaterial so far as the fee to be charged by the secretary of state is concerned. Subsection (e) of section 25-602, Burns' Ind. Stat., 1933 Revision, reads 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 domestic corporations for profit having capital stock, fees shall be collected by such secretary of state as follows: The articles of agreement of consolidation, merger or union shall be treated as articles of incorporation resulting or remaining, and into or with which the other corporations mentioned in the articles of agreement are thereby consolidated, merged or united. And the secretary of state shall charge and collect 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. And in fixing the amount of such fees, no credit shall be allowed for fees pre-
viously paid by any constituent corporations, but the same shall be determined solely by the amount of capital stock of the corporation resulting or remaining as aforesaid after the consolidation, merger or union. * * *"

It will be noted that this section of the statute specifically provides that whether the articles of agreement be of consolidation or merger the same shall be treated as articles of incorporation and the same fee shall be charged as would be charged for the filing of original articles of incorporation. And in fixing the amount of such fees no credit shall be allowed for fees previously paid by either of such corporations.

While it is true that subsection (e) deals generally with consolidation or merger of domestic corporations, it was evidently not the intention of the Legislature to impose a heavier burden on consolidations of domestic corporations than would be imposed upon the consolidations of domestic and foreign corporations. If it were the intention that subsection (g), section 25-602, Burns' Ind. Stat., 1933 Revision, should apply and a fee of five dollars ($5.00) only should be charged, then corporations desiring to reorganize might by consolidation or merger with very small foreign corporations entirely escape the fees imposed on domestic companies. It is my opinion they did not intend that such condition should prevail. The secretary of state should accordingly charge the fee designated for consolidations or mergers regardless of whether the merger or consolidation be with companies wholly domestic or domestic and foreign.

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LABOR, DIVISION OF: Public policy prohibits child labor. Issuing officer has discretion employment of minors between 14 and 18 years. Certificate to permit employment of minor.

June 21, 1938.

Mrs. Mary L. Garner, Director,
Bureau of Women and Children,
Division of Labor,
State House,
Indianapolis, Indiana.

Dear Madam:

Reply to your letter of June 17, 1938, requesting a ruling, which request is set out as follows: