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provided for in such act then the corporations may merge or consolidate. Only in such fashion may it be said to have "sold" its charter. This answer is, of necessity, general in its nature since there are too many possible problems in connection with a specific merger or consolidation to attempt to define, generally, the rights in a manner which would control each situation.

In summary therefore, it is my opinion that:

1. An assessment plan insurance corporation organized under the Acts of 1897 which has become dormant but has not been dissolved by statutory procedure may be reactivated.
2. Such a corporation when properly reactivated and operating in an approved manner has generally the right to merge or consolidate subject to the restrictions and limitations imposed by the Indiana Insurance Law of 1935.

OFFICIAL OPINION NO. 59

September 27, 1962

Hon. Dorothy Gardner
Auditor of State
238 State House
Indianapolis 4, Indiana

Dear Mrs. Gardner:

This is in reply to your request dated August 29, 1962, for an Official Opinion, which reads in part as follows:

"Is there any legal provision for the retirement funds to write and sign their own retiree checks outside the provisions for a special disbursing officer?"

Your letter indicates that the Director of the Data Processing Division of the State of Indiana has requested you to designate his said division as a service agency for the writing of about 13,000 retiree checks for the State Teachers' Retirement Fund and Public Employes' Retirement Fund.

The office of Auditor of State is a constitutional office created by Indiana Constitution, Art. 6, Sec. 1, which provides as follows:

“There shall be elected by the voters of the State, a Secretary, *an Auditor* and a Treasurer of State, who shall, severally, hold their offices for two years. *They shall perform such duties as may be enjoined by law*; and no person shall be eligible to either of said offices, more than four years in any period of six years.” (Our emphasis)

It is apparent from the foregoing provision that while the Constitution of Indiana has created the office of Auditor of State it has not prescribed any specific duties in connection therewith. It does, however, authorize the Auditor of State to perform such duties as may be enjoined by law.

1 R. S. 1852, Ch. 7, Sec. 2, as found in Burns' (1951 Repl.), Section 49-1702, enjoins the Auditor of State to perform specific duties, including those found in clause eight thereof, which provides:

“Eighth. Draw warrants on the treasurer for all moneys directed by law to be paid out of the treasury to public officers, or for any other object whatsoever, as the same may become payable, and every warrant shall be properly numbered.”

In this connection reference is made to Acts 1905, Ch. 169, Sec. 520, as found in Burns' (1956 Repl.), Section 10-3715, which provides:

“If the auditor of state shall draw any warrant upon the treasurer of state, unless there be money in the treasury belonging to the particular fund upon which such order is drawn to pay the same, and in conformity to appropriations made by law, he shall, on conviction, be fined not less than one hundred dollars [\$100] nor more than one thousand dollars [\$1,000], and be imprisoned in the county jail not less than one [1] month nor more than six [6] months.”

The provisions of the Acts of 1859, Ch. 138, Sec. 7, as found in Burns' (1951 Repl.), Section 49-1809, limit payments to be made by the state treasurer as follows:

“The treasurer of state is expressly prohibited from paying any money out of, or transferring any money

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from, the treasury of state, except upon the warrant of the auditor of state; and the auditor shall examine, with care, every demand and claim presented for payment, and shall be satisfied that every claim is just, legal, and unpaid, before he shall allow, audit, or countersign it; and, for that purpose, may require the affidavit of the claimant, or other evidence, and he shall require every claim to specify the particular items of indebtedness. But when satisfied that any claim is just, legal and unpaid, and if there be money to the credit of the fund, and not before, the auditor shall issue his warrant on the treasurer for its payment out of the proper fund; and if there be money of such fund in the treasury when the warrant is presented, the treasurer shall pay it, but not otherwise; and when paid, the treasurer shall take a receipt therefor on the back, and shall cancel the warrant with a canceling hammer, and shall register, file and preserve the same.”

It thus appears that the Legislature has imposed upon the Auditor of State the duty of drawing warrants on the Treasurer of State for all moneys directed by law to be paid out of the treasury for all authorized purposes, which, in my opinion, would include all retiree checks for the Indiana State Teachers' Retirement Fund and Public Employes' Retirement Fund; and, further, the Legislature has made it a criminal offense for the Auditor of State to draw any warrant upon the Treasurer of State unless there is money in the treasury belonging to the particular fund upon which such order is drawn and in conformity to appropriations made by law. Such criminal statute refers only to the Auditor of State, which fact strongly indicates that the Legislature has placed the primary responsibility of drawing checks upon the Auditor of State.

Your inquiry raises the question as to whether the Legislature has directly or indirectly authorized the retirement fund agencies in question to write retiree checks, or whether such authority is exclusive with the Auditor of State.

Both the Indiana State Teachers' Retirement Fund and the Public Employes' Retirement Fund are now subject to the provisions of the Indiana Public Employees Social Security Integration and Supplemental Retirement Benefits Act, which

is the Acts of 1955, Ch. 329, as amended and added to, and as found in Burns' (1961 Repl.), Section 60-1911 *et seq.* That act provides in Burns' 60-1923, *supra*, that each retirement system subject to its provisions shall nevertheless continue to be a separate retirement system and its affairs shall continue to be administered by the board which has previously administered its affairs, subject to the same terms and conditions as heretofore except insofar as the same are inconsistent with the terms and conditions of that act. There are no express provisions in that act concerning the mechanics of making retirement payments. I have examined the act providing for the Indiana State Teachers' Retirement Fund, the same being Acts 1915, Ch. 182, as amended, and found in Burns' (1948 Repl.), Section 28-4501 *et seq.*, and Burns' (1962 Supp.), Section 28-4506 *et seq.*, and I have examined the provisions of the Public Employes' Retirement Act, the same being Acts 1945, Ch. 340, as amended, and found in Burns' (1961 Repl.), Section 60-1601 *et seq.*, and from such examination I am of the opinion that no statutory authority exists in either of said acts which authorizes any person other than the Auditor of State to draw warrants or checks upon the Treasurer of State for the payment of money from said retirement funds.

Acts 1915, Ch. 182, Sec. 10, as amended, and found in Burns' (1948 Repl.), Section 28-4507, which pertains to the State Teachers' Retirement Fund, provides in part:

" * * The board shall direct all disbursements from this fund and the auditor of state shall issue his warrant on the treasurer of state, on properly itemized vouchers, officially approved by the president and executive secretary of the board of trustees of the Indiana state teachers' retirement fund * * *"* (Our emphasis)

Acts 1945, Ch. 340, Sec. 16, as found in Burns' (1961 Repl.), Section 60-1616, which pertains to the Public Employes' Retirement Fund, provides in part:

*"The auditor of state is authorized and directed to draw warrants upon the treasurer of state in payment of properly itemized vouchers, signed by the chairman and secretary of the board, upon authorization of the board * * *"* (Our emphasis)

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Acts 1947, Ch. 279, Sec. 7, as found in Burns' (1961 Repl.), Section 60-1807, providing for the powers and duties of the director of auditing, who, by virtue of Acts 1947, Ch. 279, Sec. 4, as found in Burns' (1961 Repl.), Section 60-1804, is the one and same person as Auditor of State, enjoins such director of auditing as follows:

“* * * (2) To examine every receipt, account, bill, claim, refund and demand against the state arising from activities carried on by agencies of the state;
* * *”

Your attention is called to Acts 1947, Ch. 279, Sec. 22, as found in Burns' (1961 Repl.), Section 60-1822, which reads as follows:

“(a) No payment for any services, supplies, materials, or equipment shall be approved for payment by any state agency, certified for payment or paid from any fund or state moneys in advance of receipt of such services, supplies, materials or equipment by the state. Provided, however, that this shall not apply to the purchase of war surplus property or property purchased from the United States government or its agencies. (b) *Notwithstanding the provisions of this section or other sections of this act, the director of auditing may, with the approval of the state budget committee and of the governor, appoint a special disbursing officer for any state agency or group of agencies where it is necessary or expedient that a special record be kept of a particular class of disbursements or where disbursements are made from a special fund, the director of auditing, with the approval of the state budget committee, may advance moneys to such special disbursing officer or officers from any available appropriation for such purpose. The director of auditing shall issue his warrant to such special disbursing officer to be disbursed by said disbursing officer as hereinafter provided.* Such special disbursing officer shall in no event make disbursements or payments for supplies or current operating expenses of any agency or for contractual services or equipment not purchased or contracted for in accordance with the provisions of this

act. No special disbursing officer shall be appointed and no moneys shall be so advanced until rules and regulations covering the operations of special disbursing officers shall have been adopted by the director of auditing and approved by the state budget committee; and provided further that the said director of auditing, when appointing a special disbursing officer, shall cite in a letter to the special disbursing officer so appointed the rules and regulations governing the appointment of special disbursing officers and shall include in such letter the exact purpose or purposes for which the moneys so advanced may be expended.” (Our emphasis)

I have examined the Administration Act of 1961, the same being Acts 1961, Ch. 269, as found in Burns’ (1961 Repl.), Sections 60-101 *et seq.*, to determine if any provisions thereof, and particularly those in reference to the powers and duties of the data processing division of the Department of Administration are in conflict with the legally established functions of the Auditor of State.

In my opinion no such conflict exists, particularly in view of the following language which appears in Sec. 2 of said Act, as found in Burns’ (1961 Repl.), Section 60-102, which reads in part as follows:

“* * * The commissioner shall be well versed in administrative management and in the affairs of state government which by law are the responsibility of the governor, and shall in no manner affect the separate departments of state government which by law or the Constitution of the state of Indiana are now under the jurisdiction *and are the responsibility of other state elected officials* * * *” (Our emphasis)

In conclusion it is my opinion that if no special disbursing officer has been duly appointed for the two retirement fund agencies in question pursuant to, and in accordance with, the foregoing provision of the Financial Reorganization Act of 1947, then the only person who could legally draw checks on the retirement funds of said agencies would be the Auditor of State.