

OPINION NO. 77-061**Syllabus:**

A merger agreement by which an Ohio corporation is merged into a foreign corporation that is duly temporarily licensed to transact business in Ohio pursuant to R.C. 1703.13 is not required to be accompanied by the releases and certificates required by R.C. 1701.86(H).

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William J. Brown, Attorney General, October 11, 1977

You have requested my opinion concerning whether a merger of an Ohio corporation into a foreign corporation that has a temporary license to do business in Ohio must be accompanied by the releases and certificates required by R.C. 1701.86(H).

R.C. 1701.79(G) provides that if the surviving corporation "does not desire to be licensed to transact business in Ohio, the agreement shall be accompanied by the releases and certificates required by division (H) of Section 1701.86 of the Revised Code, with respect to each constituent domestic corporation. . . ." R.C. 1701.86(H) requires that in such circumstances, the following documents are to be filed:

" (1) An affidavit of one or more of the

January 1978 Adv. Sheets

persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the counties, if any, in this state in which the corporation has personal property or a statement that the corporation is of a type required to pay personal property taxes to state authorities only;

(2) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such filing, or that such payment has been adequately guaranteed;

(3) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing;

(4) A receipt, certificate, or other evidence from the bureau of employment services showing that all contributions due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such contributions;

(5) A receipt, certificate, or other evidence from the industrial commission showing that all premiums due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such premium payments."

A foreign corporation may be licensed to transact business in Ohio if it complies with the provisions of R.C. Chapter 1703. It may obtain a license under R.C. 1703.03 which allows it to transact business in Ohio as long as the requirements of R.C. 1703.03 through R.C. 1703.31 are satisfied. In addition, it may qualify temporarily under R.C. 1703.13, which provides as follows:

"Any foreign corporation which would be entitled to make application for and procure a license to transact business in this state under sections 1703.01 to 1703.31, inclusive, of the Revised Code, may procure from the secretary of state a temporary license to transact business in this state upon a filing with the secretary of state the application and certificate of good standing or subsistence required by such sections and paying to him a filing fee of one hundred dollars. Such license shall be evidenced by a license certificate issued by the secretary of state entitling such corporation to transact business in this state for a period of six months from

the date of such certificate. A corporation so licensed shall not be required to file any other reports or pay any other fees required by sections 1703.01 to 1703.31, inclusive, of the Revised Code, but shall be subject to all other revisions of such sections. No foreign corporation shall be granted more than two temporary licenses within any period of three years."

The phrase "desire to be licensed . . . in Ohio . . ." as that term is used in R.C. 1701.79(G) has not been defined by the General Assembly nor construed by the courts. Therefore, it must be interpreted according to its plain and ordinary meaning. R.C. 1701.79(G) does not differentiate between temporary and permanent licensing, so in the plain and ordinary meaning of that statute, a foreign corporation, by obtaining a temporary license to transact business in Ohio, demonstrates a "desire to be licensed . . . in Ohio." Consequently, it is not necessary for that surviving foreign corporation to file the releases and certificates set forth in R.C. 1701.86(H).

You express concern in your letter that such an interpretation would leave the state with inadequate guarantees that the surviving corporation would meet the obligations set forth under R.C. 1701.86(H). It should be noted that the merger process does not, in and of itself, preclude the enforcement of the obligations set forth in R.C. 1701.86(H). R.C. 1701.82(A)(5) preserves the rights of all creditors of the constituent corporations of the merged entity. Therefore, the state would have access to the courts after the merger to enforce its rights against the surviving corporation.

It is therefore my opinion, and you are so advised that:

A merger agreement by which an Ohio corporation is merged into a foreign corporation is duly temporarily licensed to transact business in Ohio pursuant to R.C. 1703.13 is not required to be accompanied by the release and certificates required by R.C. 1701.86(H).