

OPINION NO. 67-059**Syllabus:**

The general corporation laws as to merger shall apply and as a consequence a state chartered building and loan association organized under Chapter 1151, Revised Code, may merge with a federally chartered savings and loan association, the home office of which is located within this state.

To: J. Gordon Peltier, Director, Dept. of Commerce, Columbus, Ohio
By: William B. Saxbe, Attorney General, June 20, 1967

Your request for my opinion reads as follows:

"The Division of Building and Loan Associations, of this department, has requested us to secure your opinion concerning the following question:

"May a state chartered building and loan association, organized under Chapter 1151, Ohio Revised Code, merge with a federal chartered building and loan association organized under the 'Home Owners' Loan Act of 1933,' 48 Stat. 128, 12 U.S.C. 1461, and amendments thereto, the home office of which is located within this state?"

Section 1151.01, Revised Code, was amended in 1961 to read in pertinent part:

"(A) 'Building and loan association' means a corporation organized for the purpose of raising money to be loaned to its members or to others; and 'building and loan association' includes 'savings association.'

"(B) 'Domestic association' means a building and loan association organized under the laws of this state or the 'Home Owners' Loan Act of 1933,' 48 Stat. 128, 12 U.S.C. 1461, and amendments thereto, the home office of which is located within this state."

Under this amendment a "domestic" building and loan association is inclusive of both an association organized under an Ohio charter and one organized with a federal charter whose home office is located within this state.

Section 1151.02, Revised Code, provides for the incorporation of state chartered building and loan associations, reading in pertinent part:

"A building and loan association may be organized and conducted under the general laws of this state relating to corporations, except as otherwise provided in sections 1151.02 to 1151.55, inclusive, of the Revised Code.* * *

Chapter 1151, Revised Code, is silent as to authority for a building and loan association to merge with another such association; however, Section 1151.63, Revised Code, provides for a consolidation as follows:

"A building and loan association may provide in its constitution and bylaws for the time and terms of its dissolution and for its consolidation with other such associations on terms to be determined upon by its board of directors.* * *"

It should perhaps be noted here that Section 1151.63, supra, is not included in the limitations prescribed in Section 1151.02, supra. Although the terms "merger" and "consolidation" are not synonymous, the overall effect of a combination by either method is essentially the same. It follows, therefore, that inasmuch as a building and loan association may provide in its constitution and bylaws for a consolidation with "other such associations," and these words must be considered in the context of the amended definition as set out in Section 1151.01 (B), supra, that this authority would be inclusive of a consolidation with a federal-charter savings and loan association which has its home office in this state, as both are to be considered "domestic associations." Further, if such a consolidation is permissible "on terms to be determined by its directors" then the shareholders, under the more restrictive and protective terms of Chapter 1701, Revised Code, can provide for such a merger.

The legality of a merger between two state-chartered building and loan associations was discussed in the case of Opdyke v. Security Savings & Loan Co., 157 Ohio St. 121, in which the court states at pages 132, 133, 135:

"Although defendant corporation was incorporated in 1916, there was an agreement in 1943 between another building and loan association and the defendant corporation under which the other building and loan association was merged into the defendant corporation, which was referred to in that agreement as 'the consolidated corporation.' This agreement was made, adopted and filed pursuant to and as required by Section 8623-67, et seq., General Code, providing for the merger or consolidations of corporations organized under any corporation act of the state. Thereafter, provision was made for the rights of dissenting stockholders of defendant corporation as provided for in those statutes relating to such a merger or consolidation. See Roessler v. Security Savings & Loan Co., 147 Ohio St., 480, 72 N.E. (2d), 259.

* * * * *

"In Davies Ohio Corporation Law, 949, it is said:

"The power to consolidate or merge is strictly statutory; consequently, an attempt to consolidate or merge without statutory authorization is a nullity."

"At the time of incorporation of defendant corporation in 1916 there was no statutory authority for the merger of building and loan associations although there was statutory authority for their consolidation.

"Thus defendant corporation and its stockholders could not have secured the benefits of that merger without taking advantage of the provisions of Section 8623-67 et seq., General Code, providing therefor.* * *"

Further, Section 1701.98, Revised Code, provides in pertinent part:

"(B) Special provisions in the Revised Code for the organization, conduct, or government of designated classes of corporations shall govern to the exclusion of Sections 1701.01 to 1701.98, inclusive, of the Revised Code, on the same subject, except where it clearly appears that a special provision is cumulative, in which case it and the provisions of said sections on the same subject shall apply."

It would seem, therefore, that inasmuch as Chapter 1151, supra, is silent as to "merger" the cumulative effect of Section 1151.02, supra, and Section 1701.98, supra, make the general corporation laws applicable to a merger of a state chartered building and loan association with a federally chartered savings and loan association.

It is therefore my opinion and you are hereby advised that the general corporation laws as to merger shall apply and as a consequence a state chartered building and loan association organized under Chapter 1151, Revised Code, may merge with a federally chartered savings and loan association, the home office of which is located within this state.