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COUNTY RECORDER — CORPORATE CERTIFICATES OF MERGER — REQUIRED TO RECORD — CERTIFIED PHOTOSTATIC COPIES—317.12 R. C.—317.13 R. C.—1701.77 R. C.—1701.80 ET SEQ. R. C.

SYLLABUS:

The county recorder is required to accept for recording certificates of merger of corporations, including certified photostatic copies thereof.

Columbus, Ohio, January 2, 1957

Hon. Gale B. Weller, Prosecuting Attorney
Morrow County, Mount Gilead, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under the laws of the State of Ohio, are County Recorders required to accept for recording, by means of photostating, a photostatic copy of an agreement of merger between corporations, which photostatic copy has been certified by the Secretary of State as being a true copy of said agreement?”

“The practical objection to accepting such photostatic copy is the difficulty in obtaining a legible photostatic copy thereof for the records of the Recorder.”

The duty of the county recorder in this regard is provided in Sections 317.12 and 317.13, Revised Code. I particularly call your attention to the first sentence of Section 317.13, which reads as follows:

“The county recorder shall record in the proper record, in legible handwriting, typewriting, or printing, or by any authorized photographic process, all deeds, mortgages, plats, or other instruments of writing required or authorized to be recorded, presented to him for that purpose.”

That a certificate of merger is an instrument which is authorized to be recorded is clearly shown by Section 1701.80, Revised Code, the pertinent part of which reads:

“(C) A copy of such agreement, certified by the secretary of state, may be filed for record in the office of the county recorder of any county in this state, and for such recording the county recorder shall charge and collect the same fee as in the case of deeds. Such copy shall be recorded in the records of deeds.”

In addition, you will note, assuming the instrument is legally sufficient, that the corporate merger is effective when filed with the Secretary of State, Section 1701.77, Revised Code; and such effective merger without further deed effects the transfer of both real and personal property, as provided by Section 1701.81, Revised Code, which reads in pertinent part:

“(A) (4) The surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, powers, franchises, and authority, as well of a public as of a private nature, of each of the constituent corporations; and all property of every description, and every interest therein, and all obligations, including subscriptions to shares, of or belonging to or due to each of the constituent corporations, shall thereafter be taken and deemed to be transferred to and vested in the surviving or new corporation without further act or deed; and title to any real estate, or any interest therein, vested in any of the constituent corporations shall not revert or in any way be impaired by reason of such merger or consolidation;”

In Opinion No. 6400, Opinions of the Attorney General for 1956, I said, quoting the syllabus:

“The county recorder is a ministerial officer only and as such is under a duty, under the provisions of Sections 317.12 and 317.13, Revised Code, to receive and record in the record of mortgages any instrument in writing which purports to effect the conditional conveyance of an interest in real property.”

It is therefore my opinion, and you are advised, that the county recorder is required to accept for recording certificates of merger of corporations, including certified photostatic copies thereof.

Respectfully,

C. WILLIAM O'NEILL

Attorney General