

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1302.

BONDS—CITY OF ALLIANCE, STARK COUNTY, \$14,000.00.

COLUMBUS, OHIO, October 17, 1939.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of the City of Alliance, Stark County,
Ohio, \$14,000.

The above purchase of bonds appears to be part of an \$81,000 issue of refunding bonds of the above city dated July 1, 1939. The transcript relative to the above issue was approved by this office in an opinion rendered to the Public Employes Retirement Board under date of August 23, 1939, being Opinion No. 1078.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1303.

INSURANCE — DOMESTIC STOCK CASUALTY COMPANY —
MAY MERGE WITH FOREIGN STOCK CASUALTY INSURANCE
COMPANY—MANNER PROVIDED BY GENERAL CORPORATION
ACT OF OHIO—PROVISO, LAWS OF FOREIGN STATE PERMIT
MERGER.

SYLLABUS:

A domestic stock casualty insurance company may merge with a foreign stock casualty insurance company in the manner provided by the

General Corporation Act of Ohio where the laws of the state of incorporation of such foreign company permit such merger.

COLUMBUS, OHIO, October 18, 1939.

HON. JOHN A. LLOYD, *Superintendent of Insurance, State House Annex, Columbus, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

"A domestic stock casualty insurance company desires to merge with a similar company organized and existing under the laws of another state. We find no special provision for a merger or a consolidation of insurance companies of this type. However, the General Corporation Act, as amended by Senate Bill Number 47, 93rd General Assembly, effective July 24, 1939, provides the procedure in merger or consolidation of corporations generally. Section 8623-67, General Code, contains the following provision:

'Any one or more such domestic corporations may merge or consolidate with one or more corporations organized under the laws of any other state or states of the United States of America (hereinafter in this and the next succeeding section called "foreign corporations"), if the laws under which such foreign corporation or corporations exist shall permit such merger or consolidation.'

We are advised that the statutes of the foreign state involved in this case authorize a merger of one of its domestic insurance companies with a foreign insurance company.

I desire your opinion on the question whether a domestic stock casualty company can merge with a foreign stock casualty company in the manner provided by the Ohio General Corporation Act where the laws of the state of incorporation of the foreign company permit such merger."

An examination of the statutes of this state discloses that the insurance laws do not contain any provision authorizing the consolidation or merger of insurance companies of the kind mentioned in your letter. You desire my opinion as to whether Section 8623-67, General Code, which is part of the General Corporation Act of Ohio, applies to insurance companies of the type mentioned in your letter. Section 8623-132, General Code, which is also part of the General Corporation Act, provides as follows:

"In cases where special provision is made in the General Code for the incorporation, organization, conduct or government

of any class of corporations, such special provision shall govern to the exclusion of the provisions of this act on the same subject, unless it clearly appears that the special provision is cumulative, in which case the provisions of this act also shall apply.

No banking, safe deposit, trust or insurance corporation shall be authorized to issue shares without par value."

As has been hereinbefore noted, there is no special provision in the insurance laws providing for the consolidation or merger of insurance companies of the type in question and it seems clear that the provisions of Section 8623-132, supra, make the provisions of the General Corporation Act applicable in the absence of any such special provision.

Paragraph II of Section 8623-67, General Code, is quoted in part in your communication. The meaning of the words "such domestic corporations" must be determined by a reference to paragraph I of this section and I find the following language used therein: "Any two or more corporations for profit organized under this act or any previous corporation act of this state * * *." Whether the words "previous corporation act of this state" are meant to include acts providing for the organization and government of insurance companies I need not determine, because the express provisions of Section 8623-132, supra, make the General Corporation Act applicable to the solution of the problem now before me. However, it could be argued with considerable force that the language used in Section 8623-67, General Code, applies to all corporations which have been organized under any law of this state.

In the past, Attorneys General of this state have advised that the provisions of the General Corporation Acts apply to insurance companies where the provisions of the insurance laws do not provide for the performance of acts of organization or government which are authorized by the General Corporation Act where there is no conflict between the General Corporation Act and the special provisions. In Volume I of the Opinions of the Attorney General for the year 1932, at page 8, I find the following statement:

"It has been held generally by the Attorney General in the past that the General Corporation Act applies to insurance companies where the special provisions governing insurance companies are inadequate in their authority for the performance of any act of organization or management which is authorized by the General Corporation Act, which laws are not in conflict with the special provisions. See Annual Report of the Attorney General for 1914, Vol. I, pp. 147, 149, 229, 237; Annual Report of the Attorney General for 1912, Vol. I, p. 24."

It therefore would seem that even in the absence of Section 8623-132,

supra, the provisions of Section 8623-67 would apply and that the proposed merger could be legally effected; however, that is a question I need not determine since such statute clearly makes the provisions of Section 8623-67, supra, applicable.

I am therefore of the opinion, in specific answer to your question, that a domestic stock casualty insurance company may merge with a foreign stock casualty insurance company in the manner provided by the General Corporation Act of Ohio where the laws of the state of incorporation of such foreign company permit such merger.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1304.

BONDS—CITY OF AKRON, SUMMIT COUNTY, \$1,000.00,
DATED APRIL 1, 1920.

COLUMBUS, OHIO, October 18, 1939.

Retirement Board, School Employes' Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of the City of Akron, Summit County,
Ohio, \$1,000.

The above purchase of bonds appears to be part of a \$500,000 issue of sewer bonds of the above city dated April 1, 1920. The transcript relative to the above issue was approved by this office in an opinion rendered to your Board under date of April 24, 1939, being Opinion No. 458.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.