OCTOBER 30, 1958

HON. CHARLES R. HOWELL, *Commissioner*
Department of Banking and Insurance
State House Annex
Trenton, New Jersey

FORMAL OPINION 1958—No. 16

DEAR COMMISSIONER HOWELL:

You have requested our opinion as to whether a corporation resulting from a merger or consolidation of two or more mutual insurance companies (other than mutual life insurance corporations) must file new certificates of appointment of agent and pay the statutory fee of $2.00 for each such certificate.

N.J.S.A. 17:22-6.14 provides:

> "Any insurance company[1] lawfully authorized to transact business in this State may, by a written certificate of authority, contract with and appoint as its representative in this State, as its agent or agents, any person or persons who holds an unexpired certificate of authority issued prior to the effective date of this act, or a license issued under the provisions of this act.
>
> "Such company shall file with the commissioner a certificate showing the names and addresses of such appointees and shall pay a fee of two dollars ($2.00) for each company appointment so made. * * * Such certificate of authority shall remain in full force and effect until the license as agent is revoked by the commissioner as provided in this act or canceled by the company upon written notice to that effect filed with the commissioner. * * *"

It has been suggested that the surviving or new company in a merger or consolidation need not file new certificates of appointment of agent since such certificates remain in full force and effect until canceled by the company or until revocation of agency license. Further argument for this contention is premised upon N.J.S.A. 17:27-5.4 relating to the legal effect of such a merger or consolidation:

> "Upon such merger or consolidation, all the rights, franchises, and interests of the corporations so merging or consolidating in and to every species of property and things in action belonging to them, or either of them, shall be deemed to be transferred to and vest in the corporation resulting from such merger or consolidation, without any other deed or transfer, and the merged or consolidated corporation shall hold and enjoy the same to the same extent as if the merging or consolidating corporations, or either of them had continued to retain their titles and transact business. * * *"

Logically, two related but distinct questions are presented. First, must the resulting company file new certificates of appointment? Second, if so, must payment of the statutory fee be made?

You inform us that you have construed N.J.S.A. 17:22-6.14, *supra,* to require new filings to cover all agents of the resulting corporation except that no filings need be made in respect of agents of a merged or consolidated corporation where the resulting corporation bears the same name as the merged or consolidated corporation. (For a resulting domestic insurance corporation's power to adopt a new name or that of a merged or consolidated corporation, see N.J.S.A. 17:27-1. For a domestic

[1] N.J.S.A. 17:22-6.23 qualifies this apparently broad language to make it applicable only to non-life insurance companies.

insurance corporation's general power to change its name, see N.J.S.A. 17:26-1.) The certificates of authority required by N.J.S.A. 17:22-6.14 are filed by the Department of Banking and Insurance according to the name of the agent. An important use of these certificates is in investigating complaints which the Department receives from the general public from time to time. Often, the complainant knows the name only of the agent with whom he has dealt but not the name of the corporation. Yet, it is almost always necessary to contact the corporation on whose behalf the agent acted in order to investigate and resolve a complaint. For the Department to carry out its supervisory responsibility over the insurance business, it is essential that it have a file of agents indicating the true current name of the corporations for whom they are authorized to act.

In our opinion, the Legislature did not intend, by providing in N.J.S.A. 17:22-6.14 that the certificate should remain in effect until canceled by the corporation, that the certificate should survive when both the character and name of the original corporation has been changed by merger or consolidation. Nor, in our opinion, did the Legislature intend to create such an exemption by enacting N.J.S.A. 17:27-5.4. It is recognized that "* * * even when a statute confers upon a corporation in general terms 'all the rights, powers, franchises, and privileges' of another corporation, it should not be construed as conferring rights and privileges which are detrimental to the public, unless there is something else to show that the Legislature so intended. * * *" *Fletcher, Cyclopedia of Corporations, Permanent Edition,* Vol. 15, c. 63, §7095.

To construe either or both of these statutes to excuse corporations resulting from mergers or consolidations from the duty to make new filings (except in respect of agents of a resulting corporation who were authorized to act for a merged or consolidated corporation having the same name as the resulting corporation) would be to create a substantial impediment to the execution of your supervision of the insurance business. Such a construction should not be followed unless expressed in clear terms in the statute. Cf. *Application of Welsh Producers Ass'n.,* 40 N.J. Super. 318, 326-327 (App. Div. 1956).

That the insurance business is affected with a public interest and, as such, is subject to reasonable regulation and control in the exercise of the police power to serve the public need is well settled. *Saffore* v. *Atlantic Casualty Ins. Co.*, 21 N.J. 300, 310 (1956). The filing requirements of N.J.S.A. 17:22-6.14 are plainly within a reasonable exercise of that power.

The statutory filing fee of $2.00 is imposed to defray the cost of the record keeping and other similar expenses involved in carrying out the statute. We are informed that filing certificates of appointment in the case of a merger or consolidation entails approximately the same amount of work by personnel of your office as would be done upon a new filing. The statute does not contemplate that filing be made but no fee required.

It is our opinion that the construction you have placed on the statute is correct, that a new filing must be made by the corporation resulting from a merger or consolidation except that no filing need be made in respect of an agent authorized to act for a merged or consolidated corporation bearing the same name as the resulting corporation, and that the fee must be paid for each filing.

Very truly yours,

DAVID D. FURMAN
Attorney General

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Deputy Attorney General