



STATE OF KANSAS

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Attorney General

March 26, 1975

Opinion No. 75- 133

The Honorable Elwill M. Shanahan
Secretary of State
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Attn: Mr. Sherman Parks

Dear Secretary Shanahan:

You inquire concerning a proposed plan of merger between Barhoten Investment Company, Inc., a Kansas corporation organized under the general corporation code, art. 60, ch. 17, K.S.A., and Colonial Savings and Loan Association, organized under the savings and loan code found in ch. 17, K.S.A. You enclose a copy of the proposed plan of merger, together with a certificate of approval executed by Oliver Estes, Savings and Loan Commissioner of the State of Kansas.

The savings and loan code, chs. 52 through 58, ch. 17, K.S.A. provides a comprehensive and detailed statutory framework governing the incorporation and organization, management, capital, and dissolution of associations. Concerning association powers, K.S.A. 17-5501 provides in pertinent part thus:

"Every association incorporated pursuant to or operating under the provisions of this act shall have all the powers enumerated, authorized and permitted by this act and such other rights, privileges and powers as may be incidental to or necessary for the accomplishment of the objects and purposes of the association. Among others, every association shall have the following powers:

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(g) To dissolve, merge, or reorganize
in the manner provided in this act." [Emphasis
supplied.]

Under K.S.A. 17-5541, "[a]ny two or more associations may merge into one of such associations, or may consolidate into a new association" in the manner provided in that section. The merger agreement must be submitted to the commissioner for his review, who shall

"examine the same to determine whether the proposed plan of merger will work an undue hardship upon the members of any of the associations involved or impair the usefulness and success of other properly conducted associations in the same or neighboring communities, and shall either approve or disapprove such proposed merger."

The question is presented whether a savings and loan association incorporated under the savings and loan code may merge with a corporation other than another savings and loan association which is organized under the general corporation code, and when such merger is proposed to be effected pursuant to the merger provisions of the general corporation code. K.S.A. 17-6701(a) provides thus:

"Any two (2) or more corporations existing under the laws of this state and authorized to issue capital stock may merge into a single corporation, which may be any one of the constituent corporations or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section."

Resolution of this question requires consideration of K.S.A. 17-6001(c) which states thus:

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"Corporations subject to special statutory regulation may be organized under this act if required by or otherwise consistent with such other statutory regulation, but such corporations shall be subject to the special provisions and requirements applicable to such corporations. Where the provisions and requirements of this act are not inconsistent, they may be construed as supplemental to such other statutes and not in derogation or limitation thereof, and such corporations shall be governed thereby. Subject to the foregoing provisions of this subsection, any corporation organized under the laws of this state or authorized to do business in this state shall be governed by the applicable provisions of this code."

A savings and loan association is certainly subject to special statutory regulation. The question is whether application of the merger provisions of the general corporation code to the merger in question is inconsistent with the very detailed and specific provisions for merger contained in the savings and loan code, itself. Certainly, if a savings and loan association wished to merge with another incorporated savings and loan association, in doing so it must comply with the provisions of the savings and loan code regarding merger. That code contains no provision, however, for merger of an incorporated savings and loan association with another, non-savings and loan corporation. It is utterly incongruous, in our view, that although a savings and loan association which wishes to merge with another association must do so in accordance with the detailed provisions therefor in the savings and loan code, an association which wishes to merge with any other corporation may do so entirely free of the restraints and regulatory provisions of the savings and loan code.

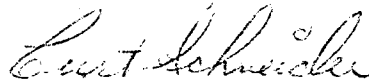
We are advised that the savings and loan commissioner has approved this particular proposed merger as an "appropriate means for the acquisition of eligible assets" Unlike the statutory authority providing the commissioner with authority to approve or disapprove mergers of associations, and prescribing standards he must apply in making that determination, the savings and loan code is absolutely silent regarding approval or disapproval by the commissioner of a merger by an association with a corporation

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organized under the general corporation code. In this instance, Colonial has been most circumspect in obtaining approval from the federal and state regulatory bodies pertaining to the industry. If the proposition were correct, however, that provisions regarding merger of the general corporation code are available to a savings and loan association wishing to merge with a general corporate business entity, the merger is thus freed from the regulatory restraints of the savings and loan code. We believe this result to be, as stated earlier, incongruous with the comprehensive and detailed provisions regarding merger and other affairs of savings and loan associations under the savings and loan code, and cannot but conclude that the provisions of K.S.A. 17-6701 for merger, in the general corporation code, are inconsistent with those found in the savings and loan code, and that the former are not available to Colonial to support the proposed merger in this instance.

We concur with your conclusion that there is no authority for filing the proposed plan of merger as described above.

Yours very truly,



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