

Insurance Company, Fees of, Payment to State of Merged Companies. Fees, for Admission of Merged Insurance Companies.

Where two insurance companies have merged into one, and one of these companies was not theretofore admitted to do business in this state, the merged company must pay the full fees of a new corporation before it can be admitted to do business. If the merged company is admitted to do business, the annual license fee of one company is all that can be charged against the merged company.

Helena, Montana, January 19, 1910.

Hon. H. R. Cunningham,
Commissioner of Insurance, Ex-Officio,
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of January 18, enclosing copy of section 129 of the insurance laws of the state of New York; also copy of the merger agreement entered between the Phoenix Insurance Company, of New York, and the Fidelity Fire Insurance Company, of New York; also circular letter from Henry Evans, and a circular letter from the superintendent of insurance of New York.

You state that the Fidelity Fire Insurance Company has never been authorized to transact business in the state of Montana, but that the Phoenix Insurance Company has for many years been so authorized, and now holds a certificate of authority, which will expire March 31, 1910, and you submit the following questions for an opinion thereon:

“In view of the above statement we would be pleased to receive an opinion from your office as to whether, under the proposed merger, set out in the documents conveyed with this communication, this department would be obliged to charge the Fidelity-Phoenix Insurance Company a new admission fee and other fees, the same as we would a new company applying for admission; that is, should we charge them the full fee of \$459.00 for the

privileges of transacting business up to and including March 31, 1910.

"Also, under our law, what fee, if any, should we charge them for the privilege of collecting premiums in the state of Montana for the year ending March 31, 1911."

Under the letter from the superintendent of insurance of New York, in referring to such merger, it is stated:

"By such merger all of the rights, franchises and interest of the two previous corporations are transferred to the new corporation by operation of law."

The letter from Mr. Evans makes the following statement:

"Nor is it possible to regard the transaction under the laws of the state of New York as the organization of a new and independent company. * * * We feel confident * * * that you will consider it as a continuance by two companies to do business in the name of the merged company."

The statements from these two letters do not quite agree. However, in our opinion it makes no difference whether the merged company is to be considered a new corporation or simply a continuation by two companies to do business under the name of the merged company. If it is a new corporation, then you should collect the total fees required to be paid by any new insurance corporation desiring to engage in business in the state; that is, \$459.00. On the other hand, if the merged company is not a new corporation, but is simply a plan whereby two independent companies continue to do business, then you must charge the total fee of \$459.00, for the reason that the Fidelity Insurance Company has never been admitted in this state, and it cannot come in here as an independent company and do business under the merger without paying the fees required of any company first coming into the state.

In answer to your second question, you are advised that, in our opinion, the license to be charged for the merged company for the year beginning April 1, 1910, would seem to be that of one insurance company, for the reason that after the merged company has paid its fees and been authorized to do business in this state, the only business it would then write here would be in the name of the merged company, as the old Phoenix company would cease to write any business in its name, and there would be no business written in the name of the Fidelity Company.

Very truly yours,

ALBERT J. GALEN,

Attorney General.