

Insurance Companies—Life Insurance—Merger—Consolidation—Insurance Commissioner.

The insurance commissioner of Montana may lawfully disapprove of a proposed consolidation of two life insurance companies which by its terms is to become effective upon the approval of such insurance commissioner.

The approval of the insurance commissioner of Montana of a proposed merger of two life insurance companies is not a necessary prerequisite for such consolidation.

George P. Porter, Esq.,

December 24, 1924.

State Auditor and Commissioner of Insurance, Ex-Officio,
Helena, Montana.

My dear Mr. Porter:

Your letter was received in which reference is made to my previous letter to you of August 29, 1924, relative to the proposed merger agreement between the Equity Life Insurance Company of Great Falls and the Nevada Life Insurance Company of Nevada.

Your original inquiry dealt with the question of the propriety of your department in approving the proposed merger. In response to this request you were advised that:

"If the proposed merger will not in anywise jeopardize the rights of policy holders in the merging companies and the financial condition of each is satisfactory to your department, I see no objection to your approval of the same."

You now state that:

"It would seem, under the circumstances, that the attitude of the department should be one of disapproval."

If in the judgment of your department the merger of these two companies is not justified by the financial condition of either or both your department unquestionably is at liberty to decline to approve the merger.

There is nothing in the insurance laws of this state which supports the conclusion that the approval of your department is a necessary prerequisite for the consolidation of two insurance companies doing business in this state.

By section 166, R. C. M. 1921, your department is given ample power to examine the affairs of insurance companies and to revoke the certificates of authority issued to any company and to its agents, in the event that you find the existence of the conditions mentioned in section 167.

Like powers of investigation into the affairs of corporations engaged in organizing insurance companies is given you by section 6126.

Section 6124, R. C. M. 1921, as amended by chapter 20, laws of 1923, is a part of this act relating to rebates and discriminations by insurance companies, and, in my judgment, has no relation to the subject of the present discussion. If, however, the general language, which appears in the latter part of the above section, as amended, could be construed as not being limited to the subject with which the act deals, it would not, in my judgment, justify the commissioner of insurance in promulgating rules which would amount to new legislation, in the absence of previous action by the law-making body of the state on the subject covered by these rules.

It is, of course, apparent that in the event of this merger, the new company must, if it desires to do business in Montana, comply with the provisions of section 6262, R. C. M. 1921, relative to its capital and surplus, as well as with all other laws of this state governing the transaction of business in Montana by foreign life insurance companies.

It would seem to me that under the existing laws your department possesses full authority to compel compliance by the new company with the laws of Montana in the event that it continues to transact business in this state.

However, as above stated, there is no statutory authority requiring your approval or disapproval of the proposed merger, but inasmuch as the agreement requires your approval before it becomes effective you are justified in using your own judgment in acting on the matter.

Very truly yours,

L. A. FOOT,
Attorney General.