

one of your predecessors in office, being Opinion No. 451, Volume 15, of Opinions. Since objection has been made by counsel for the consolidated corporation to the payment of this fee I would respectfully request that you advise me as promptly as possible what fee I am to charge for filing a certificate of consolidation of cooperative associations with this office."

Your question arises over the interpretation to be given to the provisions of Chapter 38 of Volume 3, Revised Codes of Montana, 1935; being Sections 6375 to 6396, both inclusive, relative to the fee your office should collect for filing a certificate of consolidation where a consolidation of two or more co-operative associations has been formed under Montana law and organized and doing business in the same county.

Section 6378, Revised Codes of Montana, 1935, provides for the certificate of incorporation of co-operative associations and provides for the payment of a fee of five dollars (\$5.00) to the Secretary of State. This is the only provision I find for the payment of a fee to the Secretary of State in this Chapter for a certificate of incorporation.

Section 6392, Revised Codes of Montana, 1935, provides as follows:

"When the foregoing provisions have been complied with, the constituent association named in said certificate shall be deemed and held to have become extinct, and **said new association**, under the name adopted, shall be deemed and held to have succeeded to all their several capital stock, properties, assets, contracts, and rights of action, and to be entitled to possess, enjoy, and enforce the same, and every part thereof, as fully and completely as either and every of its constituent associations might have done had no consolidation taken place. **Said new association** shall also be deemed and held to have become subrogated to its several constituents, and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities of every kind and nature, to any person, persons,

Opinion No. 110

**Secretary of State—Co-operatives,
Consolidation of—Certificate of
Consolidation, Fee for Filing—
Fee, Filing Certificate of
Consolidation.**

Held: On the consolidation of two or more co-operative associations under Chapter 38, Revised Codes of Montana, 1935, an entirely new corporation comes into being and the fee to be collected by the Secretary of State for the filing of the certificate thereof is five dollars \$5.00).

April 23, 1948

Hon. Sam W. Mitchell
Secretary of State
Capitol Building
Helena, Montana

Dear Mr. Secretary:

You have submitted for my opinion the following:

"I attach my file bearing upon the consolidation of Farmers Coop. Oil and Supply Company of Conrad, Montana and Conrad Producers Coop. of Conrad, Montana.

"I have assessed the fee for filing this certificate of consolidation under an opinion given this office by

or corporations whomsoever or whatsoever, and said new association must sue or be sued in its own name in any and every case in which any or either of its constituents might have sued or may have been sued had no such consolidation been made." (Emphasis supplied).

It is to be noted from the foregoing section that the legal effect of a consolidation is the creation of a new association, a new corporation. Those out of which the new corporation is created become extinct. They are wiped out entirely. They exist no longer.

Under the facts here, it is the same as though an entirely new corporation were to come to the Secretary of State with its incorporation papers for a certificate of incorporation, the fee for which would be five dollars (\$5.00).

Under this Chapter we have a special kind of corporation and a special law dealing therewith, where the stock represents membership rather than the assets of the corporation.

Attention should be called to Section 6395, Revised Codes of Montana, 1935, which provides:

"The secretary of state shall not issue any certificate of incorporation to any corporation or association except in compliance with this act."

From the foregoing it appears that the legislative intent was to consider a consolidation of such co-operative associations as a new association or corporation and that is the legal effect of the language used; this being so, the fee to be required by the Secretary of State under such conditions is five dollars (\$5.00).

I am aware of Opinion No. 451 of Volume 15, Report and Official Opinions of the Attorney General, but with said opinion I cannot and do not agree and by this opinion it is expressly overruled.

I call attention to Opinion dated January 14, 1927, on page 22 of Volume 12, Report and Official Opinions of the Attorney General, with which I agree and which I reaffirm.

It is, therefore, my opinion that on the consolidation of two or more co-operative associations under Chapter 38, Revised Codes of Montana, 1935, an entirely new corporation comes into being and the fee to be collected by the Secretary of State for the filing of the certificate thereof is five dollars (\$5.00).

Sincerely yours,
R. V. BOTTOMLY,
Attorney General