

N.D.A.G. Letter to Meier (March 28, 1985)

March 28, 1985

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary Meier:

Thank you for your letter dated March 1, 1985, regarding N.D.C.C. 10-20-05.

N.D.C.C. Ch. 10-20 governs the merger, consolidation, and sale of corporate assets. The merger of a subsidiary corporation as set forth in N.D.C.C. 10-20-05(5) provides as follows:

10-20-05. MERGER OF SUBSIDIARY CORPORATION.

* * *

5. On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as is provided in chapters 10-19 through 10-23:
 - a. Endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof.
 - b. File one of such duplicate originals in his office.
 - c. Issue a certificate of merger to which he shall affix the other duplicate original. (Emphasis supplied)

As you state in your letter, the plan of merger cannot be filed until the thirtieth day after the mailing of a copy of the plan of merger to the shareholders of the subsidiary corporation. Moreover, the thirty day waiting period is mandatory and may not be waived by the Secretary of State.

However, as you are aware, Senate Bill 2041, which revises North Dakota's Business Corporation Act, has been approved by both houses of the Legislature. Moreover, this bill

carries an emergency clause and, depending on what action the Governor takes, the Revised Business Corporation Act may become law any day now.

Proposed Section 10-10.1-100(4) of Senate Bill No. 2041 provides as follows:

10-19.1-100. MERGER OF SUBSIDIARY INTO PARENT.

* * *

4. Within thirty days after a copy of the plan of merger is mailed to shareholders of the subsidiary, or upon waiver of the mailing by the holders of all outstanding shares, the articles of merger must be signed on behalf of the parent and filed in duplicate original with the secretary of state, along with the fees provided in chapter 10-23. (Emphasis supplied)

Therefore, if Senate Bill No. 2041 is enacted into law, the thirty day waiting period may be waived by holders of all outstanding shares of the subsidiary corporation.

Sincerely,

Nicholas J. Spaeth

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