

## **N.D.A.G. Letter to Meier (June 22, 1987)**

June 22, 1987

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

Dear Secretary Meier:

Thank you for your letter of June 9, 1987, inquiring as to the ability of a for profit business corporation to merge with a nonprofit corporation pursuant to North Dakota law. Attached to your letter was a letter from a Bismarck attorney indicating the desire of a business corporation to cease doing business and to merge the assets of that corporation into a nonprofit corporation.

The general principle of law concerning the power of the state over corporations is clear. State legislatures have control over corporations which were created by them and they possess the undoubted power to authorize corporate mergers and to say what corporations shall enjoy that right. Ferguson v. Meredith, 68 U.S. (1 Wall.) 25 (1844); 15 W. Fletcher, Cyc. Corp. § 7049 (1983). Some states provide a method whereby a for profit corporation and a nonprofit corporation may merge with one another. For example, Delaware allows such mergers to occur and specifies the method by which the mergers are to be accomplished. Del. Code Ann. tit. 8, §§ 257, 258 (1975).

North Dakota law, however, does not provide for the merger of a-for profit corporation and a nonprofit corporation. N.D.C.C. § 10-19.1-96 provides any two or more corporations may merge resulting in a single corporation. However, the term "corporations" as used in this statute has been statutorily defined to mean a corporation organized for profit. N.D.C.C. § 10-19.1-01(8). Thus, a nonprofit corporation may not participate in a merger pursuant to N.D.C.C § 10-19.1-96.

N.D.C.C. § 10-25-01, also provides that any two or more domestic corporations may merge into one corporation pursuant to a plan of merger. However, the term "corporations" as used in this statute has been statutorily defined to mean a not for profit corporation for purposes of N.D.C.C. ch. 10-25. Thus, a for profit corporation may not make use of the merger authority found at N.D.C.C. § 10-25-01.

Clearly, North Dakota law does not contain a provision authorizing or providing the method whereby a for profit corporation may be merged with a nonprofit corporation. As a result of this nonexistent statutory authority, our only conclusion is that such a merger may not occur under existing statutes.

The factual situation described in the letter attached to your letter may be resolved by

several alternatives. The for profit corporation may be dissolved or the transfer of assets of the business corporation pursuant to N.D.C.C. § 10-19.1-104 may occur. Counsel for the corporation may wish to review this latter statute to determine if it is a viable alternative for the profit corporation.

Sincerely,

Nicholas J. Spaeth

cv