1978 WL 34949 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 20, 1978

***1** Mr. Robert C. Cleveland
Commissioner of Banking
Board of Financial Institutions
State of South Carolina
1026 Sumter Street, Room 217
Columbia, South Carolina 29201

Dear Mr. Cleveland:
Reference is made to your letter of June 14, 1978, requesting an opinion from this Office concerning merger of credit unions. The first question related to the ability of credit unions to merge under present law. In general, corporations which are creatures of statute have no authority to consolidate or merge, except as provided by statute. See Stephenson Finance Co., Inc. v. S. C. Tax Commission, et al., 130 S.E.2d 72. Section 34-1-110 of the 1976 Code, pertaining to credit unions, authorizes the Board of Financial Institutions to promulgate regulations permitting cooperative credit unions to 'engage in any activities that are authorized for federally-chartered credit unions by federal law or by regulation of the National Credit Union Administration.' It is the opinion of this Office that the State Board of Financial Institutions can promulgate an appropriate regulation which would permit merger of credit unions.

In a merger, the absorbed corporation is automatically dissolved by force of law. You have submitted proposed regulations to this Office, pertaining to the necessity of approval by shareholders of the merging credit unions. In my opinion, the merging corporation would, in effect, be dissolved by the merger, which means that the merging corporation should comply with the dissolution procedures contained in Section 34-27-260 of the 1976 Code. This Code Section contemplates special meeting of members called by the Board of Directors, with at least two-thirds of the members present being required to vote to dissolve the credit union. In my view, the merging corporation dissolves and simultaneously merges into the surviving corporation, and the meeting contemplated by Section 34-27-260 could be utilized for purposes of dissolution and merger approval.

It is unnecessary to obtain approval of the membership of the surviving credit union, but we would recommend that the regulation approving merger include a requirement of approval (probably by two-thirds vote) of the merging credit union, to avoid any allegation of injustice by members of the surviving credit union relating to the terms of merger. It is significant that the plan of merger contemplated by the general corporation laws of the State contemplate the approval of the merger by two-thirds vote of outstanding shares for both merging corporations. See Section 33-17-30(c) of the 1976 Code.

Your letter of June 14, 1978, also requests our advice whether the common bond concept must be maintained in any surviving credit union in a merger situation. In my opinion, a regulation permitting merger of credit unions should also provide for retaining the common bond concept contemplated by Section 34-27-40 of the 1976 Code.

As previously noted, I will be happy to work with you in drafting appropriate regulations to implement this opinion, assuming approval of the merger concept by the State Board of Financial Institutions.
Yours very truly,

***2** Victor S. Evans

Deputy Attorney General

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