

1975 WL 29151 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 22, 1975

*1 The Honorable O. Frank Thornton
Secretary of State
P. O. Box 11350
Columbia, SC 29211

Dear Mr. Thornton:

We are in receipt of your letter in which you inquired whether or not a business corporation can merge with a cooperative formed under the Cooperative Marketing Act. You have expressed concern over the propriety of such a merger as one corporation is specifically formed as a nonprofit organization and the other corporation as a profit making organization.

A corporation and a non-profit association established under the Cooperative Marketing Act are created and operated under entirely separate statutes. The applicable code sections authorize a great deal of activity and control by a non-profit association in a profit corporation. See South Carolina Code of Laws, 1962, Sections 12-904; 12-910; 12-923(4)(7); South Carolina Code of Laws, 1962, as amended, Sections 12-12.3(14). However, a merger is not specifically authorized.

Section 12-20.1 of the Supplemental Code governs mergers of corporations. It is stated there that 'any two or more domestic corporations may merge into one of such corporations . . . pursuant to a plan of merger approved in the manner provided in Chapters 1.1 to 1.14 of this Title.' Sections 12-11.2(b) defines corporation or domestic corporation as ' . . . a corporation for profit formed under the laws of this State.' (emphasis added).

Apparently, the statutory prerequisite for merger is that the two merging corporations be profit making. Corporations are creatures of statute and have no authority to merge except as provided by statute. Stephenson Finance Co. v. South Carolina Tax Commission, 242 S.C. 98, 120 S.E.2d 72 (1963). It is always presumed that the legislature is familiar with prior legislation dealing with the same subject matter. Bell v. S. C. Highway Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Therefore, statutes in pari materia must be construed together and reconciled, if possible, to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Following strict construction of the statutes involved it would appear that pursuant to Section 12-11.2(b) and 12-20.1 that a non-profit association and a profit making corporation cannot merge.

It is, therefore, the opinion of this Office that a non-profit association formed under the Cooperative Marketing Act cannot merge with a profit making corporation.

Yours very truly,

Treva G. Ashworth
Assistant Attorney General

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