Mr. David Hunter  
Commissioner of Labor  
225 State House  
Indianapolis 4, Indiana  

Dear Mr. Hunter:  

I have your letter of March 22, 1954, which reads in part as follows:  

"Three different Unions are employed by a company engaged in the digging and excavating of sand and gravel, as well as the processing thereof, including the separation and grading for sale to the public, and in addition thereto, said company operates and carries on a Readi-Mix Cement Plant.  

"A question has arisen as to whether or not the employees of said company can legally demand and receive payment of their wages at least once every week in accordance with * * * Section 40-104 of Burns’ Indiana Statutes.”

The section of Burns’ referred to is the Acts of 1911, Ch. 68, Sec. 1, which provides:  

"Every corporation, association, company, firm or person engaged in this state in mining coal, ore or other mineral, or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading, barrels, brick, tile, machinery, agricultural or mechanical implements, or any article of merchandise, shall pay each employee of such corporation, company, association, firm or person, if demanded, at least once every week, the amount due such employee for labor, and such payments shall be in lawful money of the United States, and any contract to the contrary shall be void.”

In ascertaining the intent of the Legislature, reference should be made to the title of the Act which provides:  

"An act requiring corporations, companies, associations, firms and persons engaged in mining or manu-
facturing in this state, to pay their employees weekly, in lawful money of the United States; prohibiting the issue or circulation of script; regulating the sale of merchandise and supplies by employer to employee, and providing penalties for violation."

It is to be noted that the title is broad and all-inclusive as regards persons engaged in mining or manufacturing. It may be contended that the rule of *ejusdem generis* should be invoked in ascertaining the intention of the Legislature. However, in a criminal prosecution for burglary, the California Supreme Court, in a similar statute, where the language was "* * * mine, or any underground portion thereof," said at page 721 of the opinion, People v. Silver (1940), 16 Cal. (2d) 714, 108 P. (2d) 4:

"It is to be remembered that 'the doctrine of *ejusdem generis* is but a rule of construction to aid in ascertaining the meaning of the legislature, and may be used to carry out, but not to defeat the legislative intent.' (23 Cal. Jur. 756.) A rule of construction which appears to be more consonant with the legislative intent in this case is that 'a statute will be given its full effect, as far as possible, and will be so construed that the whole may stand, and that each part thereof may have the meaning and effect which, from the act as a whole appears to have been intended.' (23 Cal. Jur. 757.)"

The Court further said that mineral includes all properties of whatever kind or character, whether underground, quarry, pit, well, spring, or other source. This case further held that stone and gravel diggings were within the Penal Code, Section 459, making the entry of the surface of mining property with the intent to commit grand or petit larceny or any felony thereon burglary.

An Official Opinion of the Attorney General, 1943 O. A. G., page 627, held that every corporation, association, company or person engaged in this state in mining coal or other minerals is required to pay employees at least once every week upon demand of the employees. The question then arises as to whether sand and gravel are "minerals" within the statutory pronouncement. The Act does not define the term "mineral,"
and 2 R. S. 1852, Ch. 17, Sec. 1, the same being Burns' Indiana Statutes (1946 Repl.), Section 1-201, provides in part:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

Reference is made to "Webster's New International Dictionary of the English Language," Second Edition, Unabridged, page 1563, wherein the word "mineral" is defined as follows:

"Any chemical element or compound occurring naturally as a product of inorganic processes. Minerals are usually solids, the only ones which are liquids at ordinary temperatures being water and mercury. Except in rare instances they have a definite molecular structure which manifests itself in crystal form, optical properties, etc. Rocks, except certain glassy forms, are either simple minerals or, more frequently, aggregates of two or more minerals."

It has been held that the word "mineral" in its ordinary and common meaning is a comprehensive term including every description of stone and rock deposit whether containing metallic or nonmetallic substance.

James Waugh v. The Thompson Land & Coal Co. (1927), 103 W. Va. 567, 137 S. E. 895;

Northern Pacific Railway v. Soderberg (1902), 188 U. S. 526, 23 S. Ct. 365, 47 L. Ed. 575;


Many of the cases construing the term "mineral" are cases involving either a grant of mineral rights or a grant of the
land excepting mineral rights. These cases, however, concede that the term "mineral" includes sand and gravel but generally the decisions are determinative of the intention of the parties to the contract.

McCombs v. Stephenson et al. (1907), 154 Ala. 109, 44 So. 867;
Puget Mill Co. v. Duecy (1939), 1 Wash. (2d) 421, 96 P. (2d) 571;

In The American Sand & Gravel Co. v. Spencer (1914), 55 Ind. App. 523, 103 N. E. 426, the Court, by implication, concluded that sand and gravel were minerals, and in Bailey et al. v. Evatt, Tax Comr. et al. (1944), 142 Ohio 616, 53 N. E. (2d) 812 the Court held that the production for commercial sale of sand and gravel from a natural sand and gravel deposit by stripping the surface soil therefrom with a drag line and removing such sand and gravel from pits with a steam shovel constituted "mining."

It is therefore my opinion that the mining of sand and gravel is within the purview of the above quoted Act and it is further my opinion that once the company is within the purview of the Act the company remains within said purview for all of its operations.

With respect to that part of your question dealing with the operation of a Readi-Mix Cement Plant my opinion is further based upon the definition of the term "manufacture." The case of Ellis v. State of Indiana (1926), 198 Ind. 679, 154 N. E. 489, holds that the word "manufacture" means not only to produce or create but covers as well the active efforts and means employed to make the finished product. In the present problem the finished product is cement.

It was said in the case of Baltimore & Ohio Southwestern R. Co. v. Cavanaugh (1904), 35 Ind. App. 32, 71 N. E. 239, at page 37 of the opinion:

"To manufacture is to modify or to change natural substances so that they become articles of value or use. * * *"
It has been held that the making of ready mixed or transit mixed concrete is "manufacture" involving transformation, that is, the fashioning of raw materials into a change of form for use.


From the above authorities and citations, it would appear that all of the employees of said company come within the terms of the Act, and therefore, it is my opinion that the employees of said company can legally demand and receive payment of their wages at least once every week in accordance with said Act.

OFFICIAL OPINION NO. 32

May 6, 1954

B. Groesbeck, Jr., M. D., Director
Department of Health
1330 West Michigan Street
Indianapolis, Indiana

Dear Dr. Groesbeck:

Your letter requesting my Official Opinion concerning the total amount to be paid by counties for funeral and burial expenses of deceased members of the Indiana State Soldiers' Home reads as follows:

"Arrangements have recently been completed with the Tippecanoe County Funeral Directors' Association to rotate the services of the Association members in directing funerals of deceased members of the Indiana State Soldiers' Home in cases for which previous arrangements have not been effected.

"During a recent conference with members of this Association, the question arose as to the interpretation on the part of county officials of the meaning of Chapter 109 of the Acts of 1951, which authorizes payment by the counties for funeral expenses of certain members of the armed forces of the United States and their widows.

"The law states, in part, that the county commis-