Acts of 1941, Ch. 139, Sec. 35, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1335.

As to your fourth question regarding the responsibility for enforcement of this provision, the previously stated instances calling for criminal prosecution would be enforceable through local law enforcement agencies. In those instances where no criminal sanction is provided, enforcement would be left entirely to superior officers within the administration of the department.

OFFICIAL OPINION NO. 68

December 15, 1954

Mr. Arnold H. Meister
State Fire Marshal
Administrator of Boiler Division
231 State House
Indianapolis, Indiana

Dear Mr. Meister:

This is in reply to your two letters to this office, the latter being November 12, 1954, requesting an Official Opinion on the construction of the Acts of 1953, Ch. 66, so you will be able to determine the extent of state inspection of boilers and pressure vessels in plants owned by the Federal Government and leased to private concerns; plants owned by the Federal Government and used by the Federal Government; and plants owned by private concerns and leased to the Federal Government.

The Acts of 1953, Ch. 66, Sec. 2, as found in Burns’ Indiana Statutes (1950 Repl., 1953 Supp.), Section 20-633, provides:

“From and after the 1st day of July, 1953, it shall be the duty of the owner or user of each steam boiler, hot water heating boiler, hot water supply boiler, or unfired pressure vessel installed, used, or operated in this state to maintain or cause the same to be maintained in safe operating condition in accordance with the applicable standards prescribed or provided for by this act pertaining to inspection, repair, and allowable working
pressures of boilers and unfired pressure vessels in service; * * *.” (Our emphasis)

Section 25 of said Act, supra, as found in Burns' Indiana Statutes (1950 Repl., 1953 Supp.), Section 20-656, provides that this Act shall not apply to "(3) Boilers and unfired pressure vessels under federal regulation."

Ordinarily, it is within the power of the state to prescribe the safeguards and precautions foreseen to be necessary and proper to prevent by anticipation those wrongs and injuries which, after they have been inflicted, the state has the power to redress and to punish (Railroad Commission v. Grand Trunk Western R. Co. (1913), 179 Ind. 255, 100 N. E. 852), and it rests solely within the legislative discretion within limits fixed by the Constitution to determine when public safety or welfare requires the exercise of the police power. (Walker v. Jameson (1894), 140 Ind. 59, 37 N. E. 402.)

In my opinion this type of regulation is a valid exercise of the police power by the Legislature and ordinarily whenever the Legislature acts for the protection of the public welfare, courts will not give a strict construction to the statute.

No place in the Acts of 1953, Ch. 66, supra, is there any definition of the words "owner" or "user," nor is there any specific indication as to who is to be included within the scope of those terms.

The Attorney General of Indiana has, in four previous opinions, in not dissimilar situations, concluded that the state was not included in or bound by these regulations where the statute involved did not specifically provide that the state should be included.

See:

1949 O. A. G., page 286, No. 75;
1946 O. A. G., page 98, No. 30;
1945 O. A. G., page 233, No. 51;

In 82 C. J. S. Statutes, Sec. 317 at page 557, it is said:

"While the general rule that statutes should not be
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construed to apply against the sovereign not named therein extends to sovereigns other than the enacting one, a statute which is intended for the benefit of the enacting state, its political subdivisions, citizens, and residents will not be construed so as to operate for the benefit of the United States.”

There are a number of other exemptions set forth in the Act particularly in Sections 25 and 26. In considering the question of boilers or vessels owned by the Federal Government or under lease to or from the Federal Government, it is necessary to know more about the location of such boilers. Where the Federal Government has acquired their own land within the territorial limits of the State of Indiana and that area has been ceded by the state to the Federal Government, then for most purposes it is no longer a part of the State of Indiana and is subject to the jurisdiction of the state only for those purposes for which valid exemption in the state statute has been made. See Acts of 1883, Ch. 7, Sec. 1 et seq., as found in Burns’ Indiana Statutes (1951 Repl.), Section 62-1001. The effect and result of such ceded lands has been discussed in numerous Attorney General’s opinions and need not be reiterated here.

See:

1943 O. A. G., page 37;
1943 O. A. G., page 259;
1944 O. A. G., page 142;

The fact that a privately owned and operated plant has a contract with the Federal Government to produce or manufacture articles or goods under federal supervision does not mean that they are subject to the federal rules and regulations in regard to boilers and unfired pressure vessels.

The basic principle upon which the rules of statutory construction are grounded is one of constitutional law by which the Federal Government and its agencies are immune from all state regulation unless the Congress has expressly waived such immunity. The principle involved is that as stated in 81 C. J. S. States, Sec. 7 (b), pages 876, 877, as follows:
"In accordance with the general rules discussed supra subdivisions b (1) and b (2) (a) of this section that neither the state nor the federal government may interfere with the jurisdiction of the other or impair the other's sovereignty, and that the United States is supreme within its proper sphere, it is generally held that the activities of the federal government are free from regulation by any state, or, as otherwise expressed, that a state may not regulate the national government in the discharge of its sovereign or governmental functions. So, the police power of a state does not extend to the United States or its transactions." (Our emphasis)

See also:

Mayo v. United States (1943), 319 U. S. 441, 63 S. Ct. 1137, 87 L. Ed. 1504, 147 A. L. R. 761;

United States v. City of Chester (1944), 144 Fed. (2d) 415.

The case of Sollitt & Sons Constr. Co. v. Commonwealth of Virginia (1934), 161 Va. 854, 172 S. E. 290, 91 A. L. R. 774, is authority for the proposition that federal immunity from regulation does not extend to the private contractor performing contracts with the Federal Government.

It is my opinion that your question should be answered as follows:

1. It is necessary to first exclude all boilers and vessels which are expressly excluded by the Act including boilers and unfired pressure vessels under federal regulation.

2. Boilers and pressure vessels located on land owned by and ceded to the Federal Government would not be subject to the provisions of the Act and this would be true whether said boiler or pressure vessel be owned by the Federal Government or be leased to it.

3. The Federal Government is not subject to the Act either as owner or user regardless of where boiler is located.

4. If a boiler be located on privately owned land or land owned by the Federal Government but not ceded to the Federal
Government, it would be subject to the provisions of the Act if the boiler or vessel be privately owned and operated or owned by the Federal Government and under lease to a private user, as the private concern is responsible either as owner or user, unless coming within an exception above referred to.

5. If the boiler or vessel be located on land ceded to the Federal Government, it would not be subject to the provisions of the Act, even though it might be under lease to a private concern.

OFFICIAL OPINION NO. 69
December 16, 1954

Mr. Cecil Bolinger
Executive Secretary
Public Employes' Retirement Fund
707 Board of Trade Building
Indianapolis 4, Indiana

Dear Mr. Bolinger:

This is in reply to your letter requesting my Official Opinion. Your letter, in part, is as follows:

"Mrs. X is librarian of the Anytown Public Library which is a municipality participating under the Public Employes' Retirement Fund. On January 1, 1954 Mrs. X retires and receives from the Public Employes' Retirement Fund an annual retirement benefit of $1,049.00. Her payments to the Public Employes' Retirement Fund with earnings amount to $390.53. The present value of her prospective benefits on July 1, 1954, as computed by the Actuary is $12,285.46. On January 1, 1954 the Public Employes' Retirement Fund transfers the $390.53 in Mrs. X's account to a retirement reserve account. The Fund also transfers $11,894.93 from an account containing payments made by the Anytown Public Library for its employes to the Retirement Reserve Account so that the balance in the Retirement Reserve Account on January 1, 1954 will be $12,285.46.

"On July 1, 1954 Mrs. X dies and the Retirement