hereinbefore stated. To require the advertising and letting of a contract for the mere widening, in the interest of safety, of each bridge of the state system of highways would subject the public to needless and enormous expense, and would result in absurdities as hereinbefore stated.

In the stating of my opinion on the questions submitted it has been the purpose to construe the various provisions involved as a whole and to arrive at what I consider a just result in the interest of the public, which result, I think, must be imputed to the intent of the legislature. If the reasoning and conclusions are not as definite as they should be, the remedy for further clarification rests with the legislature.

OFFICIAL OPINION NO. 37

June 23, 1950.

Mr. Thomas R. Hutson,
Commissioner of Labor,
Room 225, State House,
Indianapolis, Indiana.

Dear Mr. Hutson:

We have received your letter of May 17, 1950, in which you request an official opinion on the following:

"The question has arisen as to whether or not a fourteen (14) year old minor could be employed to operate a tractor. Would this be classified as farm labor or a hazardous occupation on moving machinery? Could the boy be covered by compensation the same as any other employee?"

The Workmen's Compensation Act (Acts of 1929), Chapter 172, Section 9, page 536, same being Burns 1940, Section 40-1209, provides that the Acts shall not apply "to farm or agricultural employees, * * * nor to the employer of such persons, unless such employer shall give notice in the manner provided in Section 3 (Sec. 40-1203, Burns) of their election to be so bound."

Your letter is not sufficiently clear as to where this particular minor will operate the tractor. In expressing my
opinion herein, I am assuming, however, that the minor has been employed to operate a tractor on a farm.

In the case of Lowery v. State (1925), 84 Ind. App. 37, it was said:

"It is to be observed that the statute does not classify the employee in accordance with the general occupation or business of the employer. Whether a laborer is or is not a farm employee is determined from the character of the work he is required to perform."

In that case it was held that the appellant was confined to farm labor, was a "farm employee" and was not entitled to compensation.

In the case of Makeever v. Marlin (1930), 92 Ind. App. 158 at 160, 174 N. E. 517, it was said:

"Assuming that a good definition of farm laborer is —'one who devotes his time to ordinary farm labor as a gainful occupation with some reasonable degree of regularity and continuity,' Workmen's Compensation Law, § 3, subd. 1, group 18, New York, can it be said by any stretch of imaginative thought that the decedent here was a farm laborer? The Supreme Court of Minnesota reasons in this manner: 'A workman is not a farm laborer simply because at the moment he is doing work on a farm; nor because the task on which he is engaged happens to be what is ordinarily considered farm labor. The employee of an implement dealer does not become a farm laborer while engaged in correcting the behavior of a self binder in the grain field of the owner, a farmer and customer of the dealer. Nor would the employee of a well digger become a farm laborer while stabling horses used on the drilling outfit. But a farmer's hired man would not cease to be a farm laborer while adjusting harvesting machinery or stabling the horses of a contractor drilling a well on the place. The modern farm laborer doubtless does much work on the rapidly increasing electrical equipment on farms. He continues a farm laborer while he does it. But an electrician sent out from town to do the same thing would not become a farm laborer for
the occasion. So also a farm laborer does not step out of his own part while doing carpenter work for his farmer employer in the repair of farm buildings. Neither does the carpenter who comes onto the farm for the job of carpentry and nothing more. One continues a farm laborer and the other does not become one."

In the case of Dowery v. State (1925), 84 Ind. App. 37, one Joseph Dowery an employee of the Indiana Girls' School whose duties as such employee were limited to work in the operation of the farm connected with and a part of the Institution, received an injury as a result of an accident which arose out of and in the course of his employment. The Appellate Court affirmed the order of the Industrial Board denying compensation. The Court said that although the farm was being operated in connection with and incidental to the conduct of the School, Dowery, whose work was confined to farm labor, was a "farm employee" within the meaning of that term as used in the Workmen's Compensation Act.

It was suggested in this case that the Court's holding could not be reconciled with the decision rendered in the case of In re Boyer (1917), 65 Ind. App. 408, 117 N. E. 507, wherein it was held that an injury to a workman on traveling wheat-threshing outfit was compensable.

However, the court said:

"It may be that within the letter of our compensation act, the man employed to assist in the threshing of wheat is doing agricultural labor, but in construing and administering the law, we must not lose sight of its scope and purpose. It is apparent that farm laborers, like domestic employees, were excluded from the operation of the act because such labor is less hazardous; being less hazardous, there is less need of protection. To be sure, the farm laborer may have some days each year of hazardous employment, but they are the exception and not the rule. With the employee engaged as a threshing-machine hand, and going from farm to farm, it is different. His work is constantly of the most hazardous nature, much more hazardous than the work of the average factory employee. It is
not reasonable to suppose that the law makers would intentionally exclude from the benefits of the compensation act those who were regularly employed as machine men in the threshing of grain. The compensation act is remedial in character, and as was well stated in *In re Duncan* (1920), 73 Ind. App. 270, 127 N. E. 289: 'It should be liberally construed to the end that the purpose of the legislature, by suppressing the mischiefs and advancing the remedy, be promoted, even to the inclusion of cases within the reason, although outside the letter, of the statute.' In the Boyer case, this court disregarded the fact that the threshing-machine employee might be excluded by the letter of the law, and correctly held that since such employee is within the reason of the act, he is also within its protection.

"The conclusion of this court in the Boyer case is correct, and is the settled law of this state. * * *"

In the case of Hahn v. Grimm (1935), 101 Ind. App. 74 in reversing the order of the Industrial Board said:

"* * * there is no evidence that appellant had, prior to his injury, been employed to perform general farm work, but to the contrary the evidence conclusively proves that he was employed as a corn-shredder hand, his employment requiring of him that he go from farm to farm during the time his employer was engaged in the corn-shredding business, and to feed and keep in working condition the machine used by his employer in the transaction of such business. The employment in which he was engaged when injured was a definite employment for a specific purpose, at a different wage and with different duties than the only other employment he had ever had with the appellee, that of cutting and shocking corn at ten cents a shock. One may be doing labor on a farm that has become necessary to be done because of farming operations, and yet not be 'a farm or agricultural employee' within the meaning of that phrase as used in our compensation law."

The Workmen's Compensation Act of 1915, Laws of 1915, Chapter 106, Section 76(b), in its definition of "employee",
was changed to include only those minors who were "lawfully" in the service of another, and the same language was reenacted in the amendment of 1929, Laws 1929, Chapter 172. In cases arising under those amendments it was uniformly held that the compensation law did not govern in cases where a minor was unlawfully employed; see, *In re Morton* (1922), 79 Ind. App. 5, 137 N. E. 62; and that a minor unlawfully employed could resort to a common law action, Ping v. Indianapolis Soap Co. (1934), 206 Ind. 287, 184 N. E. 903.

In 1933 the legislature made significant changes in the definition of the word "employee". The word "lawfully" was omitted; minor employees were made of full age for all purposes under, in connection with, or arising out of the Act; the benefits payable to a minor under 16 years of age, illegally employed or permitted to work, were doubled; and it was provided that the rights and remedies therein granted to a minor subject to the Act on account of personal injury or death by accident should exclude all rights and remedies of such minor, his parents, personal representatives, dependents, or next of kin at common law, statutory or otherwise on account of such injury or death. See Acts 1933, Chapter 243, Burns 1940 Replacement, Section 40-1701 (b).

In the case of Dawson v. Acme Evans, Inc. (1947), 118 Ind. App. 49, 75 N. E. (2d) 553, it was held that the Workmen's Compensation Act is exclusive within the scope of its operation and governs employed minors where it would govern adults, and infant under fifteen years who sustained accidental injuries arising out of and in the course of his employment was entitled only to the rights and advantages provided by the Compensation Act, irrespective of whether he was lawfully or unlawfully employed.

It was likewise held that the Child Labor Laws are still effective, but they can apply only in that portion of the field unoccupied by the Compensation Act, such as in cases where employee or his employer have rejected the act; where the employment is casual and not in the course of the regular business of the employer; where the employment is included in one of those specifically exempted from the operation of the Compensation Act.

Section 28-522, Burns 1940 Replacement, Acts of 1921, Chapter 132, Section 22, page 337 and Sections 28-522 and
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28-523, Acts of 1921, Chapter 132, prohibits minors to be employed or to work in certain specific named occupations. The operation of a tractor as herein set out is not listed among those named prohibited occupations. However, said sections of the statute in addition to the named occupations states: "or in any other occupation dangerous to life or limb or injurious to the health or morals of such minor".

In the case of Cash v. Rockwood Mfg. Co. (1947), 117 Ind. App. 605, 75 N. E. (2d) 173, it was said:

"Working at a factory machine that is dangerous to life or limb is an occupation prohibited to minors but the statute provides no standard by which any given occupation can be so adjudged. When the specifically prohibited occupations are not involved, it becomes a question of fact for the Industrial Board to determine, in each particular instance, whether the occupation in which the minor is engaged when injured, is dangerous to life or limb. * * *"

It is therefore my opinion that if the minor is as I assumed employed as a farm hand and incidental thereto, is operating a farm tractor he would be considered a farm or agricultural employee and therefore would not come within the provisions of the Workmen's Compensation Act. If per chance he be hired solely for the purpose of driving the tractor and injury to the minor result therefrom it would become a question of fact, as to whether or not his occupation was such as to be dangerous to life or limb for the Industrial Board to find, and if found to be such the benefits payable to the minor would be doubled.

Although the Workmen's Compensation Act is not applicable to farm or agricultural employees nor to the employer of such person, the employer may elect, if he so desire, to be bound by its provisions provided he gives the necessary notices as set out in the Act. Section 40-1209 Burns, Acts of 1929, Chapter 172, Section 9, page 536.