therefore of the opinion that the Act does not apply to cemetery associations or burial grounds where there is no sale or transfer of the title to some part of the real estate for a fee or commission and in cases where only burial permits are issued.

CHJ:ar

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OFFICIAL OPINION NO. 92

September 30, 1949.

Mr. Frank White, Director,
Railroad Department,
Public Service Commission,
401 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion on the full crew law of Indiana. Your request is in the following language:

"The undersigned, Director of the Railroad Department of the Public Service Commission, desires an official opinion upon the question of application of certain portions of Chapter 58, Acts 1937.

"Paragraph 4 under sub-section N of Section 1 of the above entitled act provides the qualifications for flagman in addition to other qualifications set forth in paragraph 1 under sub-section N of Section 1, Section 6 of the act defines the number of employees to be used as members of a switching crew.

"The question is whether or not a switch engine occupying a main track with cars shall have a flagman with qualifications as provided in paragraph 1 and 4 of sub-section N of Section 1? In other words, whenever locomotive, with or without cars, occupies a main track shall it be protected by an employee who has one year's experience, and who under these circumstances acts as a flagman? If a yard engine occupies a main
track with cars and has only a crew as defined by Section 6 it is quite possible that neither of the two helpers referred to in Section 6 would have one year's train service experience. Should a yard engine under the circumstances hereinabove referred to, when occupying a main track and hauling cars, have a helper with one year's train service experience?"

Specifically, you desire to know if a yard engine occupying a main track with cars attached should have a crew composed of members defined in Section 6 of the Act to which you refer and should have in the crew a helper with one year's train service experience.

Section 6, so far as it applies here, is in the following language:

"It shall be unlawful for any carrier to use, operate or permit any locomotive to be used or operated in any railroad yard, or on any railroad track, to handle or switch cars, or to transfer cars from one railroad to another, or from one railroad yard to another railroad yard, unless each and every locomotive, while handling or switching cars shall be manned by a crew of competent employees, which crew shall consist of not less than one engineer, one fireman, one yard conductor or foreman, and two yard brakemen or helpers. * * *"

Section 7 of the Act is as follows:

"It shall be unlawful for any carrier to operate or permit to be operated, on its main track, any single locomotive, unless such locomotive is manned by a crew of competent employees, which crew shall consist of not less than one engineer, one fireman, one conductor or flagman: Provided, however, That where two or more locomotives are operated under their own power on any main track, and coupled together, there shall be provided a crew of competent employees consisting of not less than one engineer and one fireman, for each locomotive, and, in addition thereto, one conductor or flagman."
It will be observed that Section 7 defines what constitutes “competent employees” which constitutes a crew. It is said in this section that all crew members shall be competent and that a crew shall consist of not less than one engineer, one fireman and one conductor or flagman. If we now refer to Sub-sections 1 and 4 of Division (n) of Section 1, we find that a competent employee is one who is able to read and understand the time tables of the carrier by whom he is employed and to read ordinary handwriting in the English language and who is able to speak, hear and understand the English language, must have good sight and must understand the signals and the book of rules of the carrier.

As applied to flagman, he must be one who is possessed of the qualifications described in sub-paragraph 1 above and shall have at least one year’s experience in train service and shall have passed the regular examination prescribed by the carrier concerning the rules and regulations governing brake-men.

It, therefore, appears that by the language of Section 6 that a competent crew must accompany the switching of cars on any railroad track or in any railroad yard.

It is my opinion that when a switch engine is occupying the main track with cars attached the crew must be accompanied by a conductor, a flagman or a helper who has had one year’s experience and who is familiar with the rules of the company and is otherwise qualified as to sight and hearing with qualifications described in Paragraph 1 in Division (n) of Section 1 of the Act. This seems to be the plain intent of the statute.

CHJ:ar

OFFICIAL OPINION NO. 93

October 4, 1949.

Honorable Frank J. Viehmann,
Insurance Commissioner of Indiana,
240 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an Official Opinion upon the two following questions: