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.

OFFICIAL OPINION NO. 93

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:
1. Whether a foreign life insurance company, qualified to transact the life insurance business in Indiana, may exercise the same rights, privileges and powers in Indiana which are exercised in this State by domestic companies.

2. Whether the Insurance Commissioner of Indiana may include in a certificate authorizing a foreign life insurance company to do business in Indiana not merely the authorization to transact the life insurance business in Indiana, but the further authorization to have and exercise the rights, privileges and powers of a domestic company in Indiana, including the investment powers granted by the provisions of Sections 39-4202—39-4204, both inclusive, Burns' Ind. Stat. Ann. 1933, 1940 Repl.

Sections 39-4202—39-4204, both inclusive, Burns' Ind. Stat. Ann. 1933, 1940 Repl., as amended in 1947 (hereinafter referred to as the "Domestic Investment Sections"), grant domestic life insurance companies certain powers with respect to investments.

Section 39-4201 Burns' Ind. Stat. Ann. 1933, 1940 Repl. (hereinafter referred to as the "General Powers Section") provides as follows:

"39-4201. *Scope of powers.*—In addition to the general rights, privileges and powers conferred by Part 3 of this act, and subject to the limitations and restrictions contained in this act and in the articles of the incorporation, every life insurance company shall possess and may exercise the rights, privileges and powers hereinafter enumerated in this article."

Section 39-4702 Burns' Ind. Stat. Ann. 1933, 1940 Repl. (hereinafter referred to as the "Foreign Powers Section"), reads as follows:

"39-4702. *Powers.*—No foreign or alien company shall be admitted for the purpose of transacting any kind or kinds of insurance business in this state, the transaction of which by a domestic company is not permitted by the laws of this state: Provided, however, That where a foreign or alien company, whose
charter provides for the transaction of the kind or kinds of insurance described in more than one (1) class of section fifty-nine (§ 39-3501) of this act, has been transacting business in this state under a certificate of authority issued by the insurance department or insurance commissioner prior to the passage of this act, such company may be issued a certificate of authority under the provisions of this act to make the kind or kinds of insurance provided by its charter. A foreign or alien insurance company admitted to do an insurance business in this state shall have the same, but no greater rights and privileges than a domestic company."

Section 39-3324 Burns' Ind. Stat. Ann. 1933, 1940 Repl. which grants the basic authority to the Commissioner of Insurance to issue certificates of authority to both domestic and foreign companies, reads as follows:

"39-3324. Certificate of authority — Issuance to companies — Prerequisite to transacting business.— The commissioner may issue a certificate of authority to any company when it shall have complied with the requirements of the laws of this state so as to entitle it to do business herein, which certificate shall expire as of midnight of the thirtieth day of April of each calendar year. The certificate shall be issued under the seal of the department authorizing and empowering the company to make the kind or kinds of insurance specified in the certificate.

"No company shall transact any business of insurance in this state until it shall have received a certificate of authority as herein prescribed and no company shall make any kind or kinds of insurance not specified in such certificate of authority."

Section 39-4708 Burns' Ind. Stat. Ann. 1933, 1940 Repl. reads as follows:

"39-4708. Issuance of certificate of authority.— When any foreign or alien insurance company has complied with the provisions of sections two hundred
and twenty-six to two hundred and thirty-two (§ 39-4701—39-4707), inclusive, of this act, then the commissioner may issue a certificate of authority, pursuant to section twenty-seven (§ 39-3324) of this act, which shall license such foreign or alien insurance company to transact only the kind or kinds of insurance specified in its application for admission, and which shall expire on midnight the thirtieth day of April next, following the date of issuance.”

You point out that certain foreign life insurance companies have raised the question whether they are authorized to exercise the rights, privileges and powers granted a domestic company by the General Powers Section, and in particular by the Domestic Investment Sections, in light of the fact that the Foreign Powers Section, although entitled “Powers,” refers only to “rights and privileges,” and although the certificates of authority hitherto issued to them by the Department of Insurance merely authorize such insurance companies “to transact the appropriate business of life insurance in the State of Indiana,” and not, in addition, “to exercise the same, but no greater, rights and privileges and powers than a domestic company.” The Sections of the Indiana Insurance Law, referred to and quoted above, construed as a cohesive group and in light of the many constitutional decisions making it mandatory in general to confer upon foreign corporations, properly qualified to transact business in a state, the same rights, privileges and powers which are exercised by domestic companies, seem to me to lead to the conclusion that both of your questions must be answered in the affirmative. It is therefore my opinion that:

1. A foreign life insurance company, qualified to transact the life insurance business in Indiana, may exercise the same rights, privileges and powers in Indiana which are exercised in this State by domestic companies.

2. The Insurance Commissioner of Indiana may include in a certificate authorizing a foreign life insurance company to do business in Indiana not merely the authorization to transact the life insurance business in Indiana, but the further authori-
zation to have and exercise the rights, privileges and powers of a domestic company in Indiana, including the investment powers granted by the provisions of the Domestic Investment Sections.

JAW:man

OFFICIAL OPINION NO. 94

October 4, 1949.

Frank Finney,
Administrator Store License Division,
Department of State Revenue,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

This is in reply to your letter of September 23, 1949, wherein you say:

"We herewith submit to you a question arising from an apparent conflict of statutes which, strictly enforced, could result in duplication of license to operate store concessions in public buildings by persons under the supervision of the Board of Industrial Aid and Vocational Rehabilitation of the Blind.

"The Indiana Store License Act (Chap. 207, Acts of 1929) does not contain any provision whereby blind persons shall be excused from obtaining a store license for operating a 'store' as defined therein. Therefore, unless exempted otherwise, such blind persons may be compelled to obtain a store license.

"However, Chap. 329, Acts of 1945 (Sec. 3) (p. 1527) authorizes the Board of Industrial Aid and Vocational Rehabilitation to issue licenses to blind citizens of the United States eighteen years of age or over, authoriz- such persons to operate vending and concession stands in any public building ("and other building" Sec. 2) in this state.