BUREAU OF MINES AND MINING: Lowering of mine boss by fireman, whether same is legal.

March 3, 1943.

Mr. Henry S. Wallace, Director,
Bureau of Mines and Mining,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 25, 1943, in which you ask the following:

"I would like an opinion of paragraphs H and I, Section 6, of the Acts approved March 8, 1923; also paragraphs K, L and M, Section 19, of the Acts approved March 8, 1923.

"My question is a certain mine in this state where a Fire Boss is lowered in the mine at 4 A.M. by the fireman. What I want to know does the law require a certified engineer for the lowering of this Fire Boss in the mine?"

I assume, of course, that the mine in question employs more than ten workmen so that it comes within the provisions of Sections 6 and 19 of Chapter 177 of the Acts of 1923, as amended, and particularly those parts of the act now found in Sections 46-401 (k, l and m) and Section 46-709, Burns' 1940 Replacement. Paragraphs k, l and m of Section 19 merely provide what is necessary for a certificate of competency and that one should not serve or be employed as a hoisting engineer without such a certificate. Those paragraphs leave unanswered the question whether anyone who is uncertified as a hoisting engineer may operate the hoisting machinery at any time. Nor does Section 46-709 give us a satisfactory answer since the prohibition there is against placing any but an engineer in charge of any engine used for hoisting. "In charge of" may mean "in operation of" or "in supervision of."

Paragraph I, by implication, seems to permit the use of the machinery by other persons providing they have been deputed for that purpose by the operator or agent.
The rather consistent interpretation of these sections by this department and by at least one inferior Indiana court, in the Vandalia case, has been that a hoisting engineer is required to operate the hoisting machinery while the mine is being operated as such; while workers and coal are being raised and lowered in the ordinary course of mining, but that for incidental use of the hoisting machinery, not in the usual and ordinary course of business, the equipment might be operated by one other than a duly certified engineer. To that effect, see:

Opinions Attorney General 1926, p. 623,
Opinions Attorney General 1927, p. 347.

If the legislation was intended otherwise than as interpreted in those opinions there has been ample opportunity to change the statutes by legislative action in the ensuing years. Consequently, if mining is not in progress, miners not being lowered into and raised from the same, nor coal hoisted, at the time when the Fire Boss is lowered by the fireman in question, and if the fireman has been authorized by the operator to do that work, I cannot say as a matter of law that the operation mentioned in your letter is a violation of the statutes cited.

EMBALMERS AND FUNERAL DIRECTORS, STATE BOARD OF: Right of Board to suppress types of advertising.

March 3, 1943.

Mr. Luther J. Shirley, Secretary,
State Board of Embalmers and Funeral Directors,
946 North Illinois Street,
Indianapolis, Indiana.

Dear Mr. Shirley:

This will acknowledge receipt of your letter of March 1, 1943, containing an advertisement from the Hinklin Funeral Home at Garrett, Indiana, and requesting an opinion as to whether or not under the law as established by the Supreme Court of Indiana in the case of Needham, et al. v. Proffitt, decided May 12, 1942, and reported in 41 N. E. (2d) 606, the