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
State Board of Embalmers and Funeral Directors has the authority to suppress advertising of the type enclosed in your letter.

I have carefully read and studied the opinion of the Supreme Court in the above case and it is my opinion that under the law as declared by the Supreme Court in that case, the State Board of Embalmers and Funeral Directors has no authority under the provisions of Section 6 of Chapter 165, Acts of 1939, page 764, being Burns' R. S. Supplement, Section 63-722, to suppress or prohibit the advertising referred to.

The Supreme Court expressly held that the following language in said Section under which the Board would have such authority, to-wit:

"It shall be unlawful for any individual or individuals so licensed to advertise a price for services, merchandise and equipment to the public or to advertise any portion thereof as being offered free to the public. By advertising is meant any form of printed matter, newspaper or otherwise, holding out such facts to the public."

was void, and violated Sections 1, 9, and 21 of Article 1 of the Constitution of Indiana and the Fifth Amendment to, and Section 1 of, the Fourteenth Amendment to the United States Constitution. This means that the above quoted language in Section 6 is unconstitutional and void for all purposes and to all cases and not simply as applied in the Proffitt case. Unless there has been new legislation enacted during the present session of Legislature which is constitutional under the above decision, the Board is without authority to suppress or prohibit any advertising unless it can establish that such advertising is false, defrauding, deceiving or misleading to the public, or tends to deceive, mislead or defraud the public, in which event the Board would have the right to proceed against the offender.

Trusting that this fully answers your inquiry.