expenses of the return home of such indigent, and charge the expenses of such indigent in traveling to and from said hospital to the account of funds advanced to the poor.

In my opinion legal settlement does not enter into this question. Legal settlement applies to the right of an applicant to relief under the Poor Relief Act of 1933, as amended, same being Section 52-144, et seq. Burns' R. S. 1943 Supplement. The qualifications for admission to your institution under the above statute is one of residence and not legal settlement.

It is my opinion that the above statute clearly gives the applicant the right of admission providing the other conditions of the statute have been complied with.

Public Service Commission: Minimum crew law, whether said law is violated by a certain switching movement by the Continental Roll and Steel Foundry.

October 20, 1943.

Hon. Clayton M. Bailey, Director,
Railroad Department,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Mr. Bailey:

This is in reply to your recent letter requesting an opinion as to whether a certain switching movement by the Continental Roll and Steel Foundry Company over and on the tracks of the Indiana Harbor Belt Railroad Company at East Chicago constitutes a violation of Chapter 58 of the Acts of 1937, found in Burns' Ind. Stat. Ann. 1933, supplement, sections 55-1326 to 55-1338. The Act is commonly known as the Indiana Minimum Crew Law. You desire to be advised as to this law because it is made the duty of the Public Service Commission of Indiana to enforce the Act. Your letter, and the correspondence attached, discloses the following situation:
The Indiana Harbor Belt Railroad Company operates a railroad about forty miles long in the Chicago switching district and it serves a large number of important industries, among which is the plant of the Continental Roll and Steel Foundry Company, hereinafter called the Foundry Company. The Foundry Company is situated along both sides of a main switch track of the Harbor Belt, and there are tracks extending from this main switch track into the plant property of the Foundry Company on both sides of the railroad and there are also other tracks within the plant on the property of the Foundry Company used by it.

The Foundry Company has for its own use a locomotive engine known as a "crane locomotive." It is self-propelled and can handle cars much the same as a regular railroad locomotive, and, in addition, it has a crane which enables it to lift and move heavy pieces of freight. This crane locomotive is used by the Foundry Company within the bounds of its own plant in switching cars around and in unloading freight. It is also used in switching cars in and out of the plant onto and across the tracks of the Harbor Belt Railroad, and this switching on the Harbor Belt tracks is the subject of your inquiry because the switching is performed altogether by a crew made up of employees of the Foundry Company. The crew reports to and receives instructions from the Foundry Company. They are paid for their switching services by the Foundry Company, and are not on the roster of the railroad company in any capacity. However, all of the members of this switching crew have been examined by the officers of the Harbor Belt Railroad Company and pronounced to be qualified to do the switching work.

The main switch track over which this switching is done by the Foundry Company employees is called an "Industrial Lead Track" by the Harbor Belt. It extends northwardly from the main track at 151st Street to the plant of the Walhan Oil Company near 141st Street, and from this lead track other switch tracks branch off to a number of industries also served by the Harbor Belt, both east and west of the Foundry Company plant. When the Harbor Belt uses this lead track in its own switching operations it protects the track. That is, no other movement is allowed on the track without orders from the railroad company. The Harbor Belt, however, does not
appear to assume any responsibility for the switching done by the Foundry Company.

It appears also that the Harbor Belt switches in and out of the Foundry Company plant a number of cars consigned to or from it almost daily, and it maintains a switch engine with its railroad crew at or near the plant ready to serve the Foundry Company with any switching desired either inside or outside of the plant.

The Harbor Belt has published a lawful tariff with a prescribed charge for switching cars from one portion to another portion of an industry on request of the industry, and also for handling locomotive cranes. In the correspondence with your letter the question is raised whether the use of the crane locomotive, as above described, is in violation of Section 8 of the Act, which is as follows:

"It shall be unlawful for any carrier to operate as a locomotive or permit to be operated as a locomotive, on its main track, in the State of Indiana, any self-propelled crane, pile-driver, weed-burner, or other self-propelled engine or machine not used for the transportation of passengers and/or freight or property for hire, which has sufficient power to draw or propel itself and one or more standard railroad cars, unless such engine or machine shall be manned by a crew of competent employees consisting of not less than one engineer, one conductor and one flagman."


It does not appear to me that the tracks over which the switching by the Foundry Company is done is a main track within the meaning of Section 1, paragraph (m) of the law which defines a main track as "any continuous track over which trains operate through and between stations."

Moreover, I do not believe a determination of that question would reach one of the things which I think the Minimum Crew Law was designed to require. Your main problem appears to be whether or not the employees of an industry, acting in behalf of the industry, are competent employees within the meaning of the statute to do switching on the
tracks of a railroad, and whether a railroad violates the law in permitting such a switching movement over or across its tracks by crews not in its employ, nor under its control, nor under the control of any other railroad carrier.

In my opinion such a switching operation over the railroad tracks is in violation of the Minimum Crew Law. The law is a safety measure, as shown by its title, which reads as follows:

"AN ACT to promote the safety of employees of and travelers upon railroads by requiring common carriers by railroad to man locomotives, trains, and other self-propelled engines or machines with competent employees; to provide the least number of men that may be employed in the operation of locomotives, trains, and other self-propelled engines or machines; to provide qualifications of certain employees; prescribing the rights, powers and duties of the public service commission and the attorney-general in connection therewith; to provide a penalty for the violation thereof; and repealing all laws and parts of laws in conflict therewith."


Section 6 of the Act provides:

"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. No such employee shall be detailed to more than one locomotive at the same time, or be assigned to any other service unless his place is filled by another competent employee, or the locomotive laid up during the period such employees are otherwise used, except that in case of the sudden disability of a member of such crew
through sickness, accident, or death, the carrier shall have three hours to replace such member, during which time such locomotive may be operated by a less number of employees than is provided herein.”


This section and other specific provisions of the statute dealing with the movement and switching of cars or trains uses the word “carriers.” A carrier is defined in Section 1(a) as a railroad (except railroads less than twenty-five miles long) and the words “employees” and “competent employees” used in connection with the switching and movement of trains or cars can hardly be interpreted to mean anything else than employees of a railroad. Section 2 provides that it shall be unlawful for a carrier to be permitted to operate a passenger train unless the train is “manned by a crew of competent employees.”

Sections 3, 4 and 5 which have to do with freight trains, and other trains, use the same language, “carrier” and “competent employees.”

In defining the qualifications of a crew the statute uses the language “competent employee.”

There is no definition in this Minimum Crew Law of the word “employee.” It is proper to conclude that the word is used in its ordinary sense. The Supreme Court of the United States in Hull v. Phila. & Reading Ry. Co., 252 U. S. 475, 479, quoting from an earlier decision observed that the Employers’ Liability Act contained no definition of employee, but “used the words ‘employer’ and ‘employee’ in their natural sense and intended to describe the conventional relation of employer and employee.”

Sub-section (n) (1) of the 1937 Act says:

“(n) The term ‘competent employee’ means:
“(1) One who is able to read and understand the time tables of the carrier by whom he is employed, and to read ordinary hand writing in the English language, and who is able to speak, hear and understand the English language, and to see, distinguish
and understand the signals required by the book of rules of the carrier governing the operation of the locomotives and trains of such carrier. When defective sight can be remedied by the use of glasses or other means, such defective sight shall not thereby render an employee incompetent under this act."


The language in the above paragraph which says that a competent employee must be one who can understand the time tables of "the carrier by whom he is employed" must be given some significance.

Then the various paragraphs following state just what the qualifications of a competent employee must be, as applied to each member of a crew—the engineer, the conductor, the flagman, the fireman, and the yard foreman. The words "one who" as used in the following subparagraphs (1) to (6) must not be taken to refer to anyone who has passed an examination. The word "one" is an adjective and modifies the word "employee." So that sub-paragraph (2) for example, should be read as applied to an engineer "one (that is an employee) who in addition to being possessed with the qualifications prescribed in paragraph (1) of subsection (n) hereof, shall have passed the regular examination prescribed by the carrier concerning rules and regulations governing the position of an engineer." That is, I believe the legislature intended by the Minimum Crew Law, not only to fix a standard in numbers and qualifications for crews employed in manning trains and doing switching on Indiana railroads, but also the law makers intended to require the crews to be employees of a railroad company.

The fact that the five men employed by the Foundry Company to do the switching have been examined and found qualified by the Harbor Belt to do the switching they perform does not make them railroad employees.

There are federal and state laws which apply only to employees of a railroad. These laws, enacted under the police power, are designed to make railway operations more safe and to protect railroad employees, passengers and property moving
over railroads from the hazards of railroad operations. Some of such federal laws are: Hours of Service Act (U. S. C. A., Title 45, Sec. 61-64), the Liability of Common Carriers by Railroad for Injury to Employees (U. S. C. A., Title 45, Sec. 51), the Railway Labor Act (U. S. C. A., Title 45, Secs. 151 to 188), the Railroad Retirement Act (U. S. C. A., Title 45, Secs. 228a to 228s), and the Unemployment Insurance Act (U. S. C. A., Title 45, Secs. 351 to 367). There is no assurance that the employees of an industry not subject to these railway laws, and therefore not encouraged by the laws to efforts of greater safety, will measure up to the standard of due care contemplated by the laws governing railway operations.

In the case of Pittsburgh, etc., R. Co. v. Parker, 191 Ind. 686, it is held that the federal employers liability Act applies only to a person suffering from an injury while he is in the employ of a railroad carrier. In that case a carpenter working for an independent contractor was making forms for a concrete bridge on a railroad and while so engaged was injured. The Indiana Supreme Court held that he could not recover damages from the railroad because he was not an employee of it. The same rule is stated in the case of Standard Oil Co. v. Anderson, 212 U. S. 215, and Stevenson v. Lake Terminal R. Co., 42 F. (2d) 357.

It is a matter of common knowledge also that the railroad companies in recognition of their public responsibilities have built up a spirit of high morale among their employees by a system of operating rules, and method of employment, and of rates of pay, and the retirement of employees, that is not exceeded by any other organization. The legislature doubtless took all of this into account in enacting the Minimum Crew Law and providing in it, as I think it must be interpreted, that the movement of trains and cars over busy railroad tracks must be done by crews in the service of a common carrier by railroad.