COMMISSIONER OF LABOR: Employees engaged in mining of coal or other minerals must be paid once every week if said employees so demand.

November 4, 1943.

Hon. Thomas R. Hutson,
Commissioner of Labor,
225 State Capitol,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you make reference to Section 40-104 of Burns' Indiana Statutes Annotated, 1933, and submit for official opinion the following question:

"Is it the law that every corporation, association, company, or persons engaged in this state in mining coal or other minerals are required to pay their employees at least once every week upon demand of the employees?"

The above section is Section 1 of Chapter 68 of the Acts of 1911 (Acts of 1911, page 110), Section 40-104 Burns' 1933, and provides as follows:

"That every corporation, association, company, firm or person engaged in this state, in mining coal, ore or other mineral, or quarrying stone or in manufacturing iron, steel, lumber, staves, heading barrels, brick, tile, machinery, agricultural or mechanical implements, or any article of merchandise, shall pay each employee of such corporation, company, association, firm or person, if demanded, at least once every week, the amount due such employee for labor, and such payments shall be in lawful money of the United States, and any contract to the contrary shall be void."

The title of this Act is:

"An Act requiring corporations, companies, associations, firms and persons engaged in mining or manufacturing, in this state, to pay their employees weekly, in lawful money of the United States; prohibiting the issue or circulation of scrip; regulating the sale of
merchandise and supplies by employer to employe, and providing penalties for violation."

I take it that the above quoted statutory provision is the law in this state unless it violates some constitutional provision or unless it has been repealed either expressly or impliedly by subsequent legislation. An earlier Act providing for semi-monthly payments to employees, if demanded by them, was under consideration in the case of Seelyville Coal etc. v. McGlosson, 166 Ind. 561. I have compared carefully the title of such Act and the first section thereof with the title and first section of the Act now under consideration, and I find that they are identical with the exception that the law involved in the Seelyville Coal Company case requires semi-monthly payments and the Act now under consideration requires weekly payments. I do not think this difference is of any consequence in determining the constitutional question and in my opinion I am bound by analogy in this case to follow the decision made in the Seelyville Coal Company case, which upheld the previous law.

It should be pointed out that the question of the policy of legislation does not present a legal question and upon the authority of the case of Seelyville Coal etc. v. McGlosson, supra, I think the section of the 1911 Act referred to is valid. On the subject that the courts have no authority to pass upon the policy of such legislation, see:

Metropolis Theatre Company v. City of Chicago, 228 U. S. 61;
State Board of Tax Commissioners of Indiana v. Jackson, 283 U. S. 527.

The next question to consider is as to whether the legislation involved has been repealed, either expressly or by implication. An examination of the statutes reveals very clearly that there has been no express repeal. In 1933, however, there was an Act passed providing for semi-monthly payments and the question might arise as to whether it was to take the place of the Act of 1911. I do not think that the 1933 Act, however, can be held to impliedly repeal the 1911 Act, especially in view of the provision in that Act itself wherein it is provided:
"* * * That nothing herein shall be taken to prevent payments being made at shorter intervals than herein specified nor to repeal any law providing for such payments; * * *." (Our emphasis.)

Burns' Indiana Statutes Annotated 1933, Sec. 40-101.

Since Section 40-104 Burns' 1933 provides that the payments to employees shall be at least once each week, "if demanded," it is apparent that the provisions are for the benefit of the employees, and they may be waived by the employees either by contract or other agreement.

In my opinion, therefore, the 1911 Act above referred to is valid and is still in force and effect. The answer to your question is in the affirmative.

INDIANA BOARD OF DENTAL EXAMINERS: Interpretation of Chapter 308 of the Acts of 1943, with particular reference to advertising and unprofessional conduct of Dentists.

November 5, 1943.

Hon. C. A. Frech, D.D.S.,
Secretary-Treasurer,
Indiana State Board of Dental Examiners,
Gary State Bank Building,
Gary, Indiana.

Dear Sir:

Your letter of October 11, 1943, received as follows:

"On behalf of the Board of Dental Examiners, I am making a request for an opinion from your office on the new dental law, and particularly with reference to the following matters:

"Section 63-518, Burns' Ann. Statutes, Supp. of 1943, provides that the Board may refuse to issue a certificate, or if one has been issued, to suspend or revoke the same, etc., for any of the following causes: