actually engaged in at the time? If the answer to the foregoing question is "yes", then as an "employee" of the district he comes within the purview of the Workmen's Compensation Act and his injuries, if any, while so engaged in such work would be compensable.

In connection with the above, however, I feel that I should direct your attention to an additional exception in the Workmen's Compensation Act, that is, the exception excluding farm or agricultural employees from the provisions of that act. I do this because the very purpose of the Soil Conservation Act is to preserve the soil of the state in order to promote and benefit agriculture. It is conceivable that some of the work being carried out by the various districts might be farming and the employment of farm hands, for which exemption could be claimed under the Workmen's Compensation Act.

I am of the opinion, in conclusion, that the tractor driver in this particular case where the tractor is used only for the purpose of constructing diversion terraces and waterways on cooperators' farms is an employee of the district and is a part-time employee under the Workmen's Compensation Act and, therefore, any injuries received by him within the scope of his employment would be compensable under the Workmen's Compensation Act.

SECRETARY OF STATE: Securities—Whether the Empire Gas and Fuel Company of Delaware is subject to regulation by the Securities Commission.

August 11, 1942.

Hon. Maurice G. Robinson,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Mr. Robinson:

I have before me your letter of August 4 asking for an official opinion as to whether or not the Empire Gas and Fuel Company, a Delaware Corporation, is subject to the supervision of State Securities Commission with respect to the proposed issue of that Corporation's 3½% Sinking Fund Debentures in exchange for its outstanding preferred stock. It is
noted that the Company owns securities of subsidiaries and other companies and is primarily engaged in substantially all branches of petroleum and natural gas businesses in the United States other than retail distribution of natural gas. It is further noted that the Company is not an operating company and should be considered a holding company. To explain the character of the particular securities which it is proposed to issue, your request sets out a letter from counsel for the Company as follows:

"Empire Gas and Fuel Company is not strictly subject to regulation as to the issue of its securities by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, since it has been exempted from such provision by reason of the Commission's Rule 3D-15. However, since the entire Cities Service System is subject to the regulation of the Commission under Section 11 of the Public Utility Holding Company Act—which section relates to corporate simplification and geographic integration—the plan for the exchange is subject to the approval of the Commission under that section. Therefore, the issuance of these Debentures is subject to the supervision of the Securities and Exchange Commission although generally Empire is not so subject as to the issuance of securities."

Your request requires a construction and interpretation of the Indiana Securities Law, the pertinent section being subsection (b) of Section 4 immediately following a general exemption clause. The subsection is here set out:

"Any security issued or guaranteed either as a principal, interest or dividend by a corporation owning or operating a railroad or any other public service utility: Provided, That such corporation is subject to regulation or supervision as to the issue of its own securities by a public commission, board or officer of the government of the United States or of any state, territory or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the dominion of Canada or any province thereof." (Our italics.)
I have examined Rule 3D-15 issued under the Public Utility Holding Company Act, effective January 24, 1941 (see Prentice-Hall Service Security Regulation at 16008). In substance this rule exempts subsidiaries of registered holding companies engaged in certain non-utility business and registered holding companies as to transactions of such subsidiaries from the supervision of the Securities and Exchange Commission. Since the Empire Gas and Fuel Company is a holding company engaged in the petroleum business, is not an operating company and therefore not a public utility, it comes within the exemption of the rule provided by Section 3D-15. However, as noted in the quoted excerpts of counsel’s letter, by virtue of Section 11 of the Public Utility Holding Company Act (Title 15, Section 79 (k) U.S.C.A.), the Empire Company, being a part of the Cities Service System, is subject to the supervisory control of the SEC. Therefore, on the basis of the information supplied in your request, it is fair to say that there will be supervision and regulation with respect to this particular issue of securities by a “public commission” of the Government of the United States, in this case, the Securities and Exchange Commission. While there may be some doubt as to whether the SEC properly falls into the category of “a public commission, board or officer of the Government of the United States * * *”, the phrase used in the Indiana law, I am not disposed to debate so technical a consideration.

The real question is whether the phrase “its own securities”, in subsection (b) of Section 4 of the Indiana Securities Act, should be construed to mean all of its own securities. That the Legislature intended that no securities should be issued except under the regulation and supervision of some public commission or body, is evident but to ascribe to the Legislature an intent to provide supervision over the issue of securities only in the case of certain particular issues, does violence to the language which it itself employed, namely, “its own securities”. I think any fair reading of this language can only lead to the conclusion that the exemption was to apply only where a company was under the supervision or regulation of some public commission with respect to the issue of all its own securities. Accordingly, it is my opinion that the Empire Gas and Fuel Company does not come within the language of subsection (b) of Section 4 of the Indiana Securities Law and
that said Company must subject itself to the regulation of the Indiana Securities Commission.

You will note that the proviso in subsection (b) of Section 4, *supra*, includes public commissions "of any state, territory or insular possession thereof * * *". It is conceivable that the Empire Company, being a Delaware Corporation, may be subject to the control of a regulatory body in Delaware but we are not informed whether such a public commission exists in Delaware or if it exists, what is the extent or scope of its powers. Unless your investigation should reveal that Delaware or any other state or municipality exerts control over the issue of all or any securities by this Company, it is my view that the Indiana Securities Commission may not exempt the Company from its supervisory authority.

DEPT. OF FINANCIAL INSTITUTIONS: Name—Whether Industrial Loan and Investment Companies may use the words "bank" or "banking" in their advertisements.

August 11, 1942.

Mr. Ross H. Wallace,
Director, Dept. of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Mr. Wallace:

I have before me your letter calling attention to Section 246 of the Indiana Financial Institutions Act as amended in 1935, and Section 19 of the Industrial Loan and Investment Act. These sections in Burns' Indiana Statutes Annotated (1933) Cumulative Pocket Supplement of June, 1942, take the following numbers, to-wit: Section 18-2004 and Section 18-8119.

You request an official opinion on the subject as to whether the use by a financial institution operating under the authority of the Industrial Loan and Investment Act, of certain language in its advertising or in its name would violate either one or both of the above sections. The language to which you refer includes the following terms: