transfer his employees from one department to another and pay in accordance with the prevailing wage in each bracket?"

Any such arrangement would in no way violate any of the provisions of the law provided the required wage scale is paid for the particular work performed.

Your letter presents a third question, namely:

"Section 6 provides that contractors for State printing and various other materials, located in counties containing cities of the first class (Marion County) shall pay the full prevailing wage scale, while contractors in the State outside of the above named area (Marion County) shall pay 90% of the average prevailing wage.

"Is it within the power of the General Assembly to discriminate between areas, districts or sections of the State as to salaries or wages to be paid by those bidding upon State work such as is enumerated in the Act?"

It answers your question to say that the State may classify as to areas, cities or other districts or communities, as well as in other respects, for legislative purposes. A general rule of law is that classification for the purposes of legislation is primarily for the Legislature to determine and is never a judicial question if the classification can under any circumstances be viewed as reasonable.

INSURANCE, DEPARTMENT OF: Assessment life insurance company, authority to transfer charter rights and insurance to another company.

January 16, 1940.

Mr. Geo. H. Newbauer,
Commissioner, Department of Insurance,
Indianapolis, Indiana.

Dear Sir:

Your letter of December 28th, is accompanied by a file of certain papers pertaining to the reinsurance of the policy
contracts of the Legion Life Insurance Company by the Rural Bankers Life Insurance Company, both of which are assessment companies organized under the assessment insurance law of 1897, being Chapter 195 of the Acts of 1897.

This act was not repealed by the Indiana Insurance Law of 1935, Chapter 162, Acts 1935. The latter act, however, prohibits the formation of any new assessment insurance company under the 1897 Act.

The facts involved in the case which you present are stated in the two paragraphs of your letter as follows:

"From the papers listed above, it appears that the Rural Bankers Life Insurance Company is reinsuring the policy contracts of the Legion Life Insurance Company. However, five policyholders of the Legion Life Insurance Company have indicated a preference to be transferred to some other company rather than the Rural Bankers-Legion Life Insurance Company, which is to be the name of the continuing organization, and have further indicated that they prefer to have their insurance continued in the Legion Life Insurance Company.

"* * * You will note from the copy of the reinsurance agreement that the Rural Bankers agrees to reinsure all of the risk of the Legion Life, also that there is a provision in the reinsurance agreement which is apparently an attempt to transfer the Charter rights and license of the Legion Life Insurance Company to the Rural Bankers."

You ask the following questions:

"Will you please give me your opinion as to whether or not the members of a company organized under the 1897 Act have the power to pass their Charter rights to another company formed under the same Act or to any other company or individual?

"Also, will you please give me your opinion as to whether or not the members of a company organized under the 1897 Act have the power to provide for the transfer of the insurance on practically all of their members to another organization leaving in the ceding organization a much smaller membership than would
have been required to start a new organization and still retain the Charter rights originally granted to it by the State?"

I quote in full Section 15 of the 1897 Act (section 39-435, Burns Indiana Statutes, Annotated, 1933), which provides for the reinsurance of risks in such instances as the one referred to in your letter:

"No such corporation, association or society, organized under the laws of this state, shall transfer its risks to, or reinsure them in, any other corporation, association or society unless the contract of transfer or reinsurance is first submitted to and approved by a two-thirds vote of a meeting of the insured, called to consider the same, of which meeting, a written or printed notice shall be mailed to each member, certificate or policyholder, at least thirty (30) days before the day fixed for such meeting. If such transfer or reinsurance shall be approved, every member, certificate or policyholder of the corporation, association or society who shall file with the secretary thereof, within ten (10) days after the meeting, a written notice of his preference to be transferred to some other corporation, association or society than that named in the contract shall be accorded all the rights and privileges, if any, in aid of such transfer as would have been accorded under the terms of such contract had he been transferred to the corporation, association or society named therein.

"No such corporation, association or society, organized under the laws of this state, shall transfer its risks or assets, or any part thereof to, or reinsure its risks, or any part thereof, in, any insurance corporation, association or society of any other state or country which is not at the time of such transfer or reinsurance authorized to do business in this state under the laws thereof." (Our italics.)

From the provisions of the foregoing section it is apparent that reinsurance of all of the risks of a company is contemplated. When this happens, the company transferring its risks would automatically cease to exist. At the same time,
it should be pointed out, that neither in the 1897 Act nor in any of the insurance laws of the State is there any provision for the merger or consolidation of assessment insurance companies. Also, there may be no sale of Charter rights to a newly organized assessment company, since the 1935 Act prohibits the formation of new companies under the 1897 Act.

Under these circumstances, as seems to be clear in the law, it is apparent that the law does not contemplate the sale of Charter rights by a transferring company in the reinsurance of its risks or otherwise.

What has been said largely answers the question contained in your second paragraph of inquiry. In connection with this question, it perhaps should be mentioned, the five members referred to seem to have misinterpreted the meaning of the sentence underlined in Section 15 quoted above in their understanding that they might indicate a preference to continue their insurance in the Legion Life Insurance Company. This sentence provides for the "transfer or reinsurance" of their policies. Their indicated preference to continue their insurance in the same company does not amount to a "transfer" or "reinsurance" as contemplated in the section, and such indicated preference, in my opinion, is of no legal effect. Their preference to remain in the transferring company would not keep alive that company or preserve its Charter rights.

In any event, the five members would not be sufficient in number to satisfy the requirement, or to satisfy other requirements, of Section 1 of the 1897 Act (Section 39-421, Burns Statutes, 1933) for the continuance of the old, and the formation of a new, company; this section in substance requires, for the formation of a new company, at least two hundred members each of whom has applied for at least one thousand dollars of insurance, and paid at least two dollars for each one thousand dollars of insurance subscribed.

As appears from the foregoing, both of your questions are answered in the negative.