With regard to that portion of your letter referring to the purchase by ultimate consumers of large quantities of fuel oils and similar products from unlicensed dealers outside the state, it is my opinion that the law was not intended to require such users to qualify as dealers, and I would, therefore, suggest that such users be required to file a monthly report of such shipments so received, accompanying the same with the usual affidavits or certificates of use as provided for in the 1933 act. Failure upon the part of such users to so report the shipments so received, and to accompany such report with such certificates of use, would render any shipment not reported, immediately subject to taxation.

In order that a definite list of users desiring to avail themselves of this privilege may be had, it is suggested that each such user be required to apply to you for the privilege, accompanying his application with an agreement to comply with all of the provisions of the law and with all rules and regulations promulgated by you as auditor of state relating thereto.

Trusting this will give you the information you desire, I am.

MINING DEPARTMENT: Whether a mine, using 100 men in day shift and 9 at night, may be made amenable to mining laws of Indiana on both shifts.

June 22, 1933.

Hon. A. G. Wilson,
Chief Mine Inspector,
Department of Commerce and Industry,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion concerning the following:

"Can a mine, working one hundred men in the daytime hours, but only nine or less men on the night shift, be made amenable to the mining laws of Indiana on the night as well as on the day shift?"

Section 25 of chapter 177, Acts of 1923, was amended by section 4, chapter 171, Acts of 1925, page 421, so as to read as follows:

"Section 25. The provisions of this act shall not apply to any mine that does not employ ten or more
men, except that it shall be unlawful to use or operate any gasoline propelled engine or machinery inside any mine in this state.”

Therefore, aside from the matter of gasoline propelled engines or machinery, no provisions of the act apply unless at least ten men are employed.

From the language utilized, we are constrained to hold, that the exception granted inures to the mine, rather than to the men. There is ample reason for this, since the general assembly obviously subscribed to such classification because it was convinced, that the dangers it sought to guard against, would not exist in mines so small that less than ten men would be employed therein at one time.

The mine forming the basis of your inquiry is not such a small mine in which the legislature believed such dangers would not be met. It is a mine large enough that one hundred men can, and are, employed at one time. It is large enough then, in the legislative body’s concept, to contain the very evils at which this enactment was directly aimed.

The letter and the spirit of this law lead to the conclusion that your question must be answered in the affirmative. More than ten men being employed in this mine at a time, it falls within the classification of mines amenable to the statute.

CONSERVATION DEPARTMENT: Whether on conviction of shooting on public highway, a fee of $5.00 should be taxed in favor of the conservation department.

June 22, 1933.

Mr. Kenneth M. Kunkel, Director,
Fish and Game Division,
Department of Conservation,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of June 16, 1933, in which you seek an opinion from this office as to whether or not, upon a conviction of or plea of guilty to a charge of shooting across, along or upon a public highway, a fee of five dollars should be taxed in favor of your department as a part of the costs.