owner, except in cases of peril or emergency, or where the place has, by dedication or otherwise, become a public landing place.

Clarke v. Evansville Boat Club, supra.

The landowner would have a civil action in trespass and, in a proper case as defined by the statute (Section 2493 Burns Annotated Indiana Statutes, Revision of 1926), the trespasser could be charged with a misdemeanor.

LIEUTENANT GOVERNOR: Mines and Mining.

November 18, 1933.

Hon. M. Clifford Townsend,
Lieutenant Governor,
Indianapolis, Indiana.

My dear Governor:

I have before me your letter of November 15, in which you submit two questions for my consideration.

1. Whether or not under the Indiana mining laws, where a mine that employed more than ten men had been closed by the inspector, this mine can be opened again, if they employed less than ten men without having remedied the conditions that caused the inspector to close them.

In reply to this question, I desire to call your attention to section 25 of chapter 177 of the Acts of 1923, as amended by section 4, chapter 171, of the Acts of 1925, which is as follows:

"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, in answer to your question, will say that so long as the operator of the mine does not employ more than ten men and does not operate any gasoline propelled engine or machinery in the mine, the act does not apply.

2. Your second question is as to whether or not one man can perform the duties defined in paragraph H, found in Section 10028, of the Revised Statutes of 1926, and paragraphs B and E, found in Section 10032, Burns Revised Statutes of 1926.
The qualification prescribed in paragraph H, *supra*, is as follows:

"The operator shall not place in charge of any engine used for conveying into or hoisting out of any mine, any but certified and sober engineers."

The qualification prescribed for paragraph B, *supra*, is "a certified competent fire boss."

The qualification under paragraph E, *supra*, is "a certified competent mine boss, who shall be an experienced coal miner."

The Section 10019, Revised Statutes of 1926, found in Volume 4, Supplement of 1929, defines what is meant by "certified" in the preceding sections of the statute and provides that there shall be appointed a chief inspector of mines, who shall have certain deputies and who are required to examine any applicant for the above mentioned positions and to issue certificates of competency to all those who have proven themselves competent upon an examination conducted by the mine inspector.

Your attention is called to the following language in section 10019, *supra*, to wit:

"J. For the purpose of providing for the expense of holding the examinations and issuing the certificates herein provided for, each applicant, before entering upon examination, shall pay the chief inspector of mines one dollar, a receipt for which must be endorsed upon each certificate before it becomes effective. Examinations for certificates of competency shall be public and open to all citizens of the United States, and at least fifteen days' notice of such examination shall be given by publication in a newspaper published in the city where such examination is to be held. No certificate shall be issued to any person entitling him to serve in more than one of the capacities set out in this section, but two or more certificates may be issued to the same person on proper examination."

Therefore, in answer to your last question, would say that if one man held certificates of qualifications, qualifying him to hold the positions set out in paragraphs H, B and E, above set out, I would say that he would be legally qualified to hold each of these positions. Of course, as to whether or not it is
practical for one to hold these positions, I do not say, but from a legal standpoint, I can see no objections to one man holding all of the positions, providing he has all of the legal qualifications provided by statute.

EMBALMERS, STATE BOARD OF: Construction of Indiana statute in view of NRA Code of fair practice; who may conduct funerals; hours.

November 20, 1933.

John Paul Ragsdale, President,
State Board of Embalmers and Funeral Directors,
1219 North Alabama Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue in response to the inquiry concerning the effect of the limited working week for employees, contemplated by the proposed code for fair dealing for the funeral service industry under the National Recovery Administration, in view of the exemptions granted by and contained in such proposed code.

The pertinent sections of the proposed code for fair competition for the funeral service industry are as follows:

"Article III, Hours: No employee shall be permitted to work in excess of forty (40) hours in any one week, except those engaged personally and lawfully in conducting funerals and those lawfully engaged in embalming.

"Article V, Section 5: Within each state this code shall not supersede any laws of such state imposing more stringent requirements on employer regulating the age of employees, wages, hours of work, health or general working conditions than under this code."

The general assembly of the State of Indiana has regulated the embalming profession in both the Acts of 1923 and 1931, and in the latter, which is chapter 92, Acts of 1931, page 261 et sequi, it regulates the practice of funeral directing. The most pertinent provision insofar as a consideration of the question presented is concerned, is section 10-A, which is as follows: