You submit the question as to whether it is compulsory for the owner of a motor vehicle manufactured or assembled after January 1, 1936, in case of replacement of broken glass to make such replacement with safety glass. The statute goes to the question of operation, and I think the operation of such a vehicle on the public highways unless the replacement is made with safety glass, would be a violation of the statute unless it comes within the limited class excepted from the provisions of the Act by Section 2.

FIRE MARSHAL DEPARTMENT: Arson cases—Power of court to suspend sentence.

June 13, 1936.

Honorable Archie McCabe,
Director of Arson,
Fire Marshal Department,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an opinion, which is as follows:

"Attached is a copy of our investigator's report on the above fire made at the time of investigation. Following is a summary of the case to date:

"'On February 8, 1933, Mr. Hindel filed an affidavit against Mike Kozakovich charging him with First Degree Arson. His bond was fixed at $5,000 and he was released on February 10, 1933. On April 17-18, 1933, the evidence was heard by a jury—Judge William Murray presiding. He was found guilty of Arson and sentence was pronounced on April 19, 1933. A motion was filed for a new trial. On May 24, 1933, the Court overruled the motion for a new trial. On May 26, 1933, the Court sentenced Mike Kozakovich to the Indiana State Prison for a term of two to fourteen years and admitted him to bail pending his appeal to the Supreme Court. He was released under $5,000 bond. On October 30, 1935, the evidence in this case was heard by the jury and no errors were found. Judge Hughes
wrote the decision affirming the conviction and Mike Kozakovich was ordered to the penitentiary. On November 13, 1935, Judge Murray suspended the sentence of Mike Kozakovich during his good behavior, with payment of costs.'

"What procedure will we have to take to force this man to go to the penitentiary? If Lower Court had no jurisdiction to suspend this sentence, what procedure should we take to issue a mandate ordering Judge Murray to issue a commitment?

"We will greatly appreciate a written opinion from your office."

By the express provision of Section 9-2209, Burns Revised Statutes of 1933, the Circuit Court is prohibited from suspending sentences in certain cases, among which is the crime of Arson. Therefore, the attempted suspension of the sentence in the case referred to is a nullity.

But the question in your mind is, just what can be done about the matter.

In my opinion, it would be necessary for the Prosecuting Attorney of Lake County to make a demand on the Court to issue a commitment to the Sheriff of Lake County to have the defendant committed to prison on the judgment.

If the Court should refuse to issue the commitment, then an action might be maintained against the Court in the Supreme Court of Indiana, to compel the Court to issue the commitment, under the provisions of Section 3-2201, Burns Revised Statutes of 1933, which is as follows:

"Writs of mandate in the circuit, superior, courts of this state are hereby abolished, and the causes of action heretofore remedied by means of complaint and summons in the name of the state on relation of the party in interest, in the circuit, superior, courts of this state, as other civil actions, and be known as actions for mandate. Writs of mandate and prohibition may issue out of the Supreme and Appellate Courts of this state in aid of the appellate powers and functions of said courts respectively. Such writs of mandate may issue out of the Supreme Court to the circuit, superior, criminal, probate, juvenile or municipal courts of this state, respectively, compelling the performance of any
duty enjoined by law upon such circuit, superior, criminal, probate, juvenile or municipal courts, respectively, including the granting of changes of venue from the county in cases where such change of venue is allowed by law, and timely, proper and sufficient motion and affidavit have been filed therefor, and such change of venue has been refused; and also writs of prohibition may issue out of the Supreme Court to such circuit, superior, criminal, probate, juvenile or municipal courts, respectively, to restrain and confine such circuit, superior, criminal, probate, juvenile or municipal courts, respectively, to their respective, lawful jurisdiction.

ACCOUNTS, STATE BOARD OF: Control of Municipally owned utilities by Board of Public Works in fourth class city.

June 17, 1936.

Hon. William P. Cosgrove,
State Examiner, Department of Inspection and Supervision of Public Offices,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your recent letter submitting the following question for an official opinion:

"Can the Board of Works and Safety in a city of the fourth class, legally assume the control of operation and management of their municipally owned utilities, which are now operated by a committee of the council?"

In connection with this inquiry, you call attention to the case of Long et al. v. Kinney et al., decided by the Supreme Court of Indiana on May 20th, 1936.

In cities of the fourth class the management of municipally owned waterworks, electric light works and heating and power plants, is placed under the control of the board of pub-