INDUSTRIAL BOARD: Boiler inspection—insurance inspectors—State Boiler Inspector.  

January 9, 1936.

Hon. Ira M. Snouffer, Chairman,  
Industrial Board of Indiana,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have a request before me dated January 8, 1936, concerning the interpretation of Chapter 111, Acts of the General Assembly of Indiana for the year 1915, beginning at page 458 of the published Acts of that year being Burns Sec. 20-601 to 20-631 inclusive and in particular, Sections 9 and 19 of said Act.

The facts, disclosed in your letter requesting the opinion and made the basis of this opinion, state substantially that two inspections were made of a certain boiler which was owned in this State prior to and on the effective date of said Act, and which is now owned by the Indiana Wood Preserving Company of Terre Haute, Indiana, having been purchased from the Crawfordsville Heating Company of Crawfordsville, Indiana. One of these inspections was made by the Boiler Inspection Department of the Industrial Board of this State, without request by any of the owners or purchasers of said boiler and the other inspection being made, at the request of the owner, by E. Wotring, an Inspector of the Fidelity and Casualty Insurance Company of New York, which is lawfully doing business under the laws of this State and within this State.

According to your letter, these reports disclose material differences as to the physical characteristics of the boiler and particularly in the permissible pressure at which the boiler may be safely operated. The State Boiler Department found seventy-five pounds pressure as the maximum permissible pressure and the report of the Insurance Inspector fixed one hundred twenty-five pounds as such permissible pressure.

Your request called attention to and quotes the two sections of the Act mentioned above and propounds the following questions:

1. Is the installation of the boiler legal under the report of the Inspector of the Insurance Company, not-
withstanding the conflicting report of the Boiler Department of the Industrial Board of Indiana aforesaid?

2. Is the owner of the boiler where the same was installed criminally liable or otherwise liable if he proceeds to keep said boiler installed and to operate the same at a pressure in excess of seventy-five pounds, being the maximum permissible allowed in the report of this department?

Section 9 of the Act quoted by you reads as follows:

“A boiler in this State at the time of the passage of this Act which does not conform to the rules of construction provided by this Act may be installed only after a thorough inspection internal and external, by the deputy boiler inspector or an assistant deputy boiler inspector of the State bureau of inspection, or by an inspector of any insurance company doing business under the laws of this State. The pressure allowed such boilers shall be ascertained by rules formulated by this Act, as hereinafter provided.”

This section expressly provides that installation of a boiler which was in this State at the time of the enactment of the Act is permissible.

“Only after a thorough inspection, internal and external, by the deputy boiler inspector or an assistant deputy boiler inspector of the State bureau of inspection, or by an inspector of any insurance company doing business under the laws of this State.”

It is quite clear that an inspection by an inspector of an insurance company of the character mentioned in the Act is the only inspection that can be required under the terms of this Act.

Section 19, to which you also call my attention, does not differentiate as to who may make the inspection, but this Section of the Act merely requires, “the boiler to be inspected”, before removal. The last sentence of the Act, however, clearly indicates that it may be done by an inspector of an insurance company because it provides that:

“The owner, user or any inspector, shall immediately
notify the State bureau of inspection in case (of) a defect affecting the safety of the boiler is discovered."

It would be rather idle to require an inspector of the State Bureau of Inspection to make this report by specific provision to that effect, since it would be his duty to do so any way under the terms of the Act, in case such inspector made the inspection. The word "inspector" in this clause, of course, means any person who may lawfully inspect such boiler under the other terms of the Act.

In this connection your attention is called to Section 20 of the Act, Burns 20-206, which describes inspections generally and includes as one of the permissible inspections an inspection,

"By a boiler inspector of any insurance company doing business under the laws of this State."

The above interpretations of the provisions of this Act are confirmed by the observation that Section 9 of the Act, dealing exclusively with boilers in this State at the time of the passage of the Act, gives boilers owned at the time of the passage of this Act a special indulgence to obviate certain objections which might be made against the constitutionality of the Act. The Boiler Inspection Act provides for no hearing of any kind and for no appeal or rehearing on the part of any owner or any interested person from the determination of the Boiler Inspector. Consequently, the usability and salability of boilers in the State at the time of the passage of the Act, were Section 19 not in this Act, could have been entirely destroyed by the actions of administrative officers without a hearing and without any appeal provided to the courts or other tribunal where the owner could be heard.

The Fourteenth Amendment of the Federal Constitution provides in substance that a State may not destroy property without due process of law. Due process of law always requires a hearing of some sort. The State Fire Marshal's Act, for instance, provides for such a hearing and appeal before the destruction of any property.

Apparently the legislature obviated such a likely constitutional objection by permitting the inspection requirement of such old boilers to be satisfied by the examination and report of an alternate agency, as well as administrative officers of
the State, which alternate agency was virtually selected by the owner, since it is extremely unlikely as a matter of practical experience that an insurance inspector would consent to make the inspection and report unless the boiler was insured or about to be insured in such inspector's insurance company. In effect, therefore, as to boilers in the State at the time this Act became a law, instead of requiring the owner of such boiler unconditionally to submit to the judgment of an administrative officer, the legislature took the course of permitting the examination and inspection to be made by an insurance inspector, who would, in case the boiler was insurable, be virtually selected by the owner, with the practical result of in effect requiring insurance for such boiler.

This course is not open to the constitutional objection mentioned above, since the owner would be virtually selecting his own inspector, although such owner remains under the practical necessity of insuring the boiler which would assure the public safety through creating a liability on the part of the company insuring such boiler. From some standpoints, in many cases at least, this could operate as a more efficient public safety requirement than the inspection of an administrative officer.

Consequently, the interpretation now being given to the Act is one which will uphold its constitutionality. The mere fact that there is a conflict between the inspection reports does not enable the report of the State Boiler Department to have any binding or superior legal force, and the only requirement of the Act is fully satisfied so far as the necessary examination and reports are concerned by the examination and report of the insurance company's inspector.

The owner has apparently not waived his election to comply with this Act through the inspection and report of an inspector of an insurance company, since the owner has not requested the inspection by the Department.

As a result of the foregoing interpretation the question submitted by you and designated No. 1 is answered "Yes", and the question submitted by you and designated No. 2 is answered "No".

With respect to the question submitted by you and designated as No. 3, which question reads as follows:

3. Is the obligation of inspection imposed by Sec-
tion 19 of this Act discharged by the examination and report of the inspector of an insurance company doing business in the State of Indiana or does the provision; "it shall be inspected before it is again operated", require inspection and report by this Department?

I reply that this provision is also subject to the provisions of Section 9 quoted above, since Section 9 applies to any installation of a boiler in the State at the time this Act went into effect, and, since also under our discussion of Section 2 of the Act, Burns 20-602, it is clear that the inspection referred to in Section 19 may be made and reported upon by an inspector of an insurance company doing business in this State. Accordingly I answer this question by stating that the obligation of inspection referred to in Section 19 of this Act, may in the case of the old boilers covered by Section 6 of the Act, be discharged by the examination and report of an inspector of an insurance company.

Nothing stated in this opinion is to be interpreted as relieving the owner of the boiler from complying with the requirements of the report of the inspector of the insurance company and repairing any defects therein reported in accordance with the recommendations of such report.


January 13, 1936.

Hon. Virgil M. Simmons,
Chief Administrative Officer,
Division of Conservation,
Indianapolis, Indiana.

Dear Sir:

This office acknowledges receipt of correspondence from Honorable A. G. Hamel, Assistant Regional Forester of the United States Department of Agriculture, Milwaukee, Wisconsin, dated December 6, 1935. In that letter Mr. Hamel suggests that an opinion be given on the following question, namely: as to whether Indiana has the necessary legislation to take advantage of the provisions of the Fulmer Act.