city did not have a sufficient population by the last preceding United States census to come within the provisions of the Act. Since the 1933 Act did not contemplate any cities of a less than three thousand (3,000) by United States census there is no salary provision for such towns, though they continue to operate as a city.

The City of Nappanee being unable to qualify under the provisions of the 1933 Act relative to salaries of officers of cities of the fifth class, subsequent sratutes must govern what salaries such officers will receive.

Sec. 2, Ch. 97, Acts of 1935 read as follows:

"* * * On and after the first Monday in January, 1939, in all cities having a population of less than three thousand, as shown by the last preceding United States census, the annual salaries of officers of such city shall be fixed by the common council, as hereinafter provided, at not to exceed the following amounts: mayor, five hundred dollars; clerk-treasurer, five hundred dollars; city attorney, four hundred dollars; members of the council, ninety dollars each; county auditor, for services to civil cities, fifty dollars: * * *"

These provisions are applicable to all cities of the fifth class who by the last preceding census were between two and three thousand. Nappanee falls within such classification and it is my opinion that such salary schedule will govern in such city for the year of 1939 and thereafter.

PUBLIC SERVICE COMMISSION: Motor vehicles—Coal hauling by truck—when illegal. 

Mr. Richard W. Sharpless, Director, Motor Vehicle Department, Indianapolis, Indiana.

Dear Mr. Sharpless:

This is in answer to your inquiry of March 10, 1938, which is as follows:

"The commission has information that a large number of truck owners are purchasing coal in Clay County in
their own name, the tickets being made out to them and the coal subsequently sold by the trucker to a consumer in his own locality.

"The commission would like to have an opinion as to whether such a carrier comes under the provisions of the 1935 Motor Vehicle Act, and is required to procure authority from the commission to render such service."

My understanding of the above is that the trucks are being used by their owners to carry their own coal which is later sold to customers. The trucks are not rendering either a common carrier or a contract service and, in my opinion, the owner is not required to procure authority from the Public Service Commission under the provisions of the 1935 Motor Carrier Act.

Of course, there may be truck owners hauling coal from mines to coal users who go through a pretense of buying coal and hauling it on their own account, but who, in fact, are actually hauling the coal either for the coal mine operator or the coal user for hire. In such a case the real transaction is that the truck owner is merely an agent for the coal user in purchasing the coal at the mines. He then adds to the purchase a charge for the hauling. If this is what the truck owners are doing, they are operating in direct violation of the Motor Carrier Act.


March 15, 1938.

Mrs. Mary L. Garner, Director,
Bureau of Women and Children,
Division of Labor,
404 State House,
Indianapolis, Indiana.

Dear Madam:

Receipt is acknowledged of your request for an official opinion construing Sec. 40-903, Burns' Indiana Statutes Annotated, 1933, which reads as follows:

"No person or corporation, or officer or agent thereof shall employ any woman or female young person in