LABOR, DIVISION OF: Employment of minors less than fourteen years of age. Requirement of certificates over fourteen years of age.

December 9, 1938.

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

Dear Mrs. Garner:

Receipt is acknowledged of your letter of recent date requesting an official opinion on the questions contained in a letter to you from the Children’s Bureau, United States Department of Labor. That letter reads as follows:

“We are interested in the application of State Child Labor Laws to minors who sell or distribute newspapers or periodicals and I shall be very grateful if you would advise me as to the application of the Indiana law to this type of work.

“It is my understanding that a minimum age of 14 applies to minors ‘employed or permitted to work in any gainful occupation’ or ‘in any occupation or service during school hours.’ The certificate and hours of labor provisions apply to minors employed or permitted to work in any gainful occupations. Are any of these provisions applied to any of the following types of street work?

“(a) Minors who are hired as employees by a publisher or news agent to distribute or sell newspapers or periodicals.

“(b) Minors who buy papers or periodicals from a publisher or news agent and then proceed to sell entirely on their own.

“(c) Minors who are distributing or selling papers or periodicals under a written contract with the publisher or independent news agent by which title to the papers is transferred to the minor who, however, is subject more or less to the direction and control of the publisher or agent for whom he distributes.
"Will you let me know also whether the words 'permitted to work', found in the Indiana child labor law, have been construed by the courts or your Attorney General and if so, will you give me the references to such opinions."

The statutes above referred to are sections 28-518 and 28-519 Burns' Indiana Statutes Annotated 1933, which recite as follows:

Sec. 28-518—"No minor under the age of fourteen (14) years shall be employed or permitted to work in any gainful occupation other than farm labor or domestic service, or as a caddie to any person or persons who are engaged in playing the game of golf. It shall be unlawful for any person, firm or corporation to employ or permit any minor to work in any occupation or service whatsoever during any of the hours when the common schools of the school corporation in which such minor resides are in session, contrary to the provisions of section 6 (sec. 28-506) of this Act."

Sec. 28-519—"It shall be unlawful for any person, firm or corporation to hire or employ or permit any minor between the ages of fourteen (14) and eighteen (18) years to work in any gainful occupation until such person, firm or corporation shall have secured and placed on file in the office of such person, firm or corporation a certificate issued by the issuing officer, as hereinafter defined, of the school corporation in which said minor resides. Upon the request of any employer who desires to employ a minor who represents his or her age to be between eighteen (18) and twenty-one (21) years, it shall be the duty of the issuing officer to issue a certificate to such minor * * * No certificate shall be required for any minor between the ages of fourteen (14) and sixteen (16) years to perform farm labor or domestic service or to perform the duties or to work or act as a caddie, to any person or persons who are engaged in playing the game of golf, during the hours when schools of the school corporation in which such minors reside are not in session * * * ."
Taking up the statute first above quoted it will be noted that the first clause absolutely prohibits a minor under the age of fourteen years from being employed or permitted to work in any gainful occupation. There are then listed three exceptions; namely, farm labor, domestic service and acting as a caddie. It is significant to note that the selling of newspapers is not included as one of these exceptions. It is elemental that the selling of newspapers from which compensation is derived is a "gainful occupation."

The words "permit to work" have been defined as follows:

"When we refer to the acknowledged authority of this country as to the meaning of the word 'permit' we find its meaning to be 'to grant leave or liberty to by express consent;' 'allow expressly;' 'give leave, liberty, or license, to;' 'to allow to be done by consent or by not prohibiting.' The word 'permit' is derived from the Latin *permittere*, which means 'to concede, to give leave, to grant.'"

Wilson v. The State, 19 Ind. App. 389, 393.

"The following definition expresses the general meaning of 'work': 'Exertion of strength of faculties; physical or intellectual effort directed to an end; industrial activity; toil; employment.' Webster's Dictionary."


It will thus be seen that anyone who employs or grants leave or liberty to, or allows to work by not prohibiting, any minor under the age of fourteen shall be guilty of the penal provisions of the statute.


It is therefore my opinion that it is contrary to law for minors, under fourteen years of age, to be hired as employees by a publisher or news agent to distribute or sell newspapers or periodicals. Permitting the minor under fourteen years of age to buy the papers or periodicals and sell them entirely on his own, either under contract or not, is merely a subter-
fuge to evade the statute. It is a well recognized principle of law that one cannot do by subterfuge or indirectly what he cannot do directly.

"An intention to accomplish certain results will be presumed where such results are the natural consequences that may reasonably be expected * * * Parties will be presumed to have acted with intent to produce the result which the nature of the act necessarily or reasonably does produce or tends to produce, and this is true in civil as well as criminal instances."

Knight v. Jillson Co. v. Miller, 172 Ind. 27, 34, 35.

It follows from the above that section 28-519 of Burns' Indiana Statutes Annotated 1933, above quoted, requires that a certificate be issued for those minors between fourteen and eighteen years of age.

AUDITOR OF STATE: Foreign Investment Companies, Whether Auditor may accept substitution of bonds deposited by Fidelity Investment Association of Wheeling, West Virginia.

December 16, 1938.

Hon. Frank G. Thompson,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion with respect to your right as Auditor of State to accept a substitution of $25,000 in bonds deposited by the Fidelity Investment Association of Wheeling, West Virginia, pursuant to chapter 215 of the Acts of 1901.

The above Act, approved March 11, 1901, is an Act entitled:

"An Act regulating foreign corporations issuing stocks, bonds, contracts and agreements upon which payments are to be made in installments or receiving deposits of money for any purpose, prescribing conditions upon which they can do business in this state,