"children" has laid down three qualifications for such classification, to-wit: 1. The child must be educable; 2. between the ages of five (5) and twenty-one (21) years, and 3. have a physical and/or mental disability which makes regular school room activity impracticable or impossible and children having needs for special educational facilities. It then exempts certain classes not material to your question.

From the clear language used, accepted in its ordinary meaning, I am of the opinion that the words "children between the ages of five (5) and twenty-one (21) years, inclusive" refers to the age of the child by calendar years, and does not warrant a construction that the language refers to the mental age limit of the child.

In answer to your second question, I do not find any provision of the above statute for more than one school corporation to operate such a school. The same must be established under the detailed provisions of said statute and with the assistance of the Division of Special Education of the State Board of Education, as provided in said act. Under the various sections of said act, other school corporations, not having special classes for handicapped children may send their children to such school, for which they, and the state, are pro rata liable for the cost under the detailed provisions of said statute. Before any such special class is organized or established, it must be approved by the State Board of Education and be organized under the rules and regulations adopted by it for the administration of said statute (Burns' Indiana Statutes [1948 Repl.], Section 28-3523). Otherwise it seems that any school corporation is eligible to establish such a class.

OFFICIAL OPINION NO. 6
February 16, 1954

Mr. Joe W. Green
State Veterinarian
Lizton, Indiana

Dear Mr. Green:

This is in reply to your letter of December 4, 1953 which is as follows:
"What persons, if any, are to be governed by the provisions of the so-called Garbage Feed Law (Chapter 236, Section 3, Acts of 1953)?

"Are such educational and denominational institutions such as Earlham College at Richmond, Indiana, and The Methodist Home for the Aged at Warren, Indiana, exempt from the provisions of said Act?"

Your request for an official opinion presents (1) the general question as to what persons, if any, are to be governed by the provisions of the so-called Garbage Feeding Law, Acts of 1953, Ch. 236, Sec. 3, as found in Burns' Indiana Statutes (1950 Repl., 1953 Supp.), Section 16-1728; and (2) the more specific question as to whether or not an educational institution such as Earlham College at Richmond, Indiana, and a denominational home for the aged, such as the Methodist Memorial Home for the Aged at Warren, Indiana, are exempt from the provisions of said act.

The pertinent part of said act reads as follows:

"* * * It shall be unlawful for any person to feed garbage to swine unless such garbage has been heated or cooked to a boiling point of approximately 212 degrees Fahrenheit and held at such temperature for a period of not less than thirty minutes or treated in such other manner as the board may prescribe by regulation: Provided, however, That it shall not be unlawful for any person to feed garbage to swine belonging to himself obtained from his own household, where such garbage only, is so fed."

Attention is called to the following sentence in the act above quoted:

"It shall be unlawful for any person to feed garbage to swine unless such garbage has been heated or cooked * * *." (Our emphasis)

The term "person" as used in the act under consideration is defined by Acts of 1953, Ch. 234, Sec. 1, Paragraph (1), as found in Burns' Indiana Statutes (1950 Repl., 1953 Supp.), Section 16-1205 as follows:
“‘Person’ means individuals of either sex, firms, co-partnerships, associations, joint ventures and corporations, of all kinds and places of residence, or any other group or combination acting in concert; and the plural as well as the singular number; and whether acting as a principal, trustee, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assign, agent, factor, servant, employee, director, officer, or any other representative of any such person.”

From the foregoing language it would appear the term “person” as used in Chapter 236, supra, is broad enough to include all educational and religious institutions located in the State of Indiana which feed garbage to swine.

The proviso clause in Acts of 1953, Ch. 236, Sec. 3, supra, which exempts certain persons from the requirements of said act reads:

“Provided, however, That it shall not be unlawful for any person to feed garbage to swine belonging to himself obtained from his own household, where such garbage only, is so fed.” (Our emphasis)

In order to determine what, if any, persons are exempt from the garbage cooking requirements prescribed by the act, it becomes necessary to ascertain the meaning of the term “household” as used in the proviso clause of said act.

It does not appear that the legislature has specifically defined the term “household,” but the Appellate Court of Indiana in the case of Berghean v. Berghean (1943), 113 Ind. App. 412, 48 N. E. (2d) 1001 in considering residence requirements in our divorce statute, has judicially defined the term “householder” (which is a companion term to “household” denoting the person who is in charge of a household), in the following language:

“Webster’s New International Dictionary (2d Edition) defines a householder to be the master or head of a family. One who occupies a house or separate tenement with his family or alone. * * *”

“The term ‘householder,’ in a statute requiring every
householder * * * means a person who has a family, whom he keeps together and provides for, and of which he is the head or master. * * * The term ‘householder’ means the occupier of a house, being the head or master, and having and providing for a house. It implies in its terms the idea of a domestic establishment or the management of a household.” (Our emphasis)

Kelley v. McFadden (1881), 80 Ind. 536, cites Worcester’s Dictionary which defines “householder” as “the occupier of a house.”

In Carpenter v. Dame and others (1858), 10 Ind. 125, 130, the court said:

“The next inquiry is, in what sense, as to qualifications, is the word householder used in the statute? Does it mean simply that he must be a holder in fee, or a leaseholder of a house, or does it mean that he must be a housekeeper—the head of a family occupying a house? The word, in statutes, seems generally to be used in this latter sense. * * * It is so used in our statutes exempting property from execution * * *.”

The term “household” has been variously defined by the authorities:

Webster’s Dictionary defines “household” as “Belonging to the house and family; domestic.”

In Moore Shipbuilding Corp. et al. v. Industrial Accident Comm. et al. (1921), 185 Cal. 200, 207, 196 P. 257, 13 A. L. R. 676, the term “household” as used in the Workmen’s Compensation Law was construed by the Court to mean:

“They (‘family’ and ‘household’) mean different things under different circumstances. * * * the word ‘household’ is variously used to designate people, generally, who live together in the same house, including the family, servants and boarders, or it may be used as including only members of the family relation. It is probable that the two terms (‘family’ and ‘household’) are coupled together in this statute to indicate that they
are used synonymously, the 'family' to include only those of the household who are thus intimately associated, the 'household' to exclude those of the family not living in the home. * * *" (Our insertion)

In Rydstrom v. Queen Ins. Co. of America (1921), 137 Md. 349, 112 A. 586, 587, 14 A. L. R. 212, which was an insurance case involving the theft of an automobile by a nephew of the owner, who was temporarily visiting his uncle, the question arose as to whether or not the nephew was a member of the assured's "household."

The Court said: "The general definition of 'household,' it will be seen, when used as a qualifying word, is pertaining or belonging to the house or family." The Court cited In re Lambson, 2 Hughes, 233, Federal Cases No. 8029, which said the term "household" includes all the dwellers in a house under the common control of one person.

People v. Tait (1913), 261 Ill. 197, 103 N. E. 750, 753, a criminal case, pertaining to a Board of Health regulation to prevent spread of a contagious disease by imposing a quarantine states that the information involved alleged in part that "Oscar Tait, his residence, and family be placed under quarantine, because a member of his household was infected with a dangerously communicable disease." The Court in defining the term "household" said:

"The word 'household' is equivalent to the word 'family.'"

In the case of Lafrinz v. Whitney et al. (1922), 233 N. Y. 107, 112, 134 N. E. 852, which involved the construction of the term "household" appearing in a will, the Court said:

"The word 'household' is defined as: 'An organized family and whatever pertains to it as a whole; a domestic establishment.' (Century Dictionary) Also as, 'those who dwell under the same roof and compose a family.' Webster's New International Dictionary. According to the lexicographers, 'household' means a family living together."

In Paul H. Andrews v. Commercial Casualty Insurance Co. (1935), 128 Neb. 496, 259 N. W. 653, the Court held that the
term "household" in the omnibus clause of an automobile policy covering other members of the assured’s household, means those who dwell under the same roof and compose a family.

Taking into account the somewhat flexible use of the term household as employed by the Courts generally, and the purpose of the act under consideration as expressed by the Acts of 1953, Ch. 236, Sec. 1, as found in Burns’ Indiana Statutes (1950 Repl., 1953 Supp.), Section 16-1726 which reads as follows:

"* * * It is hereby declared to be the public policy of the State of Indiana, acting through its general assembly, to control and regulate the collection, transportation and cooking of garbage to be fed to swine within this state, to the end that the spread of animal diseases shall be more adequately controlled and also that the public health and welfare of the citizens of this state shall be safeguarded against health hazards, annoyances and nuisances that might arise from the collection, transportation and cooking of garbage to be fed to swine, if the same be not required by law; and this act is designed to effectuate such purposes and public policy, through the exercise of the police powers of the state. This act shall be liberally construed to effect such policy and to promote such objectives."

It is therefore my opinion that the act in question is sufficiently broad in its terms to include “all persons,” as that term is defined by Ch. 234, Sec. 1, supra, including an educational institution such as Earlham College and the denominational home for the aged such as The Methodist Memorial Home for the Aged at Warren, Indiana.

It is my further opinion that the only persons exempt from the provisions of Acts of 1953, Ch. 236, Sec. 3, supra, as contemplated by the proviso clause in said act, are householders, i.e., private families, as distinguished from institutional or other groups, which do not constitute “families” as that term is generally known and defined by the Courts.

Attention should be called to the fact that the phrase “any person” is used in both the main provision of the act under consideration, and the proviso; however, as stated in Board
of Commissioners of Marion County v. Millikan (1934), 207 Ind. 142, 151, 190 N. E. 185:

"* * * The office of a proviso is not to enlarge or extend an act, or the section of which it is a part, but rather to put a limitation upon and to qualify the language employed. * * *"

Accordingly, it is my further opinion that the term "any person" appearing in the proviso of said act is directly related to the ensuing phrase "his own household," and does not have the same broad connotation as it obviously has in the main provisions of the act.

Therefore, in my opinion, I do not think the institutions named in your second question are exempt from the provisions of Acts of 1953, Ch. 236.

OFFICIAL OPINION NO. 7

February 18, 1954

Mr. Morris J. Carter, Commissioner
Bureau of Motor Vehicles
126 State House
Indianapolis, Indiana

Dear Mr. Carter:

This is in reply to a letter in which your predecessor, William L. Wilkinson, inquired as to the following:

1. Are the lists of names of persons whose driving privileges have been suspended as the result of accident or conviction public information?

2. If such lists are public information, and since a daily list containing such data is compiled for the use of the Commissioner, may a copy of said list be posted on a bulletin board in the Bureau of Motor Vehicles or published?

The statutes involved in answering your inquiry are the Acts of 1947, Ch. 347, as found in Burns' Indiana Statutes (1952 Repl.), Section 47-2408 where it is said: