The answer to your first question is that the authority for issuing such diplomas is the authority contained in section 28-4926 of Burns Indiana Statutes Annotated (1933). It follows also that the practice of giving the examinations provided in the above section may not legally be discontinued so long as there is anyone applying. Your question number two is answered accordingly.

I think your third question should be answered in the affirmative, so far as the details are not prescribed by the Act itself. It will be noted that the Act itself requires the person taking the examination under the Act to make a satisfactory passing grade in a sufficient number of subjects to constitute the equivalent of a high school course. This requirement could not be, of course, varied but there are undoubtedly details which may be fixed by the board. Your third question is answered in the affirmative.

TAX COMMISSIONERS, STATE BOARD OF: Whether farms owned by colleges and hospitals, operated with students or employees, products of which are used by institution, are tax exempt.

May 10, 1939.

Hon. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following question:

"Where a college or hospital owns a farm and operates same with its students or employees, the products of which are used by such institution, is such farm subject to taxation?"

While it is not so stated, I assume for the purposes of the question that the hospital referred to is a charitable institution and that the farm referred to is owned by such institution in fee simple. It is also assumed for the purposes of the question that the college referred to owns such real estate in fee simple.
Upon that basis, I think the only exemption section which can possibly be applicable is section 64-201 of Burns Indiana Statutes Annotated (1933), December, 1938, Cumulative Pocket Supplement, and the only possible clauses of said section which require attention are clauses fourth and fifth.

Clause fifth reads as follows:

"The following property shall be exempt from taxation: * * *

"Fifth. Every building, or part thereof, used and set apart for educational, literary, scientific, religious or charitable purposes by any institution or by any individual or individuals, association or incorporation, provided the same is owned and actually occupied by the institution, individual, association or incorporation using it for such purpose or purposes, and every building owned and occupied, used and set apart for educational, literary, scientific, fraternal or charitable purposes by any town, township, city or county, and the tract of land on which such building is situate, including the campus and athletic grounds of any educational institution not exceeding fifty (50) acres; also the lands purchased with the bona fide intention of erecting buildings for such use thereon, not exceeding forty (40) acres; also the personal property endowment funds, and interest thereon, belonging to any such institution or any town, township, city or county and connected with, used or set apart for any of the purposes aforesaid."

The use which justifies the exemption under a provision similar to the clause above quoted long ago has been held to exclude buildings or other property from such exemption provision which are rented and whose rents only are used for the particular purpose described. Note the language of clause fifth of the exemption section:

"Every building, or part thereof, used and set apart for educational, literary, scientific, religious or charitable purposes by any institution or by any individual or individuals, association or incorporation, * * *"

It was upon the basis of similar language in an earlier statute that the court in the case of City of Indianapolis v.
The Grand Master, etc., 25 Ind. 518, denied exemption to property whose rents only were used for the charitable institution involved, saying on page 522:

"** * * it cannot be held that the use of the building by lessees for theatres, concerts and mercantile purposes, is a use by a charitable institution within the meaning of the statute" * * *

I can see that there is perhaps some distinction between renting property owned by such an institution and operating the same property by the institution, assuming that to operate such property is one of the legitimate purposes of the institution. But, however that may be, I do not see how an exemption for this property can be claimed under Clause Fifth of the above section. The only real estate which it exempts is the buildings described therein "and the tract of land on which such building(s) is (are) situate, including the campus and athletic grounds of any educational institution not exceeding fifty (50) acres"; and also the lands not exceeding forty (40) acres purchased with the bona fide intention of erecting buildings thereon for the use of the institution. In other words, it is clear to me that the real estate exemptions provided in Clause Fifth, supra, are limited to the buildings described and to the land on which they are located including, in the case of a college, fifty acres for campus and athletic grounds and forty acres upon which to build and with the purpose of building new buildings. It follows that the real estate referred to in your question is not exempt from taxation under Clause Fifth of the above section.

Clause Fourth of the above section reads as follows:

"The following property shall be exempt from taxation: * * *

"Fourth. The personal property and real estate of every manual labor school or of any technical high school, trade school or college incorporated within this state when used and actually occupied for the purpose for which such institution was incorporated; such real estate not to exceed eight hundred (800) acres in any one county of this State."

The question as to whether the property described in your letter is exempted from taxation by the above provision de-
PENDS UPON THE CONSTRUCTION TO BE PLACED UPON THE LANGUAGE USED THEREIN. UPON THE THEORY THAT THE FARM IS OPERATED BY THE COLLEGE TO PROVIDE PRODUCTS WHICH ARE USEFUL TO AND USED BY THE COLLEGE FOR ITS LAWFUL PURPOSES, I THINK THAT WOULD BE SUFFICIENT TO MEET THE REQUIREMENTS OF THE PROVISION THAT THE REAL ESTATE MUST BE ACTUALLY USED AND OCCUPIED FOR THE PURPOSE FOR WHICH THE INSTITUTION WAS INCORPORATED. I THINK THAT THE FURNISHING OF MEALS TO ITS FACULTY AND TO ITS RESIDENT STUDENTS WOULD BE CONSIDERED AS INCIDENT TO THE OPERATION OF SUCH AN INSTITUTION, AND THAT THE OPERATION BY THE COLLEGE OF A FARM TO PRODUCE THE FOOD THUS USED WOULD BE WITHIN ITS CORPORATE POWERS. A MORE SERIOUS QUESTION ARISES, HOWEVER, WHEN WE COME TO A CONSIDERATION OF WHETHER THE WORD "COLLEGE" AS USED IN THE ABOVE PROVISION APPLIES TO AND DEFINES ALL COLLEGES WITHOUT LIMITATION. IT WILL BE NOTED THAT THE WORD IS USED IN CONNECTION WITH THE TERMS "MANUAL LABOR SCHOOL," "TECHNICAL HIGH SCHOOL" AND "TRADE SCHOOL," ALL OF WHICH MIGHT VERY WELL REQUIRE THE USE OF A LARGER ACREAGE FOR LABORATORY PURPOSES THAN THE ORDINARY COLLEGE; AND WHILE IT IS NOT ENTIRELY CLEAR, IN MY OPINION, THE WORD "COLLEGE" AS USED IN THE ABOVE PROVISION IS MODIFIED BY THE WORD "TRADE" IN THE SAME WAY AS SAID WORD MODIFIES THE WORD "SCHOOL." THIS INTERPRETATION SUGGESTS A REASON FOR THE LARGER ACREAGE EXEMPTION AND ALSO INDICATES THAT THE USE REFERRED TO IS A USE DESIGNED TO AFFORD PRACTICAL TRAINING TO THE STUDENTS IN THE TRADE FOR WHICH THE EDUCATIONAL PROCEDURE IS DESIGNED.

IT IS MY OPINION, THEREFORE, THAT IF THE COLLEGE INVOLVED MAINTAINS A COURSE OR COURSES NECESSITATING OR MAKING DESIRABLE THE USE OF SUCH FARM AND ACTUALLY USES THE SAME AS A PART OF ITS EDUCATIONAL PROCEDURE IN THE TEACHING OF SUCH COURSE OR COURSES, IT WOULD BE EXEMPT FROM TAXATION UNDER CLAUSE FOURTH, supra, UP TO EIGHT HUNDRED ACRES IN ANY ONE COUNTY OF THE STATE; OTHERWISE, IT WOULD NOT BE EXEMPT UNDER SAID PROVISION.

THE OBSERVATIONS IN THIS OPINION ARE NECESSARILY GENERAL IN THEIR CHARACTER Owing TO THE WAY IN WHICH THE QUESTION IS STATED, BUT I THINK I HAVE SUFFICIENTLY STATED THE PRINCIPLES INVOLVED AS I SEE THEM TO ENABLE YOU TO APPLY THEM TO THE FACTS AS THEY MAY BE DEVELOPED IN ANY PARTICULAR CASE.