intent of the legislature was, it had the undoubted power to require the clerks to issue the license without charge.

FIRE MARSHAL, STATE: Permits issuable under theatre law for schools, whether applicable to individuals and private organizations.

May 29, 1939.

Hon. Clem Smith,
State Fire Marshal,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of inquiry of May 23, 1939, which reads:

“We wish that you would review the so-called Theatre Law, chapter 83, Acts of the General Assembly 1937, in particular section 4 (c) and (d) which deals with the issuance of Class C permits.

“The following are some of the questions which confront the department at this time:

“1. Can a Class C permit issued to a school corporation for the holding of school activities and extracurricular activity also be used by individuals, service clubs and church organizations when an admission fee is charged and the proceeds are not entirely for charity, due to the fact that producing companies are under contract to put on said motion picture shows, stage attractions, radio shows, etc?

“2. Would the department be within its rights to issue a Class B permit, for which a fee of ten dollars is charged, to such organizations as service clubs, American Legion, church organizations and the like?

“3. If a Class B permit can be issued, is it to be in the name of the sponsors of the show, the producing company, or the name of the building wherein the show is being held?”

It is called to your attention, as you no doubt know, that I rendered an opinion to you on August 5, 1937, which furnished a rather complete discussion of the provisions of the so-termed

In that opinion it was pointed out that there was apparent conflict in the provisions of the Act but that the reading of the law as a whole, and taking into account the specific provisions of the law which naturally controlled over the general provisions, it was my conclusion that the purpose of the Act was primarily to regulate theatres, opera houses, and motion picture shows, with a grant only to the Fire Marshal of discretionary powers of supervision over all Class C places of amusement specified in Section 4 (c); and my opinion to you at that time stated that "the amusements of which you inquire should be classified under Class C."

The questions presented in your letter of May 23 narrow down to the following consideration. That is, you seem to be in doubt as to whether a Class C permit issued to a school corporation for the holding of school activities and extracurricular activities may also be used by individuals, service clubs, and church organizations where an admission fee is charged and where proceeds are not devoted entirely to charitable purposes.

Determination of your first question depends upon the wording of section 4 of the Act, which reads in its entirety as follows:

"Section 4. For the purposes of this Act, such buildings, rooms, halls and places so to be approved shall be classified as follows:

(a) Class A shall include theatres, opera houses and moving picture shows operated in any building or part thereof having a seating capacity of four hundred fifty or more persons, or having an auditorium floor area in excess of three thousand one hundred fifty square feet, for which the inspection fee shall be fifteen dollars per year.

(b) Class B shall include theatres, opera houses and moving picture shows operated in any building or part thereof having a seating capacity of less than four hundred fifty persons, or having an auditorium floor area of three thousand one hundred fifty square feet or less, for which the inspection fee shall be ten dollars per year.

(c) The provisions of this Act shall not include:
(1) public dance halls, night clubs, with stage or floor shows, and other places of public amusement given in any building or part thereof and/or under tents or canvas, nor shall this Act include (2) places of amusement or entertainment that are under the direct supervision of the athletic commission of the State of Indiana; (3) halls, gymnasiums or places of assembly wherein contests, drills, exhibitions, plays or displays, dances, concerts or other types of amusement are held by schools, universities, social or fraternal organizations, lodges, societies, labor unions or churches; (4) institutions in which the inmates are involuntarily detained; or (5) any State, city or county building or property.

"(d) The several halls, gymnasiums or other places of assembly, amusement or entertainment designated in sub-section (c) of this section shall, for the purposes of this Act, be classified as Class C places of amusement. All Class C places of amusement shall be under the direct supervision of the State Fire Marshal and shall be inspected at such times as the State Fire Marshal shall deem necessary to insure adequate safety to the public. After an inspection is made and if the State Fire Marshal shall approve such place of amusement, a Class C permit shall be issued therefor, but no charge for such permit shall be made."

It does not appear from any of the provisions as found in section 4, or as found in any part of the Act, that a classification of permits shall be based upon the question as to whether admission charges are made of the public or as to whether the proceeds thereof shall go to charity. There is hardly any question but that admission fees are collected in connection with many of the entertainments or exhibitions furnished by those holding Class C permits. Only in an indirect or limited sense do the proceeds in some cases revert to the public use and go, if at all, to actual charity.

It is to be noted that section 4 (c) is quite broad and definite in its terms, and it seems to have been the legislative intent to have excluded all such places designated therein as show or exhibition places from the full operation of the Act, irrespective of the entertainment sponsorship or of admission charges.
In answer, therefore, to your first question, it is my opinion that Class C permits issued to school corporations under section 4 (c) may be used by individuals, service clubs, and church organizations regardless of admission fee charges and regardless of the purpose to which the fees charged may be devoted.

My answer to your first question necessarily answers your second question and disposes, of course, of your third question.

HIGHWAY COMMISSION, STATE: Regulations and requirements, relocation of obstructions, private entrances, driveways and approaches; compensation of owner.

June 1, 1939.

Mr. T. A. Dicus, Chairman,
State Highway Commission,
State House,
Indianapolis, Indiana.

Dear Mr. Dicus:

I have your letter of May 19, 1939, asking for an official opinion on certain questions pertaining to section 113, chapter 48, Acts of 1939. In paragraph 1 of your letter you state:

"This section provides that no person, firm or corporation shall construct any such entrance, driveway or approach without the written permit of and in accordance with the regulations and requirements of the commission. It further provides for the adoption of such regulations by the commission.

"When such regulations are adopted as required by this section and published as required by section 156, chapter 48, Acts of 1939, may they be applied so as to regulate and correct existing drives not in conformity therewith?"

It is my opinion that this paragraph can only be construed to give the commission power, under section 156, to regulate and correct private drives or approaches to a highway constructed and reconstructed after said Act was passed. Of course, if any present private driveway or approach is an unlawful obstruction to a highway already constructed, the commission has sufficient legal power to correct the situation,