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.

HIGHPWAY 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,
even though the same was constructed before the present Act was passed.

In paragraph 2 of your letter you ask the following:

"If these new regulations prescribed a minimum distance from the right-of-way line for the location of gasoline pumps, may these regulations be applied so as to require the relocation of curb pumps and others now located in close proximity to the highway."

Clause 3 of section 133 provides:

"Such regulations and requirements may include the minimum distance that gasoline pumps, buildings and other structures, to which such private entrances, driveways or approaches made a connection, may be placed next to the property line of the State highway, or next to the outside edge of sidewalks along said routes through incorporated cities and towns."

It is my opinion that the commission cannot prescribe a regulation that would require an owner of a gasoline pump or pumps, buildings, and structures to relocate the same on a highway already constructed without just compensation. Of course, as heretofore stated, if pumps, buildings and structures are unlawful obstructions to the present existing highway then, in that event, the commission has legal power to correct the situation.

Paragraph 3 of your letter is as follows:

"This section provides that 'said owner or occupant of abutting property shall remove such private entrances, driveways and approaches at said owner's or occupant's expense when requested to do so by the commission'."

"Does this apply only to drives constructed after the effective date of this Act or does it apply also to those heretofore constructed."

This language is contained in paragraph six (6) of section 113. The whole paragraph contains the following language:

"The owners or occupants of the abutting property shall maintain and keep in repair all such private en-
trances, driveways and approaches thereto, but no such private entrances, driveways and approaches shall be constructed or maintained in such a manner as to obstruct or interfere with the highway, the traffic thereon, or with any drain or ditch which has been constructed on or which serves such highway. Said owner or occupant of the abutting property shall remove such private entrances, driveways and approaches at said owner's or occupant's own expense, when requested to do so by said commission."

The first part of said paragraph adds no force or effect to the law, as it always has been the law that private entrances, driveways and approaches must be so constructed and maintained that they will not obstruct or interfere with the highway, the traffic thereon or any ditch or drain which has been constructed on or which serves the highway. If such entrances to roads already constructed, or to be constructed, are obstructions to the highway or interferes with ditches or drains which serves the highway, such obstructions should be removed at the owners expense.

It is my opinion that the commission can not by regulation change existing drives and entrances to highways already constructed unless they are unlawful obstructions to the highway without compensation to the owner. In the construction or reconstruction of new roads, I am of the opinion that the commission may require the changing of the location of drives and entrances in the interest of safety; and I also am of the opinion that the commission may also require changes in the width of the driveway and if necessary eliminate one or more driveways in the interest of safety. However, I would not say that this may always be done without compensation.

It has long been the law that an abutting landowner on a public highway has a special right of easement use in the highway for egress and ingress purposes, and this is a property right which can not be damaged or taken away from him without just compensation.