BOYS' SCHOOL, INDIANA: Non-liability for employees negligence in transporting boys.  

February 24, 1939.

Mr. E. M. Dill, Superintendent,  
Indiana Boys' School,  
Plainfield, Indiana.

Dear Sir:

I have your letter of February 22nd, wherein you request an official opinion on the following questions:

1. "What is the liability of one of our employees who uses his own car to transport boys in the event of an accident resulting in an injury to one of the passengers? This is assuming that the employee is transporting the boy under the proper authority.

2. "What is the liability of the Indiana Boys' School in such a case and what is the liability of the driver of a car owned by the Indiana Boys' School in event of an accident resulting in an injury to a passenger in the car while in use for official business?"

In answer to your first question, your employee would be subject to liability for injury to one of the passengers if such injury resulted from his negligence in the operation of the motor car. In fact, this would also be true of the situation presented by your second question. In other words, the fact that he is an employee of your institution and is engaged in the performance of duties imposed upon him as such employee, does not constitute a defense to an action for liability based upon his personal negligence.

As to that part of your second question concerning the liability of the Indiana Boys' School, the answer would be that no liability would rest upon the Indiana Boys' School on account of injuries resulting from the negligence of one of its employees while engaged in the discharge of his official duties.

The personal liability of the employee to a passenger in either his own car or a car owned by the school would be further limited if the situation should come under the provisions of chapter 201, Acts of 1929, page 679, the pertinent provision of which is as follows:

"No person who is transported by the owner or operator of a motor vehicle, as his guest, without pay-
ment for such transportation, shall have a cause of action for damages against such owner or operator for injury, death or loss in case of accident, unless such accident shall have been intentional on the part of such owner or operator or caused by his reckless disregard of the rights of others."

If the boys transported come within the above provision in that they are the guests of such employee, the employee would only be liable to them in case the accident resulting in injury was intentional or caused by the driver's reckless disregard of the rights of others. Where, however, the boys are required pursuant to their commitment to the school, in compliance with disciplinary rules or in the performance of tasks assigned to them by officials of the school to be transported in an automobile of the employee or of the school, they would not be considered as guests within the meaning of the 1929 statute limiting the degree of negligence for which the owner or operator is responsible.

VETERINARIAN, STATE: Appointing appraiser for tuberculosis affected cattle.

March 1, 1939.

Dr. J. D. Axby,
State Veterinarian,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein you call attention to section 16-602, Burns' Indiana Statutes Annotated, 1933, which prescribes the procedure for the appraisal of cattle affected with tuberculosis which are condemned for slaughter. Said section provides that such cattle "shall be appraised in advance by two disinterested persons, one to be selected by the State Veterinarian and the other by the owner; and when these two persons are unable to agree, they shall select a third appraiser and their decision shall be final." You state that the work of your division is done in cooperation with the Bureau of Animal Industry, and that you have been appraising such cattle in conformity with a Federal Bureau of Animal Industry regulation which reads as follows: