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:
“Cattle affected with tuberculosis or paratuberculosis shall be appraised by a representative of the bureau, or a cooperating representative of the state, territory, county, or municipality; if the owner refuses to accept such appraised value, the animals shall be appraised in accordance with the laws and regulations of the state or territory in which the animals are condemned.”

The question raised by your letter is whether claims covering the State’s liability for a part of the appraised value of the cattle condemned should be paid where the appraisal was made by a representative of the Bureau of Animal Industry or a cooperating representative from your division, and the owner is willing to accept the appraisal.

The answer to your question depends upon whether it can be said that such an appraisal of the affected cattle constitutes compliance with section 16-602, supra. The statute requires that such appraisal shall be by “two disinterested persons” whereas in the situation inquired about, the appraisal would be made by only one person. Undoubtedly, the statute contemplates that the state veterinarian and the owner shall each designate a disinterested person as an appraiser, but as suggested in my opinion to you on April 5, 1937, the “statute prescribes no method by which the owner may be compelled to select such person” such selection being “a privilege given the owner which may be waived by failure or refusal to select a disinterested person.” However, as stated in that opinion, the owner’s waiver of his right to name an appraiser “would not amount to a waiver of his right to be indemnified.” In the situation referred to in the opinion dated April 5, 1937, it was contemplated that the owner would contest every stage of the proceeding to test and slaughter the diseased cattle, and that he would not voluntarily agree to accept any figure fixed by appraisers even though determined in compliance with the statute. It was therefore, suggested that, the owner failing to designate an appraiser, you should name both appraisers. Upon their failure to agree upon the value, they should select a third appraiser. Where, however, the owner not only fails to designate an appraiser, but is willing to accept the appraisal made by your nominee, he has both waived and obviated the necessity of naming a second and third appraiser.

The only question remaining then, is whether the representative of the Bureau of Animal Industry, or the representative
of your division, designated by you to appraise the affected cattle, would be "disinterested" within the meaning of the above cited statute. Section 1-201, cl. 11, Burns, etc., 1933, contains the following:

"When a person is required to be disinterested or indifferent in acting on any question or matter affecting other parties, consanguinity or affinity within the sixth degree, exclusive, by the civil law rules, or within the degree of second cousin, exclusive, shall be deemed to disqualify such person from acting; except by consent of parties."

The foregoing statute contemplates that a circumstance, i.e., relationship within the named degrees, so likely to produce interest as to disqualify, may be waived by the parties. The provision permitting the state veterinarian to name one of the appraisers was undoubtedly enacted primarily to safeguard the interests of the State as distinguished from the interests of the owner. Therefore, if the owner waives his own right to name an appraiser and is satisfied to accept an appraisal made by an appraiser named by the state veterinarian with a view to protecting the State's interest, without challenging disinterestedness, the award so made and agreed to by the owner would constitute a sufficient basis for payment by the State of its share of the value of the cattle condemned.

INSURANCE, DEPARTMENT OF: Bond, whether must be filed by insurance companies writing compensation insurance in Indiana.

March 2, 1939.

Hon. George H. Newbauer,
Insurance Commissioner,
Department of Insurance,
State Capitol Building,
Indianapolis, Indiana.

Honorable Sir:

I have before me your letter of the 23rd ult., reading in part as follows:

"Under the retaliatory provisions of the Indiana Insurance Law this department has imposed upon com-