1968 O. A. G.

OFFICIAL OPINION NO. 26

June 20, 1968

PUBLIC UTILITIES—HIGHWAY COMMISSION, STATE—
Removal of Meters or Other Utility Equipment
Because of Construction of Highway. Utility
Having Compensable Interest in Such
Equipment.

Opinion Requested by Mr. Martin L. Hayes, Executive Secretary, State Highway Commission.

I am in receipt of your request for an opinion on the following questions:

1. "Are we legally required to compensate a utility for the cost of removal, relocation or modification of its facilities if such facilities are located on private property by only an oral license?

2. "If in the affirmative, how do we relate our administration of your Official Opinion No. 51, [1966] wherein you established that, 'a utility which has installed equipment pursuant to such license' (meter request) 'is not entitled to compensation for the costs of its removal of said equipment forced by the construction or widening of a highway?'

3. "Further, if the answer to the first question is in the affirmative, what form of documentation including affidavits are required to show that the utility has by oral license acquired an irrevocable easement in order to justify legal compensation by us for the removal, relocation or modification of facilities?"

The best approach in answering your questions would be to take the second question first and determine the exact conclusion reached in 1966 O.A.G., p. 342.
OPINION 26

That opinion considered whether a public utility should be compensated for the removal of equipment installed pursuant to a meter request form signed by a customer property owner when such removal is due to the construction or widening of a highway. The opinion concluded that the meter request form was merely a license and that the utility had no compensable right.

Unfortunately, the language used in expressing this conclusion was overly broad, and thus the opinion could be interpreted as holding that a public utility is never to be compensated for the forced removal of equipment installed under a license from the property owner. Such an interpretation is not in accord with the law of the State of Indiana.

The misleading language was occasioned by the indisputability of the conclusion that the meter request form, if it is merely a license, would create no compensable interest on the part of the utility. The opinion in the main considered and negated the possibility that the meter request license form, being a written document, created an easement in favor of the utility.

Thus, the conclusion reached in that opinion would be better expressed as follows:

"The only manner in which the meter request form could create a compensable interest in favor of the utility would be by creating an easement on the land. Since this request, even though written, does not constitute an easement, the utility is not entitled to compensation when the construction or widening of a highway necessitates removal of equipment installed pursuant to the request."

In other words, my 1966 opinion did not consider the question of compensable licenses, and so cannot be used as authority on the existence or nonexistence of such licenses, except insofar as it specifically holds that the meter request form considered therein is not a compensable license.

The first question contained in your present inquiry is in effect a request to distinguish between compensable and non-compensable licenses.
In *Ferguson v. Spencer*, 127 Ind. 66, 67, 25 N.E. 1037 (1890), the court said:

"A license is defined to be an authority given to do some act, or a series of acts, on the land of another without possessing an estate therein. *Cook v. Stearns*, 11 Mass. 533 (13 Am. & Eng. Encyc. of Law, 539)."

A mere license to use the land of another is revocable at the pleasure of the landowner. *Parish v. Kaspere*, 109 Ind. 586, 10 N.E. 109 (1886).

However, a license may become irrevocable if it is given in return for a valuable consideration, *Byrrough v. The Terre Haute & Logansport R. R.*, 107 Ind. 432, 8 N.E. 167 (1886), or if the licensee invested money on the belief that it was to be perpetual, *Indianapolis & C. Traction Co. v. Arlington Tel. Co.*, (1911), 47 Ind. App. 657, 95 N.E. 280. The principle was stated in *Chamberlin v. Myers*, 68 Ind. App. 342, 349, 120 N.E. 600, 602 (1918), as follows:

"It is well settled, on the grounds of equitable estoppel, that a parol license to use the lands of another is revocable at the pleasure of the licensor, unless the license has been given for a valuable consideration or money has been expended on the faith that it was to be perpetual or continuous. When a license has been executed by an expenditure of money, or has been given on a consideration paid, it is either irrevocable altogether or cannot be revoked without remuneration, the reason being that to permit a revocation without placing the other party in status quo would be fraudulent and unconscionable."

[On this basis, if the licensee either voluntarily accepts repayment of his expenses or successfully initiates legal action to recover such expenses he cannot thereafter claim that his license was irrevocable. See *Oster v. Broe*, 161 Ind. 113, 64 N.E. 918 (1902).]

Such a license may become an easement upon, and impose a servitude upon, the estate of the landowner. *Joseph v.*
If, however, the license specifically provides that it is to be revocable at the pleasure of the licensor, or that it is given for a definite number of years, the expenditure of money will not make that license irrevocable. *Laughely Turnpike v. McQuery*, 147 Ind. 526, 46 N.E. 90 (1896); *Cranor v. Lake Erie & W. R. R.*, 83 Ind. App. 449, 149 N.E. 97 (1925).

(The meter request form considered in my 1966 opinion is a mere license to enter upon the property to perform those acts necessary to provide service to the landowner, and is thus revocable at the pleasure of the landowner.)

Another type of irrevocable license, a type best explained by illustration, is a license coupled with some form of property interest. For instance, a person who pays in the spring for a specified amount of corn, said corn to be harvested by the buyer, has an irrevocable license to enter upon the land of the purchaser and harvest the corn. *Miller v. State*, 39 Ind. 267 (1872). (The meter request form considered in my 1966 opinion specifically grants the utility the right to enter upon the property of the landowner and remove the equipment installed pursuant to the request. This portion of the meter request is a license coupled with an interest, and, therefore, irrevocable.) The court in *Snowden v. Wilas*, 19 Ind. 10, 13 (1862), used this illustration:

"License, it may here be observed, to do an act upon the land of another, does not necessarily involve an interest in real estate, does not necessarily amount to an easement, and, when it does not, it may be given by parol, and if coupled with an interest, especially if it be upon a consideration, it can not be revoked. If one gives another license to go upon his land to shoot a single squirrel then existing and pointed out, that does not create an easement, and may be given by parol; and if the license go further, and include the right to take away, as the property of the licensee, the squirrel when shot, it is coupled with an interest; and, if given upon consideration, at all events, it cannot be, at mere volition, revoked. But the right, and perpetuity,
1968 O. A. G.

to one to hunt game upon a given tract of land of another, would be an easement, would involve an interest in real estate, and might be revocable, under certain circumstances, if not under all, if given by parol. . . .”

Needless to say, the Highway Department is not specially concerned with licenses coupled with an interest since, practically speaking, the department would not have occasion to prevent a licensee from harvesting a load of corn or removing a shot squirrel.

To summarize, a license, whether oral or written, must be considered a compensable interest in the land if the license has been executed through compensation paid by the licensee or through the licensee’s investment of money in reliance upon the continuation of the license. However, a license that is granted with the specific reservation that it is revocable at the pleasure of the licensor creates no interest in the land no matter what compensation or investment might be involved. Similarly, a license given for a specific term of years creates no interest in the land subsequent to that term of years, although compensation or investment might make the license irrevocable for that term.

The final question in your request concerns the amount of documentation that would sufficiently evidence the existence of an executed oral license to justify the Highway Department’s compensating a utility for the forced removal, relocation or modification of its facilities.

Since the mere existence of such facilities almost presupposes the existence of a license executed by investment, and considering the need for simplicity and ease in the acquisition of land for highway purposes, unduly complex documentation should be neither necessary nor desirable. It is, therefore, my opinion that sufficient documentation would be an affidavit submitted by a responsible official of the utility stating both that the utility obtained an oral license from the landowner (or his predecessor in title) and that, in the belief that such license was in perpetuity, the utility invested a sum of money in the installation and maintenance of the facilities involved,
provided that such affidavit is accompanied by an agreement to hold the State of Indiana and its Highway Commission harmless in the event the existence of an irrevocable oral license is questioned by any landowner who might be adversely affected.

OFFICIAL OPINION NO. 27

June 28, 1968

INDIANA GIRLS' SCHOOL—INDIANA WOMEN'S PRISON—Status of Respective Parole Boards.

Opinion Requested by Mr. Anthony S. Kuharich Commissioner, Department of Correction.

I am in receipt of your request for an opinion on the following questions:

"1.) What is the current legal status of the Parole Boards at Indiana Girls' School and Indiana Women's Prison?

"2.) In the event that the Parole Boards at Indiana Girls' School and Indiana Women's Prison have no legal status — what legally constituted means may the Department of Correction use to implement a parole system at these institutions?"

The Parole Boards of Indiana Girls' School and Indiana Women's Prison were created by Acts 1953, ch. 266, § 27, the same being Burns IND. STAT. ANN. § 13-1527, which provides:

"There is hereby created a separate Board of Parole for each of the following institutions: The Indiana