gartens,' and as a result a rather substantial number of such institutions—are avoiding the purpose of the law." Such situations necessitate a careful analysis of the facts in each case and if the facts show the prime purpose of the institution to be the providing of care and maintenance to children rather than instruction, then licensing of the facility should be required in accordance with Acts 1945, ch. 185.

A "bona fide educational institution" should present little or no problem to the department inasmuch as the phrase implies an educational institution established in good faith. From the foregoing discussion such institution must be one established primarily for learning and instruction as contrasted to one intended simply for the care of children. Again, whether an establishment is a "bona fide educational institution" will depend upon the facts ascertained by your investigation and the application of the same standards and characteristics used for determining the existence of a "school."

OFFICIAL OPINION NO. 51

December 30, 1966

STATE HIGHWAY COMMISSION—REAL PROPERTY—So-Called "Utility Easements" as Licenses—Compensation to Utility in Eminent Domain Proceeding.

Opinion Requested by Mr. M. L. Hayes, Executive Director, Indiana State Highway Commission.

This is in reply to your recent letter requesting an Opinion on whether a meter request form signed by a customer of a utility, which allows placement of equipment on the customer's property, constitutes a right or interest in land for the utility.

Your letter states that the request form includes the following statements:

"I request the utility service herein described and agree to take such service from Company and to pay Company for such service in accordance with the rate schedules and terms and conditions applicable to such service as shown in tariffs of Company which are now or may be from time to time on file with the Public Service Commission of Indiana and I agree to be bound by such rate schedules and terms and conditions in the use of such service."

"I hereby further agree to respect and to permit the continuance of the rights heretofore granted company for the location of rural distribution lines and service wires on the above described premises, including but without limiting the generality of the foregoing the necessary pruning of trees, the setting of anchors where necessary, the doing of such other things as are essential to the efficient operation and maintenance of company's said distribution lines and service wires, and the allowing of proper representatives of the company to enter upon said premises for the aforesaid purposes and for the removal of any or all of the equipment installed thereon by company whenever any of such equipment is no longer needed to supply service to such premises."

The specific question asked is, "Do the above statements signed by the 'Customer' constitute a legal document establishing a land right that would require the State Highway Commission to pay for the removal of equipment that may have been installed pursuant to the meter request due to construction or widening of a highway?"

It must be determined whether the above language constitutes the granting of an easement or whether it grants a mere license or permission. The Supreme Court and Appellate Court of Indiana in three leading cases have described the requisites for the creation of an easement by grant.

The first case is *State v. Anderson,* 241 Ind. 184, 188, 170 N.E. 2d 812, 814 (1960), in which the Court stated:

> ". . . The rule stated in the case of *Leviston v. Junction R. Co.* (1856), 7 Ind. 597, is that since an easement is an interest in land, a grant of an easement must contain all the formal requisites of a grant of land."

The second case is *Ross v. Valentine,* 116 Ind. App. 354, 364, 63 N.E. 2d 691, 695 (1945). In that case the Court stated:

> "The instrument by which an easement by express grant is created should describe with reasonable certainty the easement created and the dominant and servient tenements. 28 C.J.S. 678, § 24. A reservation of an easement is not operative in favor of land not described in the conveyance. 28 C.J.S. 686, § 29. The intention of the parties will not control the plain and unambiguous terms of the deed as against third persons. 26 C.J.S. Deeds § 100."

The third case is *Lennertz v. Yohn,* 118 Ind. App. 443, 449, 450, 79 N.E. 2d 414, 417 (1948). The Court reiterated:

> "An examination of the authorities discloses that the rule established by the weight of authority is to the effect that, in order to create an express easement, or a covenant granting a right of way by deed or other written instrument, 'The instrument by which an easement by express grant is created should describe with reasonable certainty the easement created and the dominant and servient tenements.'
>
> ". . . [I]n 17 Am. Jur. 939, § 25, discussing express easements, the rule is stated as follows: 'With reference to the manner of grant, the rule is that in describing an easement, all that is required is a description which identifies the land that is the subject of the easement and expresses the intention of the parties.'
>
> "Considering the agreement of April 8, 1941, as set forth in special finding No. 2, *supra,* we find it wholly fails to describe with reasonable certainty either the dominant or servient tenements; there is no attempt to describe the location of the drive referred to; the

> location of the properties affected is not described in any manner, whether platted, or unplatted; whether located in an incorporated town or city; the lot number, if platted, or the section, township and range, county or state in which the real estate is located, if unplatted; there are no express words granting, conveying, or creating an easement in favor of any specified named person or creating either a dominant or servient estate as to any particular described tract of land."

The elements the courts have deemed requisite for the creation of an easement are not present in the document described by you as a meter request form. There is no description identifying the land, no signature of husband and wife or other interested parties claiming ownership of specific land, no statement of evidence of a certain interest created by a previous grant of easement. The terms of the document are ambiguous, phrased in faulty English, and utterly lacking in specific descriptive words as to time or place. There is a passing reference to a grant or right heretofore granted the company for the location of rural distribution lines, which grant may or may not be in existence. Therefore, I cannot say that there has been an interest created in land by the quoted document in itself.

A license has been defined as a right *or permission* granted to do an act which, without such license, would be illegal. Generally, a license confers on a person the right to do something which he otherwise would not have the right to do. *Denny v. Brady,* 201 Ind. 59, 163 N.E. 489 (1928); *Shuman v. City of Fort Wayne,* 127 Ind. 109, 26 N.E. 560 (1891). The words "license" and "permit" are often used synonymously. It is the law in Indiana that a license with respect to real property is a permission to do a particular act or series of acts on land, given to a person who possesses no interest in that land.

The word "permit" is used expressly in the meter request form. Certainly, without this permit, the utility company could not go onto a person's property and install equipment without becoming a trespasser.

In the case of *Northern Ind. Gas & Elec. Co. v. Merchants Improvement Ass'n,* 87 Ind. App. 74, 160 N.E. 50 (1928), the Court dealt, not with the question of the amount of damages but rather whether a utility was entitled to *any* damages for the costs occasioned by its forced removal of its property upon vacation of an alley. In holding that the company was not entitled to damages, the Court stated that the utility "imposed no additional burden upon the fee, paid nothing for its privileges, and certainly should not be entitled to recover for the loss thereof by reason of the vacation of the alley." 87 Ind. App. at 78, 160 N.E. at 52. The case also referred to structure used by utilities as personal property which utilities have a right to remove and which could not be subjects for the assessment of damages.

Based on the above cases distinguishing easements from licenses, it is my opinion that the document called the meter request form creates only a license. Therefore, a utility which has installed equipment pursuant to such license is not entitled to compensation for the costs of its removal of said equipment forced by the construction or widening of a highway.

OFFICIAL OPINION NO. 52

December 30, 1966

MOTOR VEHICLES—Use of Uniform Traffic Ticket and Complaint—Sufficiency to Support Issuance of Warrant—Persons Other Than Peace Officers Signing Complaint.

Opinion Requested by Hon. Alan I. Klineman, State Senator.

This is in reply to your request for an Official Opinion in regard to the Uniform Traffic Ticket and Complaint. Your questions are as follows:

> "1. Can a charge of Reckless Driving or Driving While Under the Influence of Intoxicating Liquor be