amended, being Burns' Ind. Statutes, 1942 Replacement, Sec. 13-507.

It is apparent from an examination of the above statutes that the procedure to be followed is the same procedure followed in other criminal cases and requires full protection of the constitutional rights of a defendant. The face of the decree entered by the Court in the present proceeding shows that there has been a denial of the constitutional rights of the defendant under both State and Federal constitutions. The decree is, therefore, in my opinion void and you have no right to hold the subject prisoner under that decree.

OFFICIAL OPINION NO. 17

February 15, 1951.

Mr. Edwin Steers, Sr.
State Election Board,
108 East Washington Bldg.,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

> "Today a letter was referred to us from The American Guard, Inc. of Anderson, Indiana, a copy of which letter is as follows:
>
> " 'The question of my letter may be misdirected, but at least I thought you could steer me to the answer if you don't have it yourself.
>
> " 'Pendleton, located in Madison County, has always been an incorporated town. We are quite confident that the 1950 census will show Pendleton with over 2,000 inhabitants. In this event, it may become a fifth class city and therefore could hold a city election rather than a town board election.
>
> " 'It is doubtful if the official census figures will be available before the 1951 Primaries; therefore, it becomes difficult to determine what kind of an election Pendleton should hold.

" 'Who has the answer and upon what evidence can a decision be made?'

"You will note the questions they ask concerning Pendleton, which has always been an incorporated town and which was shown by the 1950 census to have a population of more than 2,000.

"Since this is a question more within the province of the Attorney General than the State Election Board, we kindly ask that you let us have an opinion on the questions raised by this letter of the American Guard, Inc., so that we may furnish them with a copy."

The only Act directing cities and towns into classes is Chapter 97 of the Acts of 1935, same being Burns 48-1201. This Act classifies cities only and makes no attempt to classify towns. Chapter 195 of the Acts of 1949 declares that all municipalities having a population of from 2,000 to 10,000 are cities of the fifth class. This Act was the subject of an Attorney General's opinion on June 9, 1949, same being 1949 O. A. G. 179. This opinion reached the conclusion that the 1949 Act has no effect on municipal corporations not already having a city form of government.

There are two Acts which make provisions for a town to become a city. The first of these is Chapter 129 of the Acts of 1905 as amended, same being Burns 48-1001, *et seq.* and the second is Chapter 240 of the Acts of 1935 same being Burns 48-1005, *et seq.* Both of these Acts require affirmative action to effectuate the transition from a town to a city. Therefore, there is no authority in Indiana which would allow any town to become a city purely as an automatic result of the taking effect of a census. It is otherwise in regard to the change of cities from one classification to another, see 1931 O. A. G. 286.

City of Lebanon v. Walker (1929), 88 Ind. App. 498;
Crowe v. Board of Commissioners of St. Joseph County (1936), 210 Ind. 404, 405, — N. E. —.

See also 62 C. J. S. Section 501, page 940 concerning the general rules as to transition from one form of municipal government to another. As stated in Official Opinion No. 12

of 1951 a United States decennial census is effective as of the date taken when officially announced. Thus the town of Pendleton will not become a city until affirmative acts are taken by the town and then elections and the holding of officers will be governed by the statute under which the change is made, that is, either Chapter 129 of the Acts of 1905 as amended or Chapter 240 of the Acts of 1935.

OFFICIAL OPINION NO. 18

February 23, 1951.

Honorable Bernard E. Doyle,
Commissioner,
Alcoholic Beverage Commission,
Illinois Building, Room 201,
Indianapolis, Indiana.

Dear Sir:

Your request of February 16, 1951, for an official opinion is in part as follows:

> "We are confronted with a question regarding the interpretation of the alcoholic beverage law pertaining to the distance from permit premises to a church or school as required by the Acts of 1935, Ch. 226, Section 6, Paragraph 18, thereof, which provides that no permit of any kind shall be issued to any premises situated within a distance of two hundred (200) feet from any school or church and in this paragraph references made to investigations by the local board.
>
> "The question is; was it the intent of the Legislature that this provision of the statute pertained only to retail permits and not to beer wholesalers and liquor wholesalers?
>
> "* * *
>
> "Your opinion will be greatly appreciated."

To answer your request the following rules of statutory construction are applicable for a proper interpretation of the