Mr. Windell W. Fewell,
Superintendent,
Indiana Boys' School,
Plainfield, Indiana.

Dear Sir:

Your request of November 8, 1949 for an official opinion is modified to read as follows:

“A boy was committed to this institution by the Juvenile Court of Lake County, on September 5, 1946, on a charge of delinquency. After having made a satisfactory adjustment, he was placed with his father, on August 29, 1947.

“The boy was released from the Lake County Juvenile Detention Home, to the custody of our worker, on August 11, 1949, to be returned to the Indiana Boys' School as a placement violator. The reason for his return, was his being involved in six burglaries in Lake County with one———.

“On August 12, 1949, the Indiana Boys' School received a Criminal Court warrant from Lake County charging the boy with Second Degree Burglary.

“We would like to know whether or not the boy can legally be prosecuted as an adult while in our custody, since he was released to be returned here as a violator. We would also like to know if the Lake County Prosecutor can have the boy apprehended; held, and tried, upon his release from the Indiana Boys' School for the same offenses that resulted in his return here as a violator.

“May we have your written opinion on the above two questions?”

1. Your first question is whether or not a boy, committed to the Indiana Boys’ School and while in the actual custody of said school, may lawfully be prosecuted as an adult for an offenses committed while in the custody of said school.
This involves the further question of whether or not the trustees and Superintendent of the Boys' School may be compelled to surrender the custody of the boy against their wishes.

It is assumed from the facts given in your letter that the boy was either in the legal or the actual custody of the Trustees of the Indiana Boys' School at all times mentioned. He was held temporarily in Lake County where he was charged with burglary at which time he was in the legal custody of the Boys' School on a commitment from Juvenile Court of Lake County. The boy then was released to the Boys' School by the Lake County authorities where he was in actual custody when demand for him was made by the authorities of Lake County for prosecution. It appears that the modifying phrase "while in our custody" is the central point of your question. No doubt the boy could have been prosecuted or dealt with by a proper court for his criminal acts while released on trial or parole from the Boys' School. But the Lake County authorities saw fit to release custody of the boy to the Boys' School where he now is held.

It is the duty of the Trustees and Superintendent of the Boys' School to keep custody of the boy in accordance with the commitment of the court which placed him there and the General Assembly has provided the only ways and means whereby such custody may be changed or modified.

In the Acts of 1905, Chapter 169, Burns Indiana Statutes, Section 9-1016 et seq. the General Assembly provided means for the prosecution of convicts while confined in any of the state prisons, for an offense committed while the prisoner was confined therein. But obviously, these provisions do not apply to the question submitted.

By the Acts of 1937, Chapter 157; Burns Indiana Statutes, Section 9-1046, the General Assembly made provisions for the safe-keeping of prisoners awaiting trial, by court order. This Act reads in part as follows:

"While a prisoner is being held in custody awaiting trial, during trial or following trial, the court having jurisdiction shall make, from time to time, such orders for the safe-keeping of the prisoner as the court shall consider to be necessary. The court, of its own motion, or on written motion of the prosecuting attorney, or
of the prisoner or his attorney, or of the attorney-general of the state, may order any sheriff, police officer, or other official having custody of the prisoner to retain such custody in his respective jail until further order of the court, or to deliver such custody to some other sheriff or qualified officer, to hold such prisoner as ordered in his respective jail until further order of the court, or, in case the court finds that an emergency exists, the court may order such sheriff or other officer to deliver such custody to the warden, or superintendant of a designated penal or correctional institution of the state to hold such prisoner as ordered in his institution until further order of the court. * * *"

Your letter does not disclose that any court order was made ordering any Lake County officer to place the boy in the Boys' School for safe-keeping during his trial in Lake County. It appears that the boy was surrendered unconditionally to the custody of the Boys' School. There appears to be no other statutory authority to compel the Trustees or superintendent of the Indiana Boys' School to surrender the actual custody of the boy in question. Therefore, in my opinion, your first question should be answered in the negative.

2. Your second question is whether or not the boy may be prosecuted after he has been released from the custody of the Boys' School, for an offense committed while in the custody of the Boys' School.

There appears to be no prohibition against such prosecution if begun before the statute of limitations has run. Therefore, in my opinion, your second question should be answered in the affirmative.