shown that the flow of the east fork of White River is increased and that the railroad bridge is actually inadequate to carry the flow, then in my opinion, the Commission has the authority, under Section 17 of the flood control act, to take action to enjoin or abate the maintenance of the structure in its present form or to eliminate the same by an action in condemnation. This opinion is limited to the powers of the Commission under the flood control act and no question was presented or considered as to any participation by the federal government in the described project.

OFFICIAL OPINION NO. 7
February 3, 1948.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis 4, Indiana.

My dear Governor:

I have your letter of December 31, 1947, requesting an opinion as to whether or not the Superintendent of the Indiana Soldiers' and Sailors' Children's Home, acting with the approval of the Board of Trustees of said Home, may retain for the maintenance of children, who are residents of the Home, any portion, or all of the monies which are paid to the children from the following sources:

(1). Payments from the Veterans' Administration, where the parent is deceased having had service-connected disability at the time of his death, and;

(2). Social security payments where the parent is deceased, and;

(3). Allotments made by parent who is in military service.

In 1933 the Legislature attempted to impose the burden of support and maintenance of children in the Home on their parent, parents, relatives or other authorized person charged with the responsibility of supporting and educating the child,
when such authorized person had sufficient means to properly support the child. That Act is as follows:

"If, at any time, upon proper investigation by the board of trustees, it shall have been ascertained that the parent, parents, relatives or other authorized person charged with the responsibility of supporting and educating any child, which is in the care of such home, has sufficient means or income to properly support and educate such child, and that such person or persons are fit and proper persons to have the care and custody of such child, it shall be the duty of the board of trustees to notify such person or persons that such child will be discharged from the home, on a date not less than ten (10) nor more than thirty (30) days after such notification, and if such person or persons fail to take such child, at the time fixed in such notice, it shall be the duty of the board of trustees to refer such matter to the prosecuting attorney of the county in which the parent or parents or relatives or other authorized person or either of them, reside, and it shall be the duty of the prosecuting attorney to initiate the proper proceedings against any or either of such persons in accordance with the provisions of chapter 41 of the Acts of the General Assembly of 1907, relative to neglected and dependent children." Section 22-2335 Burns' Indiana Statutes, Annotated, 1933, the same being Section 10 of Chapter 182 of the Acts of 1933.

Under the provisions of that Act the Board of Trustees of the Indiana Soldiers' and Sailors' Children's Home were not authorized to make a contract with the parents for the support of the children in the Home, as the 1947 Act allows, but were only empowered to refer the matter of failure to support by the person charged with support to the Prosecuting Attorney of the county in which such person resided.

The 1947 session of the General Assembly empowered the Board of Trustees, acting through their agent, the Superintendent to make contracts with the persons charged by law with the support of children in the Home, when such persons had sufficient means or income to support the children. The
Act of the 1947 General Assembly amends Section 10 of Chapter 182 of the Acts of 1933, and the pertinent portions of that Act are as follows:

"* * * If, at any time, upon proper investigation by the board of trustees, it shall have been ascertained, before or after accepting any child that the parent, parents, relatives, or other authorized person charged by law with the responsibility of supporting and educating any child which is in the care or is to be in the care of such home, has sufficient means or income to properly support and educate such child, or to contribute to the support and education of such child, the superintendent with the approval of the board of trustees may enter into a contract with such person whereby the home shall be reimbursed for the support and education of such child, according to the terms of the contract, in any amount up to one hundred percent of the average per capita cost to the home of keeping and educating each child therein. * * *"


The Appellate Court has decided in the case of Estes v. National Veneer and Lumber Co. (1935), 100 Ind. App. 609, that the placing of a child in the Home does not legally terminate the obligation of the parent to support the child. The court said at page 612:

"If we admit that said provisions (Section 22-2326, Burns' Indiana Statutes Annotated, 1933 'the board of trustees * * * shall have the care, custody, control, training and guardianship of any and all children admitted to and living in such home, from the day of their admission thereto until they are eighteen years of age, or until they are discharged therefrom, by the board * * *') are mandatory, we are not forced to conclude that the obligation of the parent to support his children is thereby 'legally terminated' ".

In the case of Campbell v. Fichter (1907), 168 Ind. 645 at page 648 the Supreme Court stated, "We take it that the authority of the guardian in this State is measured by legis-
lative enactment.” The trustees of the Home are guardians for some purposes. See, Section 22-2326 Burns’ Indiana Statutes, Annotated, 1933, supra.

“If, at any time, upon proper investigation by the board of trustees, it shall have been ascertained, before or after accepting any child, that the parent, parents, relatives or other authorized person charged by law with the responsibility of supporting and educating any child which is in the care or is to be in the care of such home, has sufficient means or income to properly support and educate such child, or to contribute to the support and education of such child, the superintendent with the approval of the board of trustees may enter into a contract with such person whereby the home shall be reimbursed for the support and education of such child, according to the terms of the contract, in any amount up to one hundred per cent of the average per capita cost to the home of keeping and educating each child therein. * * *


There is no authority granted to receive any funds for keeping and educating any child, except by contract as above provided. The statutory rule of construction is well settled, that, “When the meaning of a statute is plain it is the duty of the court to define it according to its obvious terms.” See: Hyland v. Rochelle (1913), 179 Ind. 671, at page 677; State v. Dudley (1910), 173 Ind. 633, 637.

In view of the foregoing, it is my opinion that the monies paid to the children from any of the sources mentioned in your letter may not be retained by the Home for the maintenance of the children, in the absence of a contract, authorizing the same, between the Superintendent and the parent, parents, relatives or other authorized person charged by law with the responsibility of supporting and educating any child residing therein. However, it is my opinion that a contract between the parent of any child resident in the Home, who is in military service, and the Superintendent, may authorize the retention by the Home of allotment checks for the maintenance of that child. The first two (2) sources of income to the children as mentioned above, cannot be retained, in my opinion,
since neither of the agencies involved is charged by Indiana law with "the responsibility of supporting and educating any child," nor could a contract authorizing the same be made.

OFFICIAL OPINION NO. 8

February 6, 1948.

Hon. Ralph F. Gates, Governor,
State of Indiana,
206 State House,
Indianapolis, Indiana.

Dear Governor Gates:

Your letter of January 16, 1948 has been received in which you request an official opinion as to whether or not the State Optometry Board has full authority under law to alone set the qualifications of the schools which they will consider competent for optometry training before allowing a person to take an examination before the Board. You further desire to know if it is necessary for any such rules and regulations concerning such matters to be approved by the Governor under the 1945 law regarding rules adopted by State agencies.

In your letter, you state complaints have been made by veteran's entitled to G. I. training, who desire to practice optometry, and cannot be admitted to a school which will be approved by the Indiana Optometry Board.

The law governing this question is contained in Sections 63-1001 et seq., Burns' 1943 Replacement, same being Chapter 187, Acts of 1907, as amended.

Section 63-1001, Burns' 1945 Supp. creates the Indiana State Board of Registration and Examination in Optometry and further provides in part that said Board shall have the following authority and duties:

"(b) Rules and Regulations. To make and promulgate rules and regulations, and to do any and all things not inconsistent with this act, which it may deem necessary or expedient for the effective enforcement of this act, and for the full and efficient performance of its duties hereunder, and the reasonable