The Indiana State Reformatory, being a prison and a state penitentiary for the confinement of those convicted of felonies, is different in all respects from the Boys' School. The environment, the associations, the discipline, were the very causes for the creation of juvenile courts. It is my opinion, therefore, that that which the Juvenile Court itself could not do—commit the boy to the penitentiary—the administrative authorities of the state have no such power.

It is my opinion, therefore, that a transfer of an inmate of the Boys' School who has been committed there by the Juvenile Court to the Indiana State Prison, and that is what our reformatory is, is without authority of law and the inmate could obtain his release from the reformatory on a writ of habeas corpus. It is further my opinion, however, that an inmate committed to the Boys' School for the commission of a crime by a court having criminal jurisdiction may be transferred.

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OFFICIAL OPINION NO. 71

December 9, 1948.

Mr. R. Cole, Secretary,
State Soil Conservation Committee,
Lafayette, Indiana.

Dear Sir:

I have your letter of November 29, 1948, as follows:

"Please give your opinion as to the period of time which the members of the present State Soil Conservation Committee should serve.

"This Committee, as provided for in Chapter 232, Acts 1937, amended Chapter 164, Acts 1941, and amended Chapter 331, Acts 1945, is appointed by the governor. Section 4, Sub-section A, indicates how this Committee is to be constituted.

"When the new governor takes office will the term of office of the present Committee end? If so, should the present Committee members tender their resignations to the new governor to be effective when he sees fit to appoint the new Committee?"
"I need this information in order to advise the present Committee concerning whether or not they should resign and when. I realize, of course, that we will need the present Committee members to function until their successors are appointed and qualified."

It is provided in Section 4, sub-section (a) of the 1937 Act as amended by Section 2 of Chapter 331 of the Acts of 1945 in part as follows:

"There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this act, the state soil conservation committee. The committee shall consist of a chairman and five (5) members and shall be appointed by the governor. * * *" (Section 15-1804, Burns' 1947 Supplement.)

You will note from the above quoted part that the committee is appointed by the Governor but the terms of the members are not fixed.

In sub-section (c) of said Section 4, it is stated, "A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee." The latter provision appeared in the Acts of 1937. Under that Act, the members of the committee were persons who held other positions and served on the committee by virtue of such other positions. When this section was amended in 1945, the provision for membership was changed and it was provided that such members should be appointed by the Governor.

Through what appears to be a legislative oversight, the provision above quoted, relative to the members of the committee holding office so long as they retain the office by virtue of which they were serving on the committee, was not changed or deleted. However, in view of the amendment making the members appointed by the governor instead of being members by virtue of some other office or position the latter provision relative to their term now has no significance.

This leaves the situation one where the statute creating the office provides that the officer be appointed by the Governor but fixes no term. Such a situation makes applicable Section
2 of Article 15 of the Indiana Constitution which is as follows:

"When the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years." (The 1926 amendment to the above section has been held unconstitutional.)

In the case of State ex rel. Manlove v. Curtis (1913), 180 Ind. 191, 192, the court said:

"The general rule is conceded to be that 'where the term of office is not fixed by law, the officer or officers, by whom a person was appointed to a particular office, may remove him at pleasure, and without notice, charges, or reasons assigned.' Throop, Public Officers Section 354. See, also, Mechem, Public Officers Sections 445, 454. Furthermore, it is stated in Article 15 Section 2, of our State Constitution that 'When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.'"

Also throwing light upon the question of the tenure of the State official whose term of office is not fixed by law see:

Klink v. State ex rel. Budd (1934), 207 Ind. 628, 633;
Kirkpatrick v. City of Greensburg (1887), 113 Ind. App. 402;
State ex rel. O'Donnell v. Flickinger (1936), 211 Ind. 361, 367;
O. A. G. 1933, 581, 582;
O. A. G. 1945, 120, 21.

It is my opinion that where the term of office is not fixed by law, the Governor who has appointed an official may remove the official at pleasure and without notice, charges or assigned reasons. Applying this to your question as to whether
the term of office of the members of the present committee end when the new Governor takes office, the answer is in the negative. However, they will continue to hold their office at the pleasure of the new Governor just as they held office at the pleasure of the present Governor. This is a different situation than where an officer appoints a deputy as the term of a deputy or assistant expires with the term of his principal. The members of the committee are officers of a State agency, not deputies or assistants of the Governor.

I call your specific attention to the provision of the Constitution saying: "* * *, the General Assembly shall not create any office, the tenure of which shall be longer than four years."

Your other question, as to whether the present members should tender their resignations to the new Governor, is a matter of policy to be determined by the members themselves and upon which I should not presume to advise you.

OFFICIAL OPINION NO. 72
December 13, 1948

Hon. C. E. Ruston,
State Examiner, State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Hon. Rushton:

I have before me your letter of December 7 as follows:

"I have received a letter from Mr. Ralph F. Moore, Auditor of Marion County, in which he states that on November 12, 1948, the Marion County Board of Commissioners adopted a Master Plan and Zoning Ordinance, pursuant to Chapter 174, Acts of 1947. This ordinance provided a penalty for its violation as authorized in section 83 of chapter 174, Acts of 1947. Mr. Moore states that a question has arisen as to the necessity of publishing this ordinance because of its penal nature and has asked me to obtain an official opinion from you on the following questions:

(1) Is publication a condition precedent to the validity of such ordinance?"