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

My dear Governor:

I have before me your letter requesting an official opinion as to the proper legal procedure to be followed in attempting to return escapees from both the Indiana Girls' School and the Indiana Boys' School, who escaped to another state. The problem or question confronting you is, no doubt, Can these children be extradited?

By law, no demand for the extradition of a person can be had unless said person be charged with crime. I take it that these children were committed to our institutions under the Acts of 1941, Chapter 233, known as the Juvenile Act. The proceedings under this Act are not criminal. Section 13 of said Act says:

"No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of a crime in any court."

Under this act, the concept of crime and punishment disappears. To the child delinquent through the commission of an act criminal in its nature, the state extends the same aid, care, and training which it had long given to the child who was merely incorrigible, neglected, abandoned, destitute, or physically handicapped. All suggestion and taint of criminality was intended to be and has been done away with. The legislative intent is made as plain as language can make it.

Section 1 of said Act says the purpose of this Act is to secure for each child within its provisions such care, guidance and control, preferably in his own home, as will serve
the child's welfare and the best interests of the state; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents.

The principle is hereby recognized that children under the jurisdiction of the court are subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them.

For the purpose of your problem, the fundamental point is that the proceeding by which said children were committed to our institutions was not a criminal one. The State was not seeking to punish a malefactor. It was seeking to salvage a boy or girl who was in danger of becoming one. In words which have been often quoted:

"* * * the problem for determination by the judge is not, Has this boy or girl committed a specific wrong, but What is he, how has he become what he is, and what had best be done in his interest and in the interest of the State to save him from a downward career."


Since the proceeding by which these youngsters were committed to an institution was not a criminal one, they cannot, in my opinion, be extradited.


Under the provisions of the Juvenile Act, however, when a child is committed to the Boys' or Girls' School, said child becomes a ward of the State. Under our law, the guardian ever after his appointment is entitled to the child's custody as against any other person, until, of course, it is made to appear that he is unfit to be entrusted with his or her cus-
tody. This has been the holding of the courts to this State from the earliest days of its jurisdiction.

Bounell v. Berryhill (1851), 2 Ind. 613;
John v. Emmert (1876), 82 Ind. 533;
Grimes v. Butsch (1895), 142 Ind. 113, 41 N.E. 328;
Palin v. Volive (1902), 158 Ind. 380, 63 N. E. 760;
In re Perry (1925), 83 Ind. App. 456;

This is a right which the guardian can enforce habeas corpus.

Bounell v. Berryhill, 2 Ind. 613.

In the case of Grimes v. Butsch, et al., 142 Ind. 113, the child resided with his guardian in the State of Missouri. The guardian was appointed in the State of Missouri. The child left his guardian and came to Indiana and resided with its relatives. On a petition for writ of habeas corpus on the part of the guardian to obtain the custody of the child, our court, among other things, stated:

"* * * It cannot be controverted upon legal grounds, we think, that where, as in this case, the right of the guardian to the custody, control and education of his ward is clearly shown under the law, it is the duty of the court to yield thereto, and award to him this right. This right, although existing under the laws of a sister State, will be respected and enforced, upon a proper showing, by the courts of this State. * * *"

The court further held that the ward, under the facts of the case, had no power to change his domicile by running away from his guardian in the State of Missouri and coming to this State. The appellant, as guardian, was entitled to
have charge of this minor in order to enable him to provide for his protection, maintenance and education.

The holding of our court seems to be a universal one, for we find in "The Conflict of Laws" by Joseph H. Beale, Section 58.1, Vol. I, that a guardian of the person of a ward, appointed at the domicile of the ward, acquires a status in relation to the ward which will be recognized in any State into which the ward may go. See, "Restatement of Conflict of Laws," Section 117 and Sections 144 to 151.

In the case of People of the State of Illinois, ex rel. Betty Hebner v. Sheriff, supra, Superior Court of Cook County on January 29, 1946, in a habeas corpus proceeding, the court ordered the petitioner, an escapee from our Girls' School, to be returned to the Indiana Girls' School.

It is, therefore, my opinion that extradition will not lie in the case that you have presented, but that the State of Indiana, as guardian, may take control and custody of said child wherever found and resort to habeas corpus if necessary. In a habeas corpus proceeding, it would be necessary for the State of Indiana to present to the court in charge of said hearing a certified copy of the order of our court committing said child to our institution.

OFFICIAL OPINION NO. 30
April 1, 1946.

Hon. Bruce F. Hardy, Supervisor,
State Farms,
State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of March 26, 1946, received requesting an official opinion as to whether or not the state institutions, such as the Indiana State Farm, Indiana State Reformatory, and Richmond State Hospital, which maintain flour mills in connection with their institutional work, are required to comply with the provisions of Chapter 264 of the Acts of