ININDIANA BOYS SCHOOL; TRANSFER. On transfer from Indiana Boys School to another state institution, the latter institution determines time of release subject to approval by State Department of Public Welfare.

May 19, 1944.

Opinion No. 48

Hon. E. M. Dill, Superintendent Indiana Boys’ School, Plainfield, Indiana.

Dear Sir:

Your letter of May 12, 1944, received in which you request an opinion on the following question:

“In the event a boy is transferred from the Indiana Boys’ School to another state institution is all responsibility and authority in connection with the boy also transferred to that institution such as determination of the time of release, to whom he should be released, etc.?”

Section 52-1104, Burns’ 1943 Supp., same being Acts 1936 (Spec. Sess.), Ch. 3, Sec. 5, as amended by Acts 1941, Ch. 179, Sec. 3, provides in part as follows:

“The state department is hereby charged with the administration or supervision of all of the public welfare activities of the state as hereinafter provided. The state department:

“* * *”

“(n) May classify the patients and inmates of the respective institutions of the state and transfer patients and inmates from one state institution to another, at will, when, in its discretion, it is deemed advisable for the welfare of the patient or inmate, but no patient or inmate of a benevolent institution shall be transferred to a penal or correctional institution except in carrying out a previous commitment of a court of competent jurisdiction.”

In the case of Mellot v. State (1942), 219 Ind. 646, the court upheld the conviction of a prisoner unlawfully escaping from the Indiana State Farm, to which institution he had
been transferred from the Indiana State Prison by the State Department of Public Welfare under the above provision of the statute. Said statute is set out at page 649 of the opinion. In affirming such conviction, and in holding the finding of guilt or innocence was a judicial function of the court trying the case, while the penalty and the place of confinement was a legislative function, the court on pages 652 and 653 of the opinion says:

"So likewise the judgment in the present instance shall be considered the same as if the judgment has specifically stated that the defendant was sentenced to the Indiana State Prison, subject however, to be transferred to another penal institution by the Board of Public Welfare, under the power granted said board by subsections of Sec. 5, Ch. 3, Acts 1936 (Sp. Sess.), p. 19."

Section 52-1109, Burns' 1943 Supp., same being Sec. 10, Ch. 3, Acts 1936, requires the approval of the State Board of Public Welfare before the board of trustees of any penal or correctional institution of this State may release any inmate of any institution upon parole.

Under the above authorities, it is my opinion when a boy is transferred from the Indiana Boys' School to another State Institution, the institution to which such boy is so transferred shall determine the time of release, to whom he should be released, etc., subject to the approval of the State Department of Public Welfare, when necessary under the provisions of the above statute.

INDIANA BOYS SCHOOL: Obsolete and unnecessary personal property can only be sold by the Auditor of State.

May 20, 1944.

Opinion No. 49

Hon. E. M. Dill, Superintendent
Indiana Boys' School,
Plainfield, Indiana.

Dear Sir:

Your letter of May 12, 1944, received advising certain persons in the town of Plainfield, Indiana, have equipped a