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
recreation hall for the use of the young people of the town; that they have been ordered by the fire marshal to install an additional fire escape; and that the Indiana Boys' School has a discarded fire escape which would suit their purpose. You state you have no further use for the fire escape and desire to know in what manner the same can be transferred to them by gift, sale or loan.

I wish to advise the sale of obsolete personal property owned by any State agency is controlled by Chapter 156, Acts 1941, same being Section 49-1723, et seq., Burns' 1943 Supplement.

The above statute provides for the sale thereof by the Auditor of State, for the appraisement by two disinterested persons to be appointed by the governor, requires publication in the newspapers, and if same is sold at private sale, it shall not be sold less than its appraised value. However, attention is called to Sec. 4 of said Act, same being Section 49-1726, Burns' 1943 Supp., which provides:

"Whenever any of such property is of an estimated value of less than one hundred dollars ($100) and the same can be used beneficially by any county, city, town, or township the same may be sold to such political subdivision at its true value without appraisal, as provided in section 2 (§ 49-1724) of this act or the advertising as provided in section 3 (§ 49-1725)."

If the above recreation hall is being operated by the town of Plainfield, such sale could be made by the Auditor of State under the above quoted section of the statute. Otherwise, it would be necessary for the same to be sold by the Auditor of State after appraisal and publication as provided in Sections 2 and 3 of said Act, same being Sections 49-1724 and 49-1725, Burns' 1943 Supplement. The steps necessary for such sale are outlined in detail in said statute.