Consequently, in accordance with the well established rule of statutory construction, I am of the opinion, there being no clearly manifest intention to the contrary, the words should be given their plain, ordinary, and usual sense.

Indiana State Board of Medical Registration and Examination v. Pickard, 93 Ind. App. 171 at 179;
Smith, Trustee, v. State, 202 Ind. 185 at 191.

I am not at liberty to mold plain statutory language into my conception of what is wise and practical and as stated in Pittsburgh, Cincinnati, Chicago and St. Louis Railroad Company v. Parker, 191 Ind. 686 at 701, where the Court says:

"Where the meaning of a statute is plain the courts must enforce it as it is written, and may not resort to an artificial construction to conform the law to what has been enacted in other states in wholly different language."

I am therefore of the opinion that the words "competent" and "disinterested" should be interpreted exactly as they are written and that such interpretation eliminates from being appraisers both the mortgagor and an officer, or employee other than one employed for the purpose of making the specific appraisement, of the mortgagee.

INDIANA STATE PRISON: Parole violations, requirements of a declaration of delinquency by Board of Trustees. Necessity of warrant for arrest of alleged parole violator.

November 19, 1943.

Hon. Alfred F. Dowd, Warden,
Indiana State Prison,
Michigan City, Indiana.

Dear Sir:

I have your letter of October 27 in which you mention that local courts have released from the State Prison upon habeas corpus petitions two prisoners who had been returned for
parole violations. The petitions in those cases alleged that a warrant for arrest of the violators was not issued prior to the declaration of delinquency by the board of trustees. Your letter also states that it has not been the practice to issue warrants for the retaking of a prisoner before the formal declaration of delinquency, and, as I understand it, you request an opinion on the following question, to-wit:

Is a declaration of delinquency valid under Sections 6, 7, and 8 of Chapter 143 of the Acts of 1897 (Secs. 13-249, 13-250, 13-251 Burns’ 1942 Replacement) without a warrant for arrest of an alleged parole violator having been first issued?

It is not conceived that your inquiry raises any question of notice and hearing upon revocation of parole but concerns only the proper statutory procedure. The statutes involved provide:

“If the agent and warden of the prison from which such prisoner was paroled, or said board or any member thereof, shall have reasonable cause to believe that the prisoner so on parole has violated his parole and has lapsed or is probably about to lapse into criminal ways or company, then such agent and warden or said board, or any member thereof, may issue his warrant for the retaking of such prisoner, at any time prior to the maximum period for which such prisoner might have been confined within the prison walls upon his sentence, which time shall be specified in such warrant.”

13-249 Burns’ Indiana Statutes, 1942 Replacement.

“Any officer of said prison, or any officer authorized to serve criminal process within this state to whom such warrant shall be delivered is authorized and required to execute said warrant by taking said prisoner and returning him to said prison, within the time specified in said warrant therefor. Such officer, other than an officer of the prison, shall be entitled to receive the same fees therefor as upon the execution of a war-
rant of arrest at the place where said prisoner shall be retaken, and as for transporting a convict from the place of arrest to the prison, in case such officer also transports said prisoner to the prison. Such fees of the officer other than a prison officer, and the expenses of a prison officer in executing such warrant, shall be paid by the agent and warden of the prison out of the moneys standing to the credit of such paroled prisoner as hereinafter provided, if any or sufficient therefor, and otherwise out of the funds of the prison.”

13-250 Burns' Indiana Statutes, 1942 Replacement.

"At the next meeting of the board of commissioners of paroled prisoners, held at such prison, after the issuing of a warrant for the retaking of any paroled prisoner, said board shall be notified thereof. If said prisoner shall have then been returned to said prison, he shall be given an opportunity to appear before said board, and the said board may, after such opportunity has been given, or in case said prisoner has not yet been returned, declare said prisoner to be delinquent, and he shall, whenever arrested by virtue of such warrant, be thereafter imprisoned in said prison for a period equal to the unexpired maximum term of sentence of such prisoner, at the time such delinquency is declared, unless sooner released on parole or absolutely discharged by the board of commissioners of paroled prisoners."

13-251 Burns' Indiana Statutes, 1942 Replacement.

A comparison of these particular statutory provisions with the Federal statutes regulating paroles reveals a striking resemblance between the two sets of statutes. The Federal statutes provide as follows:

"If the warden of the prison or penitentiary from which said prisoner was paroled or said board of parole or any member thereof shall have reliable information that the prisoner has violated his parole,
then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same, for the retaking of such prisoner.”

Sec. 4, Acts 1910, 36 Stat. 820, Sec. 717, Title 18, U. S. C. A.

“Any officer of said prison or any Federal officer authorized to serve criminal process within the United States, to whom such warrant shall be delivered, is authorized and required to execute such warrant by taking such prisoner and returning him to said prison within the time specified in said warrant therefor. All necessary expenses incurred in the administration of this chapter shall be paid out of the appropriation for the prison in connection with which such expense was incurred, and such appropriation is hereby made available therefor.”

Sec. 5, Acts 1910, 36 Stat. 820, Sec. 718, Title 18, U. S. C. A.

“At the next meeting of the board of parole held at such prison after the issuing of a warrant for the retaking of any paroled prisoner, said board of parole shall be notified thereof, and if said prisoner shall have been returned to said prison, he shall be given an opportunity to appear before said board of parole, and the said board may then or at any time in its discretion revoke the order and terminate such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the said prisoner shall serve the remainder of the sentence originally imposed; and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced.”

Sec. 6, Acts 1910, 36 Stat. 820, Sec. 719, Title 18, U. S. C. A.

Under those provisions, the question of necessity for the issuance of a warrant for arrest prior to a declaration of de-
linquency was raised in Moore v. White, 23 Fed. (2d) 467, Circuit Court of Appeals, Eighth Circuit, in which the Court said:

"Appellant never was arrested under a warrant issued by the warden of McNeil Island penitentiary. He never had an opportunity to appear before the board of parole of that penitentiary and resist the revocation of his parole. That board could only revoke the parole after an arrest upon warrant of the warden of that particular penitentiary."

Similarly, in New York, Sections 216, 217, and 218 of Chapter 43 of the Consolidated Laws provide as follows:

"216. If the parole officer having charge of a paroled prisoner shall have reasonable cause to believe that such prisoner has lapsed, or is probably about to lapse, into criminal ways or company, or has violated the conditions of his parole in an important respect, such parole officer shall report such fact to a member of the board of parole who thereupon shall issue a warrant for the retaking of such prisoner and his return to the designated prison or the Elmira Reformatory.

"217. Any parole officer, or any officer authorized to serve criminal process, or any peace officer to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such prisoner and returning him to the prison designated by the commissioner of correction, there to be held to await the action of the board of parole. Such officer, other than an officer of the prison or parole officer shall be entitled to receive the same fees therefor as upon the execution of a warrant of arrest at the place where said prisoner shall be retaken, and as for transporting a convict from the place of arrest to the prison, in case such officer also transport said prisoner to the prison. Such fees of the officer, other than a prison officer or parole officer, shall be paid by the agent and warden of the prison out of the moneys standing to the credit of such paroled prisoner, if any or sufficient therefor,
and otherwise out of the funds of the prison, in which case such expenses shall be charged against and deducted from any moneys which may stand to the credit of such prisoner in the future.

“218. Whenever there is reasonable cause to believe that a prisoner who has been paroled has violated his parole, the board of parole at its next meeting shall declare such prisoner to be delinquent and time owed shall date from such delinquency. The warden of each prison shall promptly notify the board of parole of the return of a paroled prisoner charged with violation of his parole. Thereupon, such board of parole shall, as soon as practicable, hold a parole court at such prison and consider the case of such parole violator, who shall be given an opportunity to appear personally, but not through counsel or others, before such board of parole and explain the charges made against him. The board of parole shall within a reasonable time act upon such charges, and may, if it sees fit, require such prisoner to serve out in prison the balance of the maximum term for which he was originally sentenced calculated from the date of delinquency or such part thereof as it may determine, or impose such punishment as it deems proper, subject to the provisions of the next section.”

In a per curiam decision in People ex rel. v. Kidney, 119 N. E. 1069, the New York Court of Appeals affirmed a decision of the Appellate Division which held inter alia that:

“* * * The declaration of the relator’s delinquency upon his parole was unauthorized since he was never arrested by virtue of a parole warrant as required by section 217 of the Prison Law (Consol. Laws, c. 43).”

It has been well established in Indiana as stated in Manners v. State, 210 Ind. 648 at 654, that:

“This requires that where there is ambiguity it must be resolved against the penalty, and only those cases brought within the statute that are clearly within its meaning and intention.”
See also: Dowd, Warden v. Sullivan, 217 Ind. 196.

It is therefore my opinion that the issuance of a warrant pursuant to Section 13-249, Burns' 1942 Replacement is an essential prerequisite to a declaration of delinquency and that, unless a declaration of delinquency is predicated thereon, it will not stop time of a parole violator.

For your information on the question of hearings prior to the declaration of delinquency, see Christianson v. Zerbst, Warden, 89 Fed. (2d) 40, Circuit Court of Appeals Tenth Circuit.

I would therefore suggest that your records be corrected accordingly and strict compliance with the letter of the statute as to future parole violators be observed.

As to those inmates in your prison who have been transferred from the Indiana Reformatory as parole violators, revocation of parole with regard to the Reformatory is governed by Sections 11 and 12 of the Acts of 1897 (Secs. 13-410 and 13-411, Burns' 1942 Replacement). Section 13-410 provides as follows:

"The said board of managers (board of trustees) shall have power to establish rules and regulations under which prisoners within the reformatory may be allowed to go upon parole outside of the reformatory building and inclosure, but to remain, while on parole, in the legal custody and under control of the board of managers (board of trustees) and subject at any time to be taken back within the inclosure of said reformatory, and full power to enforce such rules and regulations to retake and imprison any inmate so upon parole is hereby conferred upon said board, whose order, certified by its secretary, and signed by its president, with the seal of the reformatory attached thereto, shall be a sufficient warrant for the officer named in it to authorize such officer to return to actual custody any conditionally released or paroled prisoner; and it is hereby made the duty of all officers to execute said order the same as ordinary process: Provided, That no prisoner shall be released on parole until the said board of managers (board of trustees) shall have satisfactory evidence that arrangements have been made for
his honorable and useful employment, for at least six (6) months while upon parole, in some suitable occupa-
tion."

Section 13-411 provides in part as follows:

"* * * And it is hereby provided that whenever, in the opinion of the board of managers (board of trustees), any prisoner on parole has violated the conditions of his parole or conditional release, by whatever name, as affixed by the managers (board of trustees), he shall, by a formal order enter in the managers' (trustees') proceedings, be declared a delinquent, and shall thereafter be treated as an escaped prisoner owing service to the state and shall be liable, when arrested, to serve out the unexpired term of his maximum possible imprisonment, and the time from the date of his declared delinquency to the date of his arrest shall not be counted as any part or portion of time served. * * *"

Incidentally, it will be noted here that no provision is made for issuance of a warrant prior to a declaration of delinquency. In any event, and without deciding that question, since those prisoners transferred from the Reformatory after violation of parole are now held as parole violators under an entirely different statute from those violators of a State Prison parole, the decision of the local court as to the latter cannot be conclusive in any way as to transferees from the Reformatory.