In view of the law as declared by the Supreme Court in the cases cited supra, and in the absence of a specific statute upon the subject, it is my opinion that the tenure teachers referred to in your letter would not continue as tenure teachers under the new set up and that the proper answer to your question is in the negative.

INDIANA STATE PRISON: Powers of the Board of Trustees with reference to issuing warrant, making orders of delinquency and right to revoke parole. Parole by Governor. December 14, 1943.

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

Dear Sir:

I have your letter of November 26th in which you set forth the following facts and three inquiries with respect thereto:

"Executive Orders, where a parole has been granted by the Governor upon recommendation of the Clemency Commission, contain the following statements:

"'Upon condition that he remains under the jurisdiction of the proper officials of the Indiana State Prison, and with the understanding that he is to make regular reports until the expiration of his maximum term or until authorized for discharge.

"'This parole will be revoked for any violation thereof, and will be revoked at any time for the good of the prisoner and the interest of society so warrants.'

"If a report to our Board of Trustees indicates that the parolee in question who had been released upon recommendation of the Clemency Commission, under the conditions as above stated, had been convicted as a misdemeanant, had repeatedly violated conditions as to drinking, had disregarded the admonitions of the parole officer in whose charge he was placed, had stolen an automobile and had fled the state and his present whereabouts were unknown, all of which clearly shows the subject to be a parole violator, our
Board would like to know the extent of its powers. Will you give us your official opinion in answer to the following questions, to-wit:

"1. Can the Board issue a warrant for the arrest of the parolee in question?"

"2. Can it enter an order that the subject is delinquent?"

"3. Has it any power to revoke the parole?"

An examination of the state statutes in regard to parole of prisoners from the Indiana State Prison shows that there are two circumstances warranting parole involving two different paroling agencies:

1. Section 2 of Chapter 143 of the Acts of 1897 (Section 13-246, Burns' 1942 Replacement) provides that the board of commissioners of paroled prisoners, composed of the same members as the board of trustees of the state prison, may entertain applications for parole of only those prisoners confined upon an indeterminate sentence and whose minimum term of sentence has expired.

2. All other prisoners seeking parole must, therefore, make application to the governor whose power to grant reprieves, commutations and pardons is found in Section 17 of Article 5 of the Constitution. That section of Article 5 also provides that the General Assembly may constitute a council of officers of state to advise and consent to pardons. By Section 4 of Chapter 17 of the Acts of 1933 (Section 13-1304, Burns' 1942 Replacement), the Clemency Commission examines "* * * carefully and thoroughly into the merits of every petition which may be presented to the governor for the pardon or parole, other than the temporary parole, of any person who shall have been convicted by any court of this state, * * *" and reports its recommendations to the governor.

It then becomes apparent that the governor's pardoning power is separate and distinct from such power as is vested in the board of parole for the state prison.

Preliminary inquiry might be whether the express power to pardon as granted to the governor in the Constitution includes power to parole. Although it has been held in Indiana in the case of State v. Shumaker, 200 Ind. 716 at 719 that "* * * the only power the Governor of Indiana has to grant
pardons is that conferred on him by the Constitution as set forth in Art. 5, Sec. 17 * * *, it is generally held by the weight of authority that the larger power to pardon includes the lesser exercise of that power in granting a parole. See 46 C. J. 1205. Furthermore, one of the leading cases in the United States involving the question of gubernatorial parole arose in Indiana and is Woodward v. Murdock, 124 Ind. 439. Although that case is now some fifty years old, it remains unimpeached in Indiana and involves a construction of the constitutional provision vesting pardoning power in the governor. I believe that case, if not directly, answers all of your questions by inference. It was there held that the governor did have power to parole upon condition and that upon violation of that condition he had the right to revoke the parole. There the court said:

"As we have already said, the Governor had authority to grant the parole, but as he did it as a matter of grace, and not as a duty, it was his right to impose such conditions as he saw proper, and when the appellant accepted it he, by implication, as well as by express agreement, did so subject to all of its terms and conditions.

"* * *

"Under the circumstances, the appellant was at large merely at the will of the Governor.

"The Governor had it in his power to order the appellant to prison at any time."

In direct answer to your questions, I am of the opinion that since the governor's parole is issued under separate authority that the governor alone is authorized to revoke it. It becomes apparent upon reading the further provisions of the Act of 1897 for arrest and declaration of delinquency as to those prisoners paroled by the board of parole of the state prison, that the legislature had reference to only those cases which were paroled under the authority of that board. As exemplary of that legislative intent, Section 10 of the Act (Section 13-253, Burns' 1942 Replacement) provides:

"Nothing herein contained shall be construed to impair the power of the governor of the state to grant a pardon or commutation in any case."
It is noted that such executive paroles normally carry the two paragraphs which provide that the parolee shall remain under the jurisdiction of the proper officials and that the parole will be revoked for any violation. Those provisions carry no greater import than the parolee may be required to report to and his conduct will be checked by the proper officials, but they do not purport to delegate a power to the board of trustees of the prison to revoke a parole even if such a delegation could be made. I am of the opinion that the proper construction of the provision on revocation is that upon report from the board of trustees of the prison (or upon information from other sources) that a parolee has violated his parole, or for any other reason for revocation, the governor shall be the one to revoke a parole granted by him.

Therefore, your questions should all be answered in the negative.

DEPARTMENT INSPECTION AND SUPERVISION OF PUBLIC OFFICES: The office of city-clerk is not an office within the purview of Section 16 of Article 7 of the Indiana Constitution.

December 14, 1943.

Hon. Otto K. Jensen, State Examiner
Department of Inspection and Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

This will acknowledge receipt of your recent letter which reads as follows:

"I have received a request from an Attorney for a Civil Town as to the eligibility of one elected to the office of Town Clerk-Treasurer at the regular election held November 2, 1943.

"Can a person, who is serving as a Justice of the Peace and whose term of office as a Justice of the Peace extends beyond the time of taking over the office of Clerk-Treasurer of a Civil Town to which office he was elected during the time for which he was to serve