FINANCIAL INSTITUTIONS, DEPARTMENT OF: Authority of department as supervisor of bank acting as guardian of persons of unsound mind to renew note at maturity.

July 20, 1939.

Mr. W. H. DeHority,
Bank Supervisor,
Department Financial Institutions,
Indianapolis, Indiana.

Dear Mr. DeHority:

Your letter of July 10, 1939, asking for an official opinion on matter stated therein, received. You state in your letter the following:

"An individual who has signed a note as surety for another person has been declared of unsound mind, and a bank under the supervision of this department has been legally designated as his guardian. The note has now matured and the maker is unable to make payment and desires to renew the note. The question arises as to the authority of the bank as guardian to sign the renewal note as surety. It is assumed, of course, that the bank as guardian would not sign the renewal note unless proper authority was obtained from the court having jurisdiction."

In my judgment, if a proper petition is presented to the court having jurisdiction of the guardianship trust by the guardian, requesting that he, as guardian, be permitted in the interests of the trust to renew the note as surety with the maker, and the court grants the petition, the transaction would be legal and binding upon said trust. This would be the interest of the trust on the theory that an extension of time would give the maker of the note the opportunity to pay the note and thus save the trust of the liability of paying. A guardian has the right to exercise his judgment, to a large extent, in administering his trust, and, if in doing so he uses the judgment of an ordinary business man in dealing in such transactions, he is generally protected from any legal liability and may bind his trust.

Even without an order of court, I think the guardian, exercising good business judgment, could renew the note and bind the trust but it is best to have the proper court order.
Subsection 5 of section 8111, Burns 1939 statutes gives a guardian express power to compound debts and under this section it is my opinion that a guardian would have a legal right to renew the note, but even without the aid of this section he has the legal power, as heretofore stated, to renew the note.

WELFARE, DEPARTMENT OF: Authority of Governor to change determinate sentence to indeterminate.

July 31, 1939.

Hon. T. A. Gottschalk, Supervisor,
Division of Institutions,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Gottschalk:

Sometime ago you addressed a letter to this office submitting several questions relative to the indeterminate and determinate sentence laws of Indiana and asking for an official opinion thereon. All of the questions seemingly revolve around the main question, which was:

"May the Governor change a determinate sentence of a prisoner in the Indiana State Prison, Indiana Reformatory or Indiana Woman's Prison to an indeterminate one?"

In reply to this question, I desire to say that we have given this question great consideration and I have reached the conclusion that the question must be answered in the negative.

Section 17 of article 5 of the Constitution of Indiana gives the Governor power to grant pardons, reprieves and commutations of sentences. There is a clear distinction between a pardon and a commutation of sentence.

"A pardon is an act of grace, proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed."

6 Words and Phrases, 5168.