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.
A commutation is a substitution of a lesser for a greater punishment by authority of law; it cuts down and modifies the original sentence to a lesser degree. It does not annul the sentence of the court, but is *pro tanto* an affirmation of it with a modification.

When the governor (acting alone or through the Clemency Commission), undertakes to change a determinate sentence to an indeterminate one, he is not exercising his pardoning power but is clearly attempting to exercise his power of commutation and, in my judgment, he is without power to do this. He has the power to commute but if he exercises this power, the effect of the commutation must be to definitely lessen the punishment. It will not do to say that the commutation may, or in all probability will, lessen the punishment. The commutation must lessen the punishment to a definite certainty. To illustrate, let us consider one who is given a determinate sentence of ten years. Full good time would give him his release at the end of six years and eight months. If the sentence were changed by the governor and an indeterminate sentence of two to ten years substituted for it, the prisoner could be kept for the full term of ten years. In other words, he would receive a greater punishment than the original judgment imposed. The prisoner might, of course, be released at the end of two years, but he could be kept on parole for the full term. He would not be a free man as he would have been on his determinate sentence of ten years, for the reason that he would have been released at the end of six years and eight months with full good time. As long as a prisoner is on parole, he is really under sentence and is a prisoner although outside the prison walls and he is under the control of the officers in the same sense as the “trusty” convict who is allowed at times to be outside the prison walls at work.

The governor may, under the Constitution, exercise his power to parole or commute but he has no power to enter judgment or sentence. This power belongs to the judicial department of government and cannot be usurped by the executive department. In my judgment, he has no power to change a determinate sentence to an indeterminate one. Of course, he has the power to commute a determinate sentence of a number of years to another determinate sentence of a lesser number of years. But the latter sentence must be for a
definite term and the term must be less than the original term given less full good time allowed for good behavior.

Since my opinion on the questions submitted affects not only the division of institutions but also the heads of our penal institutions and the clemency commission, I am sending copies of this opinion to the several heads of our institutions and the clemency commission so that we may achieve a uniform procedure with regard to commuting sentences in conformity with this opinion.

AUDITOR OF STATE: Vehicles entering State bearing extra supply tanks containing in excess of fifteen gallons of fuel violate Indiana Motor Vehicle Fuel Tax Law.

July 31, 1939.

Mr. Howard Etzold,
Director, Motor Vehicle Fuel Division,
Office of the Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge your request for an official opinion involving section 4 of the Indiana Motor Vehicle Fuel Tax Law (section 47-1504 Burns Supplement), and more especially the following provision of that section:

"Provided, That any person, tourist or traveler coming into the State in a motor or commercial vehicle may bring into the State in the tank or container of such vehicle, and for use in the operation thereof, not more than fifteen (15) gallons of motor vehicle fuel at one time, and use the same for the operation of such vehicle without the payment of such license fee thereon: any motor fuel so brought into the State in excess of fifteen (15) gallons shall be subject to the license fee prescribed by this Act."

With regard to the excerpt above set out, you make the following inquiry:

"The question has arisen as to whether this restriction would pertain to extra supply tanks, for added capacity in excess of 15 gallons, as provided above, of