changing the name of the corporation is pointed out and defined by sections 1071 to 1075, inclusive, of Burns Revised Statutes of 1926.

GOVERNOR: Authority of governor to remit forfeitures and to release only partially the liens of forfeiture judgments.

September 29, 1933.

Hon. Wayne Coy,
Under Secretary,
Executive Department,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of September 25, 1933, in which you ask whether or not the Governor of Indiana has authority to grant the petition of one Hetty L. Oren, which, together with other papers relative to said petition were attached to your letter.

The instrument in question is entitled, “Petition for Remission and Release of Judgment and Costs on Bond Forfeiture,” but the prayer of the petition is in the following language: “Petitioner respectfully states that it would be to the best advantage of the State of Indiana and to herself if this judgment be released insofar as it concerns the easement of flowage to be conveyed to the United States of America.” (My italics.) Reference is made to a judgment of forfeiture against petitioner and others as sureties on a recognizes bond, and to an easement of flowage over certain lands of petitioner, which it is alleged the Federal Government is seeking in connection with dam No. 41 erected at Louisville, Kentucky. Petitioner alleges that consummation of the negotiations regarding sale of the easement are dependent upon the release of said land from the lien of the forfeiture judgment.

Article 5, section 17 of the Indiana Constitution, provides in part that the Governor “shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; * * *.” (Section 150, Burns Annotated Indiana Statutes, Revision of 1926.)

He can only remit fines and forfeitures, under authority of this section, in pursuance of the provisions of law. In other words, his power so to do is limited by the law which confers the power.
Ryan v. State, 176 Ind. 281;
State v. Dunning, 9 Ind. 20;
U. S. v. Morris, 26 F. Cas. No. 15816.

The only law enacted by the legislature which may be construed as granting the power and prescribing the manner in which such power may be exercised, is section 8007, Burns Annotated Indiana Statutes, Revision of 1926. It provides that:

“All applicants to the governor for remission of fines and forfeitures shall forward to him, with their application, the opinion of the propriety of so doing of a majority of the following officers in the county where the fine was assessed or forfeiture incurred, viz.: The clerk of the circuit court, auditor, sheriff, county treasurer and such officers as shall, from time to time, have the care and custody of the common school fund within the county.”

The petition of Hetty L. Oren does not appear to contain, nor to be accompanied by, the opinions of a majority of the county officials named in the statute above referred to. The file contains a petition of “Floyd Scholl, et al.” addressed to Harry Leslie, the former governor, seeking a “Remission of Forfeiture” on the same recognizance bond, to which petition, the present petitioner was a party, and which appears to include the opinions of the required number of such county officials. However, that petition is not the petition now under consideration and upon which relief is now sought. The governor has no power to act until the statutory requirement has been complied with.

Ryan v. State, supra;
State v. Dunning, supra.

Should the petition be presented in proper form, the governor would have the authority to remit the forfeiture as to the petitioner Hetty L. Oren, in the amount of the bond, exercising his own discretion as to the propriety of granting such relief. In no event, however, would he have the authority to remit the costs of any part thereof.

Ryan v. State, supra.

However, the relief sought by the present petition, as I understand the same, is not the remission of the forfeiture but
the release of the lien of the forfeiture judgment as to a certain interest in real estate belonging to petitioner. The word "remission," as used in the constitutional and statutory provisions under consideration, implies the forgiveness or voluntary relinquishment of a claim or a part thereof. (Kilgore Lumber Co. v. Thomas & Hammonds, 128 S. W. 62, 64).

I find no authority for the governor to release the lien of such a claim as that constituted by a forfeiture judgment, as to certain real estate only. The only relief he may afford is remission of the forfeiture, which releases the petitioner from all liability on account of such forfeiture to the amount of the remission.

BOYS' SCHOOL: Feeble-minded inmate may be returned to committing county, or transferred to another institution.

September 29, 1933.

Hon. E. M. Dill, Supt.,
Indiana Boys' School,
Plainfield, Indiana.

Honorable Sir:

I am in receipt of your request that an official opinion issue in response to the following inquiries:

"If it should develop within a few months after a boy is committed to this institution that he be feeble-minded, does the board of control of this institution have the right to return this boy to the county from which he was committed?

"Is the Binet-Simon intelligence test that we use here and an examination by the school physician, sufficient examination to prove the boy feeble-minded?"

In response to your first question, the statute plainly provides that no boy is to be committed to your institution who is not of sound intellect and it is made the duty of the court, before committing the boy, to cause him to be examined by a physician who is to certify to the fact of such soundness. The statute is as follows:

"Examination of boy.—No boy shall be committed to said institution who is not of sound intellect and free from cutaneous and other contagious diseases, or who