mission” to evidence an authority which he does not have. In other words, I think a “commission” issued by the state to one of its officers, in the commonly accepted sense of the term, and certainly as that term is used in the Constitution, is not a contract at all such as might properly evidence the rights, duties and obligations of an employee, but is a written evidence of the delegation of a portion of the sovereign power. Being such, it is fitting as required by section 6 of Article 15 of the Indiana Constitution, that it be issued in the name of the state, signed by the governor, sealed by the state seal and attested by the secretary of state. Burns Annotated Indiana Statutes of 1926, section 235. But no reason can be given for requiring such a document to evidence an ordinary employment. As already stated, the provision of section 6 of chapter 4, supra, as to the issuance of commissions is an authority rather than a mandate, and for that reason, and for the further reason that no useful purpose can be served by evidencing the appointment of an employee by a “commission,” in my opinion the governor is not required by said section to “commission” employees or servants appointed by him pursuant to said act.

GOVERNOR: Duties of “State Commission on Clemency”; custody of prisoners released by commission and placed on probation.

March 16, 1933.

Hon. Wayne Coy,
Under Secretary to the Governor,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter requesting an opinion as to the duties of the “State Commission on Clemency” created by chapter 117, of the Acts of the General Assembly of 1933, the specific question concerning which you inquire being the question as to who shall have the custody of prisoners released by the commission and placed on probation for a definite period of time.

An examination of the above act reveals the fact that said commission is an advisory commission only, charged with the duty of carefully and thoroughly examining into the merits “of every petition which may be presented to the governor
or the ardon or parole, other than the temporary parole, of any person who shall have been convicted by any court of this state and to report to the governor, in writing, its conclusions and recommendations in each such case."


The act neither gives nor purports to give to the commission any authority to either pardon or parole a prisoner; nor does it give to the commission the custody of a paroled prisoner. The commission is simply advisory to the governor in the exercise of his constitutional power to grant reprieves, commutations and pardons. Article 5, section 17, Indiana Constitution.

I do not think, in view of the foregoing, that chapter 117, supra, should be held to repeal provisions of other existing laws placing the custody of prisoners paroled pursuant to the provisions of the Indeterminate Sentence Law in the board of trustees of the institution to which the prisoner was committed. I think, too, that there are obvious reasons in favor of leaving the custody of prisoners paroled upon the recommendation of the "State Commission on Clemency" with the boards of trustees of the institutions to which such prisoners were committed. However, it is proper to observe in this connection that the governor in issuing a parole upon the recommendation of the commission, may attach conditions not inconsistent with law (Woodward v. Murdock, 124 Ind. 439 at page 443); and if, in his opinion, it is desirable to have the paroled prisoner report at stated periods to said commission instead of to the board of trustees of the prison, I can see no objection to that procedure; but, in my opinion, the custody of the prisoner during the period of parole should remain with the institution to which the prisoner was committed.

SECRETARY OF STATE: Filing of annual reports with Railroad Commission by rail carriers.

Joseph O. Hoffman,  
Chief Corporation Counsel,  
Secretary of State's Office,  
Indianapolis, Indiana.

Dear Mr. Hoffman:

I have before me your inquiry of February 16, 1933, in which you ask me to determine whether or not the provision