Your inquiry does not detail sufficient facts relating to the specific case you have in mind to enable me to determine whether or not the case falls within the scope of one of the several statutes dealing particularly with cities between certain population limits. Neither does it throw any light on the question of the particular statute under which the library was originally established, nor the history of its control since its establishment. However, authority for the transfer of the "ownership, custody and control" of a library "already established and maintained under the existing laws of this state" to the public library board of any city or incorporated town from "the managing board of such library already so existing and maintained," is provided for, under certain conditions, by Section 10, Chapter 55, Acts 1901, as amended by Section 5, Chapter 169, Acts of 1903 (Section 41-312, Burns 1933 Indiana Statutes). In my opinion the language of said Act is broad enough to authorize transfers of library property from the board of education of any such city or incorporated town, provided the conditions of the Act are satisfied and the outlined procedure is followed.

CLEMENCY, STATE COMMISSION ON: Parole violators from Indiana penal institutions imprisoned in other states, detainers against; who has authority to release.

June 27, 1936.

Hon. John H. Klinger,
Secretary,
State Commission on Clemency,
Indianapolis, Indiana.

Dear Sir:

I have before me your recent request for an official opinion, reading in part as follows:

"If a prisoner is granted a parole by the Board of Trustees of the institution and while out on this parole, he violates it, is sentenced and committed to an institution in another state and the institution in this state from which he is on parole files a detainer ordering his return to our institution upon his release from the institution in which he is then held, is the matter of
a release from this detainer one for the consideration of the Board of Trustees of the institution or for the State Commission on Clemency?

"Taking the case of a prisoner who has been granted a parole by the State Commission on Clemency and the above occurs, is the matter of the release from the detainer one for the consideration of the Clemency Commission or the Board of Trustees of the institution from which he was paroled?"

The exact authority and function of the state commission on clemency with reference to paroles is set out in Section 4, Chapter 117, Acts of 1933, which reads as follows:

"It shall be the duty of the state commission on clemency to examine 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 to report to the governor, in writing, its conclusions and recommendations in each such case. Every such report shall be signed by at least two members of the commission."

It will be noted that the authority of the commission is limited to the making of recommendations to the governor regarding petitions for pardon or parole presented to him. In this respect it acts as investigating commission for the governor; but it has no authority whatsoever with respect to the actual granting or revoking of any pardon or parole, this authority being vested solely in the governor under our Constitution and statutes, except for such authority as is given the various institutional boards to grant paroles, as in cases of indeterminate sentences where the minimum sentences have been served. Consequently, that portion of your letter which refers to "a prisoner who has been granted a parole by the State Commissioner on Clemency" is in error, and refers, I assume, to a case where the parole has been granted by the governor on the recommendation of the clemency commission.

With reference to the first suggested case set out in your inquiry, where the board of trustees of the institution has paroled a prisoner and has placed a detainer against him in another state on account of violation of the terms of his
parole, it is my opinion that the matter of release of the
detainer is one for the consideration of the institutional board
alone.

As to the case of a prisoner paroled by the governor on
the recommendation of the clemency commission, of course
the right to revoke the parole is vested solely in the authority
which issued the parole—the governor. When he has acted in
this respect and has revoked the parole, and a detainer has
been placed against the parolee by the institutional board
by reason of such revocation, it would seem that the matter
of granting a release from such detainer is subject to the
control of the governor, except as the institutional board may
act under the advice and direction of the Governor. In no case,
however, is any authority vested in the clemency commission
to act upon a detainer, except as it may be called upon by
the governor to assist him in an advisory capacity in connec-
tion with detainers placed against parolees whose paroles
were granted by him.

ACCOUNTS, STATE BOARD OF: Gasoline fund, whether
appropriation necessary to authorize its expenditure by
county.

Hon. William P. Cosgrove,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you request an offi-
cial opinion in answer to the following question:

"Can a county council, at its regular meeting, with-
out any budget or estimate therefor, made by any
officer or board of the county, and without having com-
plied with Chapter 173, Acts 1935, page 837, and with-
out any published notice to the taxpayers, by the
county auditor, legally appropriate from the Gasoline
Fund any sum to be used for the payment of county
unit road bonds?"

Chapter 173 of the Acts of 1935 provides in part as fol-