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.

June 29, 1936.

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-

...
"That in the formulation of a budget by the proper legal officers of any county, city, town or school corporation, such officers shall prepare as accurate an estimate as can be obtained of the probable amount of revenue which such county, city, town or school corporation will receive from the state for and during the year for which such budget is being formulated and for which appropriations are to be made, and the amounts of revenue which will probably be received from the state shall be shown in such budget estimates and shall be taken into consideration in calculating the tax levy which is to be made for the ensuing year, and no money received from the state by any county, city, town or school corporation, whether from the gasoline fund, the motor vehicle fund, the common school revenue fund, or the general fund, for highway, street or school purposes, as the case may be, shall be expended unless and until such money so received or to be received shall have been included in the budget estimates and shall have been appropriated by the proper officers authorized by law to make appropriations, in the amounts and for the specific purposes for which any such fund is to be expended:"


The above Act was passed on March 9th, 1935. Two days earlier on March 7, 1935, the legislature enacted an amendment to the budget law. Acts of 1935, page 532. This amendment to the budget law is not very material in the consideration of your question, however, and reference thereto in this opinion is made for the sole purpose of calling attention to the fact that the budget referred to in that Act and also in Chapter 173 are the same. With that in mind it will be noted that the evident purpose and intent of Chapter 173 is to specifically require additional data in the published budget upon the basis of which a tax levy is made over and above the requirements of the general budget Act. These additional requirements so far as your question is affected thereby is the requirement that the county's portion of the gasoline fund shall not be expended unless and until it "shall have been included in the budget estimates and shall have been appropriated by the proper officers authorized by law to make appropriations in
the amounts and for the specific purposes for which any such fund is to be expended.” I think this language is very clear and requires before the expenditure of gasoline tax money not only an appropriation but that the appropriation shall designate the purposes for which the fund is to be expended and that the items shall be included in the published budget. Upon the assumption contained in your question, therefore, the question should be answered in the negative.

It perhaps should be pointed out in this connection also that Chapter 173 of the Acts of 1935 is subsequent in point of time to the decision in the case of Bridges vs. State ex rel. Vaughn, 190 N. E., page 758. However, this opinion is not inconsistent with the conclusion of the court in the above case, in which case the opinion seems to have been predicated upon the fact that there was a surplus in the special road fund above the requirements for current construction, maintenance, and repair. Since the passage of Chapter 173, supra, the taxpayers are entitled to the notice embraced in a budget prepared in conformity with it.

TEACHERS' RETIREMENT FUND BOARD: Retirement fund, whether may be invested in tax warrants issued under authority of Chapter 161, Acts 1933.

June 30, 1936.

Hon. Robert B. Hougham,
Executive Secretary,
Indiana State Teachers’
Retirement Fund Board,
Indianapolis, Indiana.

Dear Sir:

I have at hand your request of recent date for an opinion concerning the eligibility of tax warrants, issued under the authority of Chapter 161, Acts of 1933, as a proper subject for investment of the funds under the control of your board.

Chapter 161, supra, authorizes the issuance by “any municipal corporation in this state,” of anticipatory warrants payable out of the funds derived from its portion of delinquent taxes, as and when such delinquent taxes are collected. The warrants so issued are to bear interest at a rate not to