People v. Murch, 189 N. E. 220, at pp. 221-222.

It is my opinion, therefore that the State Legislature had in mind to remove from the category of crime all lawbreaking acts committed by boys between the ages of seven and sixteen years, except those punishable by death or life imprisonment. If this was the legislative intent, then I think such cases should be charged and dealt with as delinquent children.

Answering your question specifically, in all cases where the offense committed does not carry with it a sentence of death or life imprisonment, the boy should be tried by the Juvenile Court under charges of delinquency and committed to your institution as such.

PUBLIC INSTRUCTION, DEPARTMENT OF: School building, right of township trustee to sell. Sale of township school buildings, right of trustee to impose condition that purchaser demolish building.

May 25, 1938.

Hon. Grover Van Duyn,
Assistant Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter enclosing a copy of a letter from the Trustee of Hanover Township, Shelby County, Indiana, with reference to the right of a township trustee in Indiana to demolish a school building. You request and official opinion in answer to the following question:

"May a township trustee and/or advisory board under conditions as stated in the enclosed letter sell a school building such as herein mentioned under a sale condition requesting the building to be demolished immediately after sale?"

The conditions which give rise to your question are set out in the letter from the trustee above referred to. He states that the township has reached the end of its funds available for building the addition now under construction to the school building located at Morristown, Indiana, and which is being financed in part, at least, through a federal grant. He states further that the grant was made subject to the requirement that a certain school building in the town of Gwynneville, Indiana, should be demolished. He states, however, that at the
time the offer of a grant was received, he immediately contacted the director of PWA for the State of Indiana, calling his attention to the fact that it was impossible for the trustee to comply with the provision for the demolishing of the building, owing to the fact that such an act would be in violation of the laws of the state, and that at the same time attention was called to paragraph 11 of PWA Form 210, reading as follows:

"11. State or Territorial Law.—Anything in the offer or the terms and conditions to the contrary notwithstanding, nothing herein shall require the applicant to observe or enforce compliance with any provision hereof, perform any other act or do any other thing in contravention of any applicable state or territorial law: Provided, That if any of the provisions of the offer or the terms and conditions violates any state or territorial law, or if compliance with the provisions of the offer or the terms and conditions would require the applicant to violate any state or territorial law, or if because of any other reason the applicant cannot comply with any of such provisions, the applicant will at once notify the administrator in writing in order that appropriate changes and modifications may be made by the administrator and the applicant to the end that the applicant may proceed as soon as possible with the construction of the project."

It is stated that the director of the PWA assured the trustee that in accepting the grant the trustee would not be required to do anything that would in any way conflict with the Indiana laws.

In describing the situation relative to the Gwynnville school, it is stated that the building is an eight-room building, one teacher being employed and one room only being used as a class and assembly room, and that the daily average attendance in the school during the school term of 1937-38 was 21. It is obvious that the school has not been abandoned.

Pursuant to an official opinion addressed to you under date of April 15, 1938, I held that there is no authority whereby a township trustee, under the statutes of the state, may demolish a school building. In that same letter, however, I referred to the fact that, under certain circumstances, the trustee of a
towmship in the state of Indiana is given the authority to abandon schools under his charge and that by following the procedure set out in the statute, he might also sell the abandoned school house.

The question now seems to be that, since a trustee of a township is not authorized to demolish a building, but is, under certain circumstances, authorized to sell a building, may the demolishing be effected through a sale, the terms of which would require that the building be demolished? Your question is limited, however, to the situation as embodied in the township trustee's letter, and it is appropriate, therefore, to determine first of all as to whether, under those conditions, the township trustee would have the right to sell the building. If he does not have the right to sell the building, then, of course, it becomes immaterial as to whether he could sell it with a covenant attached that the building should be immediately demolished. The statute on the subject governing the sale of abandoned school houses is embodied in Sections 28-3316 and 28-3317 of Burns' Indiana Statutes Annotated, 1933.

The first of the above sections authorizes the proper trustee, whenever a school house shall have been removed to a different location or a new one erected for the school in a different place and where the land whereon the building is situated belongs unconditionally to the township, to sell the same when, in his opinion, it is advantageous to the township to do so.

The second section above referred to relates entirely to the sale of school property when it is no longer used and occupied for school purposes, or when the same has been abandoned for a period of two years. In the first event, upon a petition of two-thirds of the qualified voters of the school district, the trustee may sell the property, and in the second event, he may sell the property without the previous filing of the petition by taxpayers. This section, it seems to me, does not apply to the present situation, for the reason that the school property to be sold is at the present time used and occupied for school purposes, and further, it is clearly not an abandoned school.

It may be claimed that a sale could be made under the first section however, because, as I understand it, a new building is being erected for the school at Gwynneville in a different place. I think, however, that this statute would have to be considered with other sections of the statute limiting the trustee in his right to abandon schools. Under the statute now existing,
there does not appear to be any provision which would authorize the trustee at the present time to abandon the school at Gwynneville.

Another reason is apparent also in the fact that both sections provide that the sale when made is to be made "for the highest price that can be obtained therefor." There may be cases in which it would be immaterial to a purchaser as to whether the building was to be demolished or not, but unless it could be shown that no higher price could be obtained for the building without the demolishing covenant than with it, it seems to me that the insertion in a proposal to sell of the condition that the building should be immediately demolished would be in violation of the above sections of the statute.

In my opinion, therefore, the township trustee in the case referred to, and under the facts as set out by him in his letter, would not be authorized to sell the building at Gwynneville with the condition attached that the buyer should immediately demolish it.

ACCOUNTS, STATE BOARD OF: Cities and towns. In cities of third class, Sanitary Board appointed by Council.

May 26, 1938.

Hon. W. P. Cosgrove,
State Examiner, Division of Accounting and Statistics,
State House,
Indianapolis, Indiana.

Dear Mr. Cosgrove:

This will acknowledge receipt of your letter of May 18, in which you submit the following question:

"Is the mayor of a third class city authorized to appoint members of the sanitary board of such city?"

In regard to this question your attention is directed to Section 48-4301 and sections following, Burns' Indiana Statutes, 1933 Revision, which provide for the construction and operation of sewage disposal plants. Section 48-4302, Burns' Indiana Statutes, 1933 Revision, contains the following provision:

"The construction, acquisition, improvement, equipment, custody, operation and maintenance of any such