Mr. James E. McCart  
Assistant Commissioner  
Department of Correction  
804 State Office Building  
Indianapolis 4, Indiana

Dear Mr. McCart:

This is in reply to your request for an Official Opinion on the following questions:

"#1. Does the Indiana Boys' School retain jurisdiction over the case of a juvenile, who, while on runaway from the institution, is arrested for a new offense and tried in an adult court. This charge could conceivably be either a misdemeanor or felony.

"#2. If the above mentioned runaway, after being waived to Criminal Court, is he eligible to post bond. If he is permitted to post bond, would the Indiana Boys' School have legal authority to return him to the Boys' School during this waiting period.

"#3. If the above mentioned runaway receives a sentence in an adult or Criminal Court, would this be tantamount to a discharge as a juvenile offender or could he be returned to the Indiana Boys' School after completing his adult sentence.

"#4. When a juvenile prior to his eighteenth birthday is waived by the Juvenile Court to an adult authority, is this tantamount to the waiving of his right to be incarcerated or tried as a juvenile."

Your first three questions all concern one who has run away from the Indiana Boys' School after having been committed to the guardianship of said institution. The Indiana Boys' School is, by the Acts of 1867, Ch. 67, Sec. 10, as amended, as found in Burns' (1956 Repl.), Section 13-910, authorized "to receive into its care and guardianship infants between the ages of seven [7] and eighteen [18] years, committed to its custody." The Acts of 1883, Ch. 18, Sec. 8½, as added by the Acts of 1945, Ch. 262, Sec. 2, as found in Burns'
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(1956 Repl.), Section 13-914a, in part says of the Indiana Boys’ School that:

“* * * no commitment shall be for a shorter period than until the boy shall attain the age of twenty-one [21] years * * *”

However, the statutory form of commitment set out in the 1883 Act and in Burns’ (1956 Repl.), Section 13-916, reads “until he attains the age of twenty-one [21] years, or until he is legally discharged by the board of control.” Running away is not a statutory legal discharge.

A boy under sixteen [16] years of age may, under Acts of 1903, Ch. 142, as found in Burns’ (1956 Repl.), Section 13-915, be sentenced by a court of criminal jurisdiction to custody of the Department of Correction (as present recipient of powers formerly granted the board of managers of the Indiana Boys’ School) to be confined in the Indiana Boys’ School, subject to transfer. Nevertheless, this provision is largely superseded by the Juvenile Court Act and it is here assumed that the hypothetical runaway juvenile referred to in your questions was committed by a court of juvenile jurisdiction as a delinquent, dependent or neglected child under the Acts of 1945, Ch. 356, as found in Burns’ (1956 Repl., 1962 Supp.), Section 9-3201 et seq., and that such commitment was “to the custody and control of the superintendent of the Indiana Boys’ School” pursuant to the Acts of 1953, Ch. 266, as set out in Burns’ (1956 Repl.), Section 13-1523.

It should be here noted that the general statute under which juvenile courts were established, being Acts of 1945, Ch. 356, states its purpose in Section 1 thereof, as found in Burns’ (1956 Repl.), Section 9-3201, thus:

“The purpose of this act is to secure for each child within its provisions such care, guidance and control, preferably in his own home, as will serve the child’s welfare and the best interests of the state; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents.

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"The principle is hereby recognized that children under the jurisdiction of the court are subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them."

In construing an earlier juvenile court act, our Appellate Court said in Dinson v. Drosta (1907), 39 Ind. App. 432, 434, 80 N. E. 32, that:

"The power conferred upon the juvenile court under this act is of the same character as the jurisdiction exercised by courts of chancery over the person and property of infants, and flows from the general power and duty of the state parens patriae to protect those who have no other lawful protector."

In addition to provisions of the act relating to the power of a juvenile court to commit delinquent, dependent and neglected children to any state institution, it should be noted that statutes relating to the Indiana Boys' School authorize courts to commit an infant to its care and custody, by Burns' 13-910, supra, because "by reason of incorrigible or vicious conduct, such infant has rendered his control beyond the power" of his parents or guardian or because "such parent or guardian is incapable or unwilling to exercise the proper care or discipline over" an incorrigible or vicious infant or because the infant is "destitute of a suitable home and of adequate means of obtaining an honest living, or is in danger of being brought up to lead an idle and immoral life."

From the foregoing, it is apparent that the state Legislature provided for commitment to the Indiana Boys' School under the doctrine of parens patriae no less than when it provided for submission of juveniles to the jurisdiction of juvenile court as delinquent, dependent and neglected children.


One of the leading cases interpreting juvenile statutes of this type is Commonwealth v. Fisher (1905), 213 Pa. 48, 62 Atl. 198, wherein it is said:

"* * * Every statute which is designed to give protection, care and training to children, as a needed substitute for parental authority and performance of parental duty, is but a recognition of the duty of the state, as the legitimate guardian and protector of children where other guardianship fails * * *"

In 1946 O. A. G., page 95, No. 29, at pages 96 to 98, it is said:

"Under the provisions of the Juvenile Act, however, when a child is committed to the Boys' or Girls' School, said child becomes a ward of the State. Under our law, the guardian ever after his appointment is entitled to the child's custody as against any other person * * *

"This is a right which the guardian can enforce [by] habeas corpus.

"* * *

"* * * the ward * * * has no power to change his domicile by running away from his guardian * * *

"The appellant, as guardian, was entitled to have charge of this minor in order to enable him to provide for his protection, maintenance and education."

Courts exercise jurisdiction rather than institutions and, under Acts of 1945, Ch. 356, Sec. 7, as set out in Burns' (1956 Repl.), Section 9-3207, it is said:

"When jurisdiction shall have been obtained by the 'court' in the case of any child, such child shall continue under the jurisdiction of the court until he becomes twenty-one [21] years of age unless discharged prior thereto or is committed to a correctional or other state institution. A person subject to the jurisdiction of the juvenile court under this act may be brought before it by either of the following means and no other:

"(a) By petition praying that the person be adjudged delinquent or dependent or neglected;"
"(b) Certification and transfer from any other court before which any such person is brought charged with the commission of a crime."

The relationship of Indiana Boys' School to the boys committed there is not one of jurisdiction but of guardianship. By the terms of the commitment, this relationship continues until the person committed is twenty-one [21] years of age or legally discharged by the board of control, and neither running away nor arrest is, by statute, a legal discharge by the board of control of the institution.

Under our present statutes, courts of criminal jurisdiction are required to transfer criminal charges (except capital offenses and certain violations of traffic laws) against persons under eighteen [18] years of age to the juvenile court; however, the judge of juvenile court is empowered to waive jurisdiction if the child is fifteen [15] years of age or over and may fix a recognizance bond at the time of the waiver.

See: Acts of 1945, Ch. 356, as found in Burns' (1956 Repl.), Section 9-3213 and Burns' (1962 Supp.), Section 9-3214.

There is not, in Burns' 9-3213, supra, relating to criminal court jurisdiction of juveniles, any distinction made between criminal charges as felonies or misdemeanors, but rather as being capital offenses, violations of traffic laws and other charges of crime.

Therefore, it is my opinion that the answer to your first question is that the Indiana Boys' School has not "jurisdiction" over a juvenile runaway, but that it continues to be guardian of such runaway until twenty-one [21] years of age or legally discharged by the board of control of the institution, even though such juvenile may be arrested on a criminal charge and tried on such charge as an adult.

By Burns' 9-3214, supra, recognizance bond may be set for the juvenile and, if he posts such bond, he is entitled to be discharged from custody on the criminal charge. However, admittance to bail on a criminal charge has no application to the guardian's right of custody in loco parentis.
The Acts of 1883, Ch. 18, as found in Burns' (1956 Repl.), Section 13-921, provides for rules under which boys, for whatever cause committed to the Indiana Boys' School, "may at any time, be discharged or released on trial" and further provides that, in the event a boy is released on trial:

"* * * It shall be the duty of the superintendent to recall any boy who may not be conducting himself properly, or any boy who may not have a suitable home."

Therefore, in answer to your second question, it is my opinion that, if one under twenty-one (21) years of age who has not been legally discharged from guardianship of the Indiana Boys' School should post bond on a criminal charge, the superintendent of such institution would not only have authority but the duty to return such person to the Indiana Boys' School while released from custody on the criminal charge.

In addition to the above-referred to provisions of Burns' 13-921, supra, whereby the board of control may provide for discharge of boys committed to the Indiana Boys' School, the Acts of 1913, Ch. 305, as found in Burns' (1956 Repl.), Section 13-923, provides for discharge at the age of eighteen (18) years within the discretion of the board of control and the Acts of 1867, Ch. 67, Sec. 22, as found in Burns' (1956 Repl.), Section 13-928, specifies a procedure by which a person in the position of parent, close relative, protector or guardian-in-fact of one committed to the Indiana Boys' School may secure the legal discharge of an infant from such institution. There is no other statutory provision by which a boy may be legally discharged from the Indiana Boys' School.

It has been said many times that expressio unius est exclusio alterius, which is to say "the expression of one thing is the exclusion of another." By failing to provide that conviction of crime (or any of its incidents such as a sentence to a penal institution) constitutes a legal discharge from the Indiana Boys' School, it follows that the Legislature did not intend it should be such a discharge.

However, your third question is primarily an administrative matter inasmuch as the Department of Correction now
exercises powers and duties formerly conferred upon boards of trustees of the various state penal and correctional institutions, according to the provisions of the Acts of 1953, Ch. 266, Sec. 23, as found in Burns' (1956 Repl.), Section 13-1523.

Nevertheless, in consideration of your third question, it is my opinion that, if one committed to the Indiana Boys' School should not be twenty-one (21) years of age or legally discharged by the board of control of such school when sentenced as an adult criminal, or when such sentence is discharged either by completion of the sentence or otherwise, the Indiana Boys' School would still be entitled to exercise its right to care and guardianship of such infant and would have a legal right to return him to such school.

Although the case of a juvenile may be waived to criminal court when such juvenile is between the ages of fifteen [15] and eighteen [18] years of age, jurisdiction waived is of the case rather than of the child and, in the absence of statutory provisions to the contrary, it is my opinion that a juvenile court is not bound by such waiver in any other case involving the same child, but trial of a child over the age of fifteen [15] years by a juvenile court is a matter of discretion rather than of right.

It is therefore my opinion that a juvenile court may exercise jurisdiction in the case of a child even though a juvenile court may previously have waived jurisdiction of another case involving such child, and such is my answer to your fourth question.

OFFICIAL OPINION NO. 65

November 14, 1962

Dr. James B. Kessler, Resident Director
Commission on State Tax and Financing Policy
1008 State Office Building
Indianapolis 4, Indiana

Dear Dr. Kessler:

This is in response to your request for my Official Opinion concerning the question of whether the Acts of 1905, Ch. 129, Sec. 53, as found in Burns' (1950 Repl.), Section 48-1407,