Mr. Kenneth M. Kunkel, Director,
Indiana Department of Conservation,
311 West Washington Street,
Indianapolis, Indiana.

Dear Sir:

I have your letter of June 21, 1950 which reads as follows:

"The Division of Forestry of the Indiana Department of Conservation owns and operates approximately 95,000 acres of forestry lands. As a normal result of forestry activities there are available for sale such products as logs, posts, pilings, fuel wood, ties, Christmas trees and standing timber. It is necessary that this produce be harvested in order that the forest may be developed in the best possible manner. The sale of forest products has been conducted by the Division of Forestry for 45 years. These sales are made after public notice and upon the receipt of sealed bids."

"In 1947 the Indiana General Assembly by Chapter 279 created the Division of Public Works and Supply. Section 5 (8) of that Act provides that the Director of Public Works and Supply shall have the power to sell to outside purchasers any supplies, materials or equipment which are surplus, obsolete and unused, in the manner provided in the act."

"May I have your opinion as to whether forest products of a similar nature as to those set out above should be sold through the Division of Public Works and Supply or as in the past, by the Division of Forestry of the Indiana Department of Conservation."

In order to determine whether or not the section of the Financial Reorganization Act referred to by you applies to the sale of forest products it is necessary to examine the statutes creating the Forestry Division of the Indiana Department of Conservation and to compare said statutes with the Reorganization Act.
The State Board of Forestry was created by an act of the Legislature in 1901 (Acts 1901, Chapter 49, page 62). In 1903 the Legislature authorized the Board to purchase two thousand acres for a state forest and to manage the same. By section 4 of that act it was provided that income derived from the sale of timber should be paid into the general fund (Acts 1903, Chapter 44, page 111). In 1919 the Legislature created "the Department of Conservation" and transferred to it all the powers and duties previously conferred upon the State Board of Forestry (Acts 1919, Chapter 60; Burns Indiana Statutes Annotated, Sections 60-701 and 60-726. In 1925 the State Forestry Fund was created and the statute provided that the income derived from the sale of products of state forest lands should be covered into and constitute a part of the state forestry funds (Acts 1925, Chapter 79; Burns Indiana Statutes Annotated, Sections 32-401 and 32-403). It is from the above cited statutes that the Division of Forestry of the Indiana Department of Conservation derives its authority to sell products of the state forest lands.

The section of the Financial Reorganization Act which authorizes the Director of Public Works and Supply to sell or transfer state property reads as follows:

"To sell or transfer to or between state agencies any supplies, materials, or equipment which are surplus, obsolete or unused; or to sell the same to outside purchasers in the manner hereinafter provided; and to make and authorize in all cases proper adjustments in the accounts and inventory pertaining to the state agencies concerned." (Acts 1947, Chapter 279, Sec. 5 (8), Burns Indiana Statutes Annotated Sec. 60-1805 (8).)

In order to determine whether or not the sale of forest products is controlled by this section of the act it is necessary to determine whether these products are included within the phase "supplies, materials and equipment" as follows:

"The terms 'supplies', 'materials', 'equipment', and 'services' as used herein shall mean and include any and all articles and things, and all services other than personal, used by or furnished to, any department
or agency of the state government including printing, binding, publication of books and records, repairs and improvements, utility services, and any and all other services required for the maintenance, operation or upkeep of buildings and offices. The enumeration of the things specified in this section shall not be deemed exclusive.” (Acts 1947, Chapter 279, Sec. 1 (c) Burns Indiana Statutes Annotated, Sec. 60-1801 (c).)

It is apparent that the above definition does not specifically embrace within its terms those products which are the result of forest management.

The Financial Reorganization Act further provides in Section 5 (9) and 5 (10) as follows:

(9) "To co-ordinate and supervise all penal industries and state farms operated by the several state institutions with the cooperation of the superintendents of such institutions; and to establish rules governing the sale and distribution of articles manufactured by the prison industries, crops and livestock, produced on all state farms, and the loan or transfer of equipment and other property, including livestock, from one institution to another, in order to insure maximum utilization of such equipment or property."

(10) "To provide for the billing of articles produced by the industries and farms of all institutions and the collection of the sale price thereof; such sales expenses to be borne out of funds received from sales in proportion to the amount of sales of such articles sold from the separate institutions; the clearing of all sales from said industries and farms shall be through said Director; further, to provide that in the event any of the other state institutions shall, in the operation of its farms, produce products or commodities in excess of the needs of the institution, then such surplus shall be sold through the Division of Public Works and Supply, and the proceeds of any such sales shall be deposited in the state treasury and credited to the Institutional Rotary Fund hereinafter established.” (Acts 1947, Chapter 279, Sec. 5 (9) and 5 (10) Burns Ind. Stat. Anno. Sec. 60-1805 (9) and (10).
You will note that Sec. 5 (9) refers to "penal industries and state farms operated by the several state institutions". The state forests, of course, are not "penal industries or farms". It would further seem from the use of the words "prison industries", "penal industries" and "state farms" that the Legislature intended the words "state institutions" and "institutions" to have their common usage as educational, benevolent and correctional institutions. (See Unofficial Opinion to Lytle J. Freehafer, Director of the Budget, dated March 31, 1949).

It is a rule of statutory construction that words in a statute are to be taken and accepted in their popular and ordinary sense and meaning unless it appears that they were used in a particular or technical sense.

Boyer v. State (1908), 169 Ind. 691, 83 N. E. 350;

If a general application of the above section had been intended then the Legislature would have used the comprehensive terms "agencies of the State", "agency" or "agencies" as provided in Sec. 1 (b) rather than the specific terms "institutions" and "state institutions".

The above reasoning is equally valid in regard to Sec. 5 (10) of the Act.

As pointed out in the first paragraph of your letter, the Division of Forestry has been, under the applicable laws, conducting sales of the products in question for a period of 45 years.

The Legislature is presumed to pass all laws with deliberation and with full knowledge of all existing ones on the same subject.

Lewis' Sutherland Statutory Construction Vol. 1, Sec. 267 P. 510;
Marks v. State 1942 220 Ind. 9, 40 N. E. (2d) 108 111.
If the Legislature had intended a repeal of the statutes regarding forestry products then such an intention should have been expressed in clear and unambiguous language. There is a rule of statutory construction, well established in Indiana, to the effect that if a general statute on a subject does not contain an express repealing clause, such statute will not ordinarily repeal a prior special statute on the same subject, but both statutes remain in force and are to be considered together.

Morris v. State *ex rel.* Brown (1884), 96 Ind. 597;
Walter v. State (1886), 105 Ind. 589, 5 N. E. 735;
Straus Bros. Co. v. Fisher (1928), 200 Ind. 307, 163 N. E. 225;
Gaddis v. Board of County Comrs. (1932), 93 App. 658, 179 N. E. 279;

In a practical appraisal of the unique and isolated problems arising in the operation of the Forestry Division of the State, and with a full consideration of the aforequoted sections of the Financial Reorganization Act and the applicable rules of statutory construction, it compels my opinion that the intention of the Legislature in the enactment of the Act, was that it not apply to the sale of forest products by the Forestry Division of the Indiana Department of Conservation.

OFFICIAL OPINION NO. 43

August 8, 1950.

Bernard E. Doyle, Chairman,
Indiana Alcoholic Beverage Commission,
201 Illinois Building,
Indianapolis, Indiana.

Dear Sir:

We have your request for an official opinion which reads as follows:

"The Alcoholic Beverage Commission desires your official opinion, in regard to Wine Wholesaler permits,