of engineers of the United States Army or any federal agency, or by cooperation with the cities and towns of the State. The Commission is also given the right of eminent domain, in Section 14, whenever it is necessary in its opinion to purchase lands or easements to carry out its purposes. It is my opinion that the purposes for which the Commission is given the right to purchase land or to exercise its right of eminent domain should be limited to those instances wherein it is necessary to have a permanent type of control over the land and particularly where flood control works are to be constructed. I do not believe that this right was intended to be extended to Section 18 where the floodway may be changed or altered or terminated merely upon notice of the Commission.

In conclusion, the Commission may stop unlawful practices either through injunctive relief or by condemnation and it needs to obtain title only to such land as it proposed to use permanently in its flood control projects.

OFFICIAL OPINION No. 108
November 9, 1949.

Mr. Fred W. Hoffmark
Securities Commissioner
Office of the Secretary of State
State House
Indianapolis, Indiana

Dear Sir:

I have your letter of August 18, 1949, which reads in part as follows:

"Your official opinion is hereby requested in reference to the following:

" 'Must a person (as defined in Section 3 (b) of the Indiana Securities Law) having no place of business in the State of Indiana and who does not confine its sales or offers to sell securities exclusively to dealers, and is engaged either for all or part of its time directly or indirectly as principal or agent in the business of
offering, buying, selling or otherwise dealing or trading in securities, and thus comes within the definition of a dealer as set out in Section 3 (d) of the Indiana Securities Law, register as a dealer for the purpose of engaging exclusively in any one or more of the exempt transactions defined in Section 5 of the Indiana Securities Law?" (The Securities Law herein referred to is Chapter 120, Acts of 1937 as amended by Chapter 30, Acts of 1941, Chapter 35, Acts of 1947 and Chapter 239, Acts of 1949.)"

To properly answer the question presented in your letter it is necessary to consider other portions of the Indiana Securities Law and, therefore, I call your attention to the following portions of the Act which I consider pertinent in the decision of this matter.

Burns' 25-831 (Sub-section d) :

"The term 'dealer' shall mean any person other than an agent as defined in this act who in this state engages either for all or part of his time, directly or indirectly, as principal or agent, in the business of offering, buying, selling or otherwise dealing or trading in securities. An issuer of securities selling such securities in this state shall be deemed to be a dealer: Provided, That the term 'dealer' shall not include a person having no place of business in this state who sells or offers to sell securities exclusively to dealers actually engaged in buying and selling securities as a business."

Burns' 25-832:

"Except as hereinafter otherwise expressly provided, the provisions of this act shall not apply to any of the following classes of securities: * * *" (Then follows a list of certain type securities.)

Burns' 25-833:

"Except as hereinafter expressly provided, the provisions of this act shall not apply to the sale of any security in any of the following transactions: * * *." (Here follow some thirteen specifically enumerated types of transactions.)
Burns’ 25-834:

“No securities, except such securities as are exempt under the provisions of sec. 4 (§ 25-832) of this act, or unless sold in any transaction exempt under the provisions of sec. 5 (§ 25-833) of this act, shall be sold within this state, unless and until such securities shall have been registered by qualification as hereinafter provided: * * *.”

Burns’ 25-839:

“No dealer or agent shall engage in business in this state as such dealer or agent or sell any securities including securities exempted in sec. 4 (§ 25-832), unless such dealer or agent has been registered in the office of the commission pursuant to the provisions of this section: * * *.”

Burns’ 25-846:

“Whenever it shall appear to the commission, either upon complaint or otherwise, that in the issuance, sale, purchase, promotion, negotiation, advertisement, or distribution of any securities within this state, including any security exempted under the provisions of section four (§ 25-832) of this act, and including any transaction exempted under the provisions of section five (§ 25-833) of this act, any person, as defined in this act: * * *

“* * *.

“(e) Or that any person is acting as dealer or agent within this state without being duly registered as such dealer or agent as provided in this act.

“The commission may investigate and whenever it shall believe from evidence satisfactory to it:

“* * *.

“(2) Or is selling or offering for sale any securities in violation of this act or is acting as a dealer or agent without being duly registered as provided in this act * * *.” (Our emphasis.)
In the remainder of this Section the Commission in connection with the foregoing provisions is given the power to issue cease and desist orders and in addition to any other remedy is specifically given the right to bring an action to enjoin any person from continuing any such prohibited practices.

Burns' 25-849:

"(a) Whoever engages in the business of selling or causing to be sold, or offering for sale or causing to be offered for sale, any security in this state without being registered as a dealer or agent under the provisions of section 11 (§ 25-839) of this act, shall be deemed guilty of a violation of this act, and upon conviction thereof may be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or may be imprisoned in the county jail or state penal farm for any determinate period not exceeding one (1) year and fined in any sum not exceeding five hundred dollars ($500), or may be fined in any sum not more than two thousand dollars ($2,000).

"(b) Whoever shall sell or cause to be sold, or offer to sell or cause to be offered for sale, any security in this state which shall not have been registered as provided in this act, except such securities as are exempt under section four (§ 25-832) or unless sold in any transaction exempt under section five (§ 25-833) of this act, shall be guilty of a violation of this act, and upon conviction thereof may be imprisoned in the state prison for a period of not less than one (1) nor more than five (5) years, or may be imprisoned in the county jail or state penal farm for any determinate period not exceeding one (1) year and fined in any sum not exceeding five hundred dollars ($500), or may be fined in any sum not more than two thousand dollars ($2,000)."

I consider the following rules of statutory construction applicable in a proper interpretation of the above quoted sections of the Indiana Securities Act. The paramount rule of
judicial interpretation of statutes is that a statute is to be interpreted according to the legislative intent.

State ex rel. Fox v. Board of Commissioners of Carroll County (1931), 203 Ind. 23;
State ex rel. O'Donnell v. Flickinger (1937), 211 Ind. 361.

Together with the legislative intent of a statute one must examine the Act as a whole and each part thereof must be given effect and harmonized if possible.

Chicago and Calumet District Transit Co. v. Mueller (1938), 213 Ind. 530;
Kryder v. State (1938), 214 Ind. 419;

To ascertain the intention in enacting any particular section of an Act all the sections and provisions of the Act should be construed together.

State ex rel. Neal v. Beal (1916), 185 Ind. 192;
May v. Hoover (1887), 112 Ind. 455;
Walgreen v. Gross Income Tax Division (1947), 75 N. E. (2) 784.

Before applying the above rules to the particular portions of the Act I point out that this Security Act deals with two main phases—(1) The registration of securities as such and (2) the registration and control of those persons who are in the business of dealing in securities. Penalties are provided to cover violations in both phases. Sections 832 and 833 set forth certain exemptions from the terms of the Act. The next section provides for the registration of all securities except those mentioned in Sections 832 and 833. This seems to indicate that the language “exempt from the provisions of this act” was meant to apply to securities rather than to those who deal in securities.

Passing then to the provision concerning those who deal in securities I find that in Section 839 all dealers who engage in business in this State as dealers must be registered and specifically the registration requirement is extended to the dealing in securities that are exempted from securities registration by Section 832.
I note that no specific mention is made in this registration section of the exempted transactions in Section 833. However, the language "any securities including securities exempted by Section 832" seems sufficiently broad to cover securities that might be involved in any of the transactions mentioned in Section 833.

To further clarify the meaning of this registration section, I call attention to the next cited sections pertaining to fraudulent practices and penalties for violations of the Act. The first specifically makes it a violation of the Act for any person to act as a dealer without being registered (in sales of securities—including those exempted in Section 832 and including transactions exempted in 833). Any such action is subject to a cease and desist order by the Commission and to injunction proceedings. The latter provides possible fine and imprisonment upon conviction for (1) whoever engages in the business of selling any securities without being duly registered in accordance with Section 839 and (2) the selling of securities which are not registered (with the exception of those securities exempted in Sections 832 and 833). It would certainly be an anomaly to say that one is not required to be registered but if he is not so registered he is subject to possible fine and imprisonment.

In applying the above rules of construction to this Act and upon the above reasoning it is my opinion that your question should be answered in the affirmative.

To further fortify this position, if so needed, I rely upon the well established rule that a practical construction given to a statute, and long acted upon and acquiesced in, is equivalent to positive law.

Board of Commissioners v. Bunting (1887), 111 Ind. 143.

This "Indiana Securities Act" was first enacted by the Legislature in 1937. It was the custom of the Securities Commission at that time and for several years thereafter to issue what was called "releases" which were administrative determinations or interpretations of the Act for the guidance of those dealing with the same. In a release dated January 1, 1940, the Commission "to eliminate the confusion in the
minds of those effected by the Act" ruled that dealers must be registered to engage in the selling of securities in the transactions enumerated in Section 833. Again, in another "release" the Commission ruled that "dealers' control" extends to those engaged in activities under both Sections 832 and 833.


Although the above referred to "releases" are not now legally effective as rules and regulations, it is my understanding that such interpretation has been followed and acted upon by the various commissions since that time.

In closing I wish to refer to that portion of your letter which mentions an opinion of this office issued January 6, 1948:

"We realize that the opinion of the Attorney General dated January 6, 1948, related to a single security transaction. In fact the letter of this Commission requesting that opinion cited the fact that an out of state dealer proposed to offer a single issue of mortgage bonds to institutions set out in Section 5 (f) of the Act. The question before the Commission at the present time has to do with an out of state dealer who proposes to offer and sell stocks and bonds, new and old issues, in large blocks to institutions located within the State of Indiana."

I wish to state in clarification that the language of the above referred to opinion is more comprehensive than was necessary to decide the particular situation presented and should be limited accordingly to such circumstances.

HVV:vb:ar