preservation of natural resources, the protection of wild life and the support of the activities of the Department of Conservation and owning and operating property which is exclusively used and set aside for such purposes may properly be held exempt from property tax thereon upon proper application duly made and filed with the County Auditor pursuant to law; (2) intangible property owned by or held for the use and benefit of such organization is not taxable under the intangible tax law of this State; and (3) contributions, tuition fees, initiation fees, matriculation fees, membership fees and earnings on or receipts from sales of intangible property by such an organization are exempt from gross income tax, but all other receipts of such organization are subject to gross income tax.

A final note of caution should be added, that this opinion should be limited to the facts assumed and not applied as a general rule of law to all conservation clubs.

OFFICIAL OPINION NO. 38

July 14, 1947.

Hon. Kenneth A. Weddle,
Securities Commissioner,
201 State House,
Indianapolis, Indiana.

Dear Mr. Weddle:

This will acknowledge receipt of your letter of June 17, 1947, in which you submit the following question:

> "Your official opinion be and is hereby respectfully requested in reference to Section 5 (h) of the Indiana Securities Act as amended by the Acts of the General Assembly for the year 1947 which in said amendment form, reads as follows: 'the sale and issuance of securities of a corporation, the stock of which is closely held, sold or distributed by it exclusively among its own stockholders, where no commission or other remuneration is paid or given, directly or indirectly, in connection with the sale or distribution of such secur-

> ities, if the Commission determines and certifies in writing that such stock is closely held.'
>
> "Pursuant to the above quoted section, your opinion is respectfully requested as to the following question:
>
> "1. Would the sale of stock by an issuer to its employees, regardless as to the amount of stock or number of employees, who at the time of sale are classified as stockholders of the issuer, where no commission or other remuneration is paid or given, in connection with the sale or distribution of said securities constitute an exempt transaction within the meaning of the provisions of said Section 5 (h) as hereinabove quoted in said Act."

The Act that you refer to is Chapter 35 of the Acts of 1947, approved February 25, 1947.

The unregulated sale or distribution of stock by an employer to an employee with the right of the employee to again sell the stock to others could be, and perhaps would be, an indirect way of avoiding regulation. Whether or not stock is "closely held" is a question of fact for the Commission to decide. The governing rule or yardstick is the meaning of the phrase "closely held." I am unable to find a court decision wherein this particular phrase has been defined, but I have found several decisions wherein the phrase "closed corporation" and "closely held" are used interchangeably in such a way as to denote that they are synonymous.

> In re Jones' Estate (1925), 23 Ohio App. 74, 155 N. E. 395;
> Tax Commission v. Clark (1926), 20 Ohio App. 166, 151 N. E. 780.

The term "closed corporation" was discussed in the case of Brooks v. Willcuts (1935), 78 F. (2) 270 in which the court used the following language:

> "* * * We are of opinion that the term 'close corporation,' as used in the regulation, was not used in the sense in which the term is used in the law of England, where it means a corporation which fills its own vacancies, or in which the power of voting is

held perforce manipulation under fixed and well-nigh perpetual proxies. McKim v. Odom, 3 Bland (Md.) 407. It seems rather plain that the regulations used the term in no technical sense, but in accord with the popular, or venacular, understanding. This understanding is strongly indicated, or illustrated by broad inference, in an expression by Mr. Chief Justice Hughes, in the late case of The Thomas Barlum, 293 U. S. 21, 55 S. Ct. 31, 32, 79 L. Ed. 176, where it is said that: 'the mortgagor (a corporation), at the time the mortgages were executed, was a close corporation, about four-fifths of its shares being owned by John J. Barlum.'

"In other words, a 'close corporation' means, in the venacular, a corporation in which the stock is held in few hands, or in few families, and wherein it is not at all, or only rarely, dealt in by buying or selling. It seems fairly plain that the regulation would subserve no practical purpose if it should be held that the term 'close corporation' is used therein in its technical, legal sense. But when it is considered that the Treasury Department by the use of the term was seeking a way to fix the value of stocks which were not listed on the stock exchanges, and in which there had not been within a reasonable period near decedent's death any dealings, it was driven ex necessitate to use a term from the common understanding to designate generally a class to which other regulations did not apply. * * *."

In the case of Lovell v. Smith (1936), 169 Sou. 280 at 286, 232 Ala. 626, the court said at page 633 that the definition of a closed corporation is "where the major part of the persons to whom the corporate powers have been granted, on the happening of vacancies among them, have the right of themselves to appoint others to fill such vacancies, without allowing to the inhabitants or corporators, in general, any vote or choice in the selection of such new officers."

In the case of People v. Yant (1938), Words and Phrases, Vol. 7, page 499, 26 Cal. App. (2) 725, 80 Pac. (2) 506, 509, it was said:

> "A petroleum corporation holding permit to sell stock for cash to its own officers, which had no authority to sell and did not sell stock to the public, was what is commonly known as a 'closed corporation'.

Nor would the ownership of a large amount of common stock by the directors sufficient to control the corporation under ordinary circumstances convert defendant into a closed corporation, was the opinion of the court in the case of Birmingham Bond & Mortgage Co. v. Lovell (1936), 81 Fed. (2) 590.

It appeared in this case that the voting power was inherent in the holders of the common stock and the fact that the directors acquired the majority thereof was held by the court not sufficient to constitute it a closed corporation.

In view of the purpose for which the Securities Act was created, to-wit, "to the end that practice of (or) commission of fraud in the barter, sale, transfer or disposition of securities in this state may be prohibited and prevented," it is my opinion that the legal or technical meaning of the term "closed corporation" as defined by the courts herein should be accepted.

It is, therefore, my opinion that the language of Section 5 of Chapter 35 of the Acts of 1947 on the definition given to the term "closed corporation" by the courts, as herein set out, requires that your question be answered in the negative.