March 18, 1946.

Hon. Milton Matter, Director,
Indiana Department of Conservation,
140 North Senate Avenue,
Indianapolis, Indiana.

Dear Mr. Matter:

I have before me your request for an official opinion upon the following questions:

"1. Kindly furnish me with an official opinion on whether or not it is lawful for an owner of dogs to pursue raccoon or other furbearing animals during the closed season as such season is defined by Section 1 of Acts of 1943, ch. 48, p. 110.

"2. Also has the Department of Conservation power under Article V, Section 141 to 148 of the Acts of 1937, ch. 21, p. 64 and Acts of 1945, ch. 120, p. 250, to issue rules, regulations or discretionary orders which would enlarge or extend the statutory closed season, or which would except from its provisions the chasing or 'pursuing' of raccoon or other furbearing animals?"

In answering your first question reference must be made to Chapter 48, Section 1, p. 110 of the Acts of 1943, Burns' 1942 Repl. Section 11-1529 (Pocket Supp.), which is as follows:

"It shall be unlawful for any person to hunt, shoot, kill, trap, capture, pursue, or posses any raccoon, opossum, skunk, mink, or muskrat, or possess the untanned hide or fur thereof in the state of Indiana from 12:00 noon on the fifteenth day of January to 12:00 noon on the fifteenth day of November, of any year, both dates inclusive, except as in this Act otherwise provided.

"(b) Any trapper may possess any raccoon, opossum, skunk, mink or muskrat, or the untanned hide or fur thereof, lawfully taken in open season, for a
period of five (5) days after the last day of the open season. Licensed fur buyers may possess untanned hides or furs or furbearing animals protected by this act and taken in open season for a period of sixty (60) days after the last day of open season, and for a longer period to be prescribed by the director upon submission of a full report giving species, number, and place furs are kept.

“(c) It shall be unlawful for any person for a period of fifteen (15) days prior to the open season on raccoon to run or chase any raccoon or any other fur-bearing animal protected by this act with or by use of dogs or to permit his dog or dogs to chase or run any such fur-bearing animals between the hours of sunset and sunrise.

“(d) It shall be unlawful for any person to make any set or place any trap or any part thereof including stake, chain, or drag designed to take or catch any fur-bearing animal protected by this act before noon of November fifteenth. Proof that any part of any trap, including trap itself, stake, chain, or drag, was placed before noon of November fifteenth shall be deemed prima facie evidence of a violation of this section.

“(e) It shall be unlawful for any person to take, catch or capture or attempt to take, catch or capture any fur-bearing animal by means of a wire trap, or a stove pipe box trap.

“(f) It shall be unlawful for any person to tend or visit any trap or remove any fur-bearing animal from any trap not his own property.”

From the foregoing statute it is apparent that the Legislature was first providing for a closed season on the hunting of certain furbearing animals, including raccoons. By the first sentence of the statute the Legislature provided that it shall be unlawful for any person to hunt, shoot, kill, trap, capture, pursue, and possess any raccoon from January 15 to November 15 of any year, except as in the Act otherwise provided. While the first sentence of the Act prohibits
the *pursuing* of any raccoon during the closed season, it does not expressly prohibit the running or chasing of raccoons with dogs.

Subsection (c) of the Act expressly provides that it shall be unlawful for any person for a period of fifteen days prior to the open season on raccoons to run or chase them with or by use of dogs, or to permit his dog or dogs to chase or run any raccoon between the hours of sunset and sunrise. In view of the fact that this subsection only makes it unlawful to run or chase raccoons with dogs fifteen days prior to the open season, this would imply that it is not unlawful to run or chase raccoons with dogs at any other time, unless such an activity would be expressly prohibited by the first sentence of the statute.

It has already been noted that the first sentence of the statute prohibits the *pursuing* of raccoons during the closed season, *except as in this act otherwise provided*. It seems clear that one of the exceptions intended to be made by the Legislature was that contained in subsection (c) which only prohibited the running or chasing of raccoons with dogs fifteen days prior to the beginning of the open season, and prohibited the owner of dog or dogs from permitting them to chase or run any such furbearing animals between the hours of sunset and sunrise during such period. If the first sentence of the Act would be construed to absolutely prohibit the running or chasing of raccoons with dogs during the closed season, then it would have been wholly unnecessary for the Legislature to have included subsection (c) in the above Act. (It makes it unlawful to pursue raccoons with dogs during the closed season fifteen days prior to the beginning of the open season.) It is a well settled principle of statutory construction that in construing a statute it is not to be presumed that any part thereof is intended to be meaningless, and every part of the statute must be considered in connection with the whole, so as to make all parts harmonious, if practicable, and give sensible and intelligent effect to each.

Lee Brothers, Inc., v. Jones *et al.* (1944), 114 Ind. App. 688, 702;
Indiana Creosoting Company v. McNutt, Governor *et al.* (1936), 210 Ind. 656, 667.
While subsection (c) of the above Act also prohibits any person from permitting his dog or dogs to chase or run any such furbearing animals between the hours of sunset and sunrise it is apparent that such prohibition applies only during the period of fifteen (15) days prior to the open season.

Based on the foregoing statute and authorities, it is my opinion that it is lawful for an owner of dogs to run or chase raccoons or other furbearing animals during the closed season, except for a period of fifteen days prior to the open season, and also except that the owner of dog or dogs shall not permit them to run or chase raccoons between sunset and sunrise during the fifteen day period before the open season.

In answering your second question reference must be made to Chapter 21, page 64 of the Acts of 1937; Burns’ 1942 Repl. Section 11-1701 through 11-1708. Section 11-1701 of Burns’ 1942 Repl. provides as follows:

"The open season for and the bag limits on fish, frogs, mussels, game, fur-bearing animals and game birds, and the regulations for taking or killing thereof, which are by this act or may hereafter be established by law, are hereby fixed and declared to be the lawful open seasons for and the bag limits on fish, frogs, mussels, game, fur-bearing animals, and game birds, and the regulations for taking or killing thereof, within the meaning and for the purposes of this act, except only as such open seasons may be suspended or abridged, or such bag limits modified or decreased, and the taking or killing thereof regulated in the manner and for the purposes hereinafter provided." (Our emphasis.)

Section 11-1702 of Burns’ 1942 Replacement provides as follows:

"The director of this state is hereby authorized and empowered, in accordance with the provisions of this act, to suspend or abridge the open seasons and to modify or decrease the bag limits otherwise provided by law for the taking, killing, hunting or pur-
suing of any particular kinds or species of fish, frogs, mussels, game, fur-bearing animals, or game birds in any designated waters or areas of this state, or to regulate the taking or killing thereof in said waters or areas, whenever he shall determine that such particular kinds or species of fish, game, or fur-bearing animals or game birds are threatened from any cause or causes with depletion or extermination in said waters or areas, or shall determine that such action is necessary for the proper protection or propagation of such kinds or species of fish, frogs, mussels, game, fur-bearing animals, or game birds in said waters, or areas. Such determination shall be made only after thorough investigation, and shall be based upon reliable data relative to the quantities of such particular kinds or species of fish, frogs, mussels, game, fur-bearing animals, or game birds, in such designated waters or areas, the volume of hunting and fishing practiced therein, and climatic, seasonal and other conditions affecting the protection, preservation and propagation of such particular kinds or species in such waters or areas.”

From the foregoing two sections it is apparent that the open seasons for hunting fur-bearing animals are those which are fixed by law, except only as such open seasons may be suspended or abridged by the director. It is further evident from the foregoing statutes that the director may only suspend or abridge the open seasons or regulate the taking or killing of fur-bearing animals when he shall determine that the fur-bearing animals are threatened with depletion or extermination. The only statutory power given to the director is to shorten the open season or to completely suspend it, and the Legislature has not expressly authorized him to enlarge the open season. It is also significant that the legislative history of this matter shows that the Legislature has consistently fixed the time for the open season. In view of these facts it would seem that a reasonable construction of the above statutes would be that the Legislature has prescribed the time for the closed season, and has only authorized the director to shorten or suspend the open season.
in order to protect the furbearing animals, but has not authorized the department or the director to extend the open season.

In order for the director to have the authority to enlarge or extend the statutory closed season, or to except from its provisions the chasing or pursuing of raccoons or other furbearing animals, there should be clear legislative authority to do so. (1933 Ind. O.A.G. p. 518).

In view of the fact that the Legislature has expressly fixed the date for the closed season, and has expressly prohibited the chasing or pursuing of raccoons or other furbearing animals during the closed season, it is my opinion that the department of conservation has no authority to issue rules, regulations or discretionary orders which would enlarge or extend the statutory closed season, or which would except from its provisions the chasing or pursuing of raccoons or other furbearing animals. As already noted in answering your first question, raccoons may be run or chased with dogs at any time except fifteen days before the open season and except that the owner of a dog or dogs shall not permit them to run or chase raccoons between the hours of sunset and sunrise.

OFFICIAL OPINION NO. 26
March 19, 1946.

Hon. T. C. Mullen, Secretary,
Board of Trustees of the
Northern Indiana Children’s Hospital,
Michigan City, Indiana.

Dear Sir:

I have your inquiry of February 28th, in which you make the following inquiry:

“I am writing you as secretary of the Board of Trustees of the Northern Indiana Children’s Hospital and at the direction of said Board to respectfully solicit your official opinion as to whether or not such Board