such articles as are made at the Indiana Reformatory, Indiana State Prison or Indiana State Farm until a written statement has been given them that such articles can not be furnished by any of the said institutions."

It is a familiar rule of statutory construction that a special act is not repealed by a later general act covering the same subject unless the general law contains a specific clause repealing the special act. See Million v. Metropolitan, etc., 95 Ind. App. 628-637;

Knox County, etc., v. State ex rel. McCormick, 217 Ind. 493-514.

For the reasons above stated, it is my opinion that Chapter 129, Acts of 1943, does not in any manner modify, repeal or affect the purchase and sale of products manufactured by the Indiana Penal Institutions, and that Burns’ R. S. 1933, Section 13-104 remains in full force and effect insofar as the purchase and sale of such products are concerned.

DEPARTMENT OF CONSERVATION: Strip Coal Mining.
Whether Department may enter into contract granting right to strip coal from lands in the State Forests.

May 27, 1943.

Hon. Hugh A. Barnhart, Director,
Department of Conservation,
140 North Senate Avenue,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your recent request which reads as follows:

"I would like to have an opinion on the right of the Conservation Department to grant the stripping of coal from lands in the state forests. We have a small amount of coal close to the surface which is suitable for stripping. Under the Acts of 1941, the operator who dug the coal would have to reforest the land following the completion of stripping."
The main question involved is one of statutory power.

It is settled law that any board or commission of the State has only such authority as is granted to it directly by some Act of the legislature, or, such authority as may be clearly implied from power granted.

This has been declared to be the law as to the Public Service Commissions, New York Central R. Co. v. Public Service Commission, 191 Ind. 627, and as to the county commissions, State ex rel. v. Hart et al., 144 Ind. 107, and with reference to Tax Boards, State Board v. Belt R. Co., 191 Ind. 282, and Gray v. Foster, 46 Ind. App. 149. The only power conferred directly on the Department of Conservation that has to do with coal or other minerals is that provided under the Division of Lands and Waters as follows:

"The department of conservation shall have the following powers, duties and authority:

"* * *

"10. To issue permits to any person, firm or corporation to take coal, sand, gravel, stone, gas, oil or other mineral or substance from or under the bed of any of the navigable waters of the state. In issuing any such permit said department shall ascertain, find and determine, and shall fix by such permit, the area within which it shall be lawful and to the best interests of the state to permit the taking by the permittee of such coal, sand, gravel, stone, gas, oil, or other mineral or substance, or either of them; and shall charge, collect and receive a fee of fifty dollars ($50.00) for each permit so issued; and shall ascertain, find and determine, and shall fix by said permit, and charge and collect from the permittee when due, in addition to said fee, the amount of the reasonable value of the coal, sand, gravel, stone, gas, oil, mineral or substance to be taken, measured by weight, cubic dimensions, or other common and usual measurement. * * *"

Then follows certain conditions that must be made a part of the permit.

Acts 1919, Sec. 18, Ch. 60, as amended in 1929;
Burns' Ind. St. Ann., Sec. 60-718.
It will be observed that the authority of your commission to allow persons or corporations to take coal from State controlled land is limited to the bed of the "navigable waters of the State." The 1919 statutes read, "from under the bed of any navigable stream or water course or from the bed of any lake wholly within the State." If there is any conclusion to be drawn from this provision, and the fact that it was amended and no other State land included, it is that the legislature intended to limit the Conservation Commission in giving permits to mine coal from State land to the land under navigable waters, otherwise the legislature in amending the Act would have included other State owned land.

In Burnett et al. v. Abbott, 51 Ind. 254, the question was whether the county commissioners could make a written contract for the boring of an oil well or sinking of a shaft for coal on the County Poor Farm land and bind the county to pay for the cost of the enterprise. The Supreme Court in that opinion said that it was aware of no statute that authorized county commissioners to enter into such a contract. The court further declared:

"Boring wells for oil, or sinking shafts for coal, either alone or in partnership with others, are enterprises beyond the functions and province of a board of county commissioners, and the board cannot bind the county to pay the expense of such works."

In the case of State ex rel. v. Hart et al., 144 Ind. 107, it appears that the county commissioners had deemed it advisable to rent a part of the courthouse to be used for private purposes. The Supreme Court said this could not be done because the powers of the Board of County Commissioners were created and defined by statute, and there was no statute conferring any such powers on the board. The court also observed in its opinion that a courthouse and the real estate on which it stands is public property held in trust for a public use and cannot lawfully be put to any other use.

Does the Conservation Commission have any general powers in conserving the resources of the State from which it might be implied that coal could be stripped from forest land belonging to the State? Section 7 of the 1919 Acts is as follows:
"The department of conservation shall have power to investigate, compile and disseminate information and make recommendations concerning the natural resources of the state and their conservation; including the drainage and reclamation of lands; flood prevention; development of water power; culture and preservation of forests; fish and game; the preservation of soils; the prevention of the waste (of) mineral resources; the prevention and methods of control or (of) plant diseases, infections and pests; the prevention and methods of control of bee diseases and the increased production of honey and the use of bee appliances; and such other questions or subjects as may be contemplated in this act; and shall have power to cooperate with the appropriate departments of the federal government in conducting topographical and other surveys, experiments or work of joint interest to the state and the federal government."

Burns’ 1933 Ind. St. Ann., Sec. 60-707.

In applying the above provision of the statute to the problem presented by your inquiry it must be kept in mind that the particular land involved is State forest land. It is not land held by the State in a proprietary capacity intended to be sold or disposed of in a commercial way as an individual or corporation might sell or lease land. It is a part of the State forest reserve to be held as such for the benefit of the people of the State. The statute provides that the land may be used "as a play ground for picnics and other meetings for the pleasure, health and enjoyment of the people." The Division of Forestry of the Conservation Commission has control of all State forest land, except the forests of the State parks which are under the Division of Land and Waters. Under Ch. 187 of the Acts of 1925, as amended in 1931, a tax is provided for a State Forestry fund. This may be used to buy land for forestry purposes, and for the growing of trees to be used for planting forests. Money from the sale of State forest land is to be kept in the Forestry fund.

Burns’ 1933 Ind. St. Ann., Secs. 32-401 to 32-403.
It might be inferred from this that the State can sell parts of the State forest, and also that the mineral under the land may be disposed of. This would be true if the mining of coal would contribute to the carrying out of the forestry program. But I do not understand that this is the situation. The stripping of coal will not prevent floods, or stop erosion, or prevent the waste of mineral resources of the State. Coal is not a fugitive thing, such as oil or gas that must be removed in order to conserve and use it.

Reference is made in your inquiry to the 1941 Act regulating strip mining. The title of that Act gives a summary of the statute and is as follows:

"An act regulating strip mining; requiring permits therefor from the director of the Department of Conservation; providing for the conservation and improvement of lands after subjection thereof to strip mining; requiring deposits of cash or surety bonds by applicants for permits; providing additional duties of the director of the Department of Conservation; and providing penalties for violation hereof; and prohibiting the classification of lands subjected to strip mining from being classified as forest lands for taxation purposes under Chapter 210 of the Acts of 1921 and declaring an emergency."

There is no provision in this law to indicate that it was intended to apply to State owned lands. The real purpose of the statute is not so much to encourage strip mining, but to make sure that on land where strip mining had already been done, or where coal was thereafter to be mined in that way, the Conservation Commission would see to it that the land would be restored to usefulness again and reforested. The conservation program begins after the coal has been removed.

I am of the opinion that the Department of Conservation has no authority to grant a permit for the strip mining of coal under forest lands of the State.