SECURITIES COMMISSION: Articles of Incorporation of the
Horton Manufacturing Company, whether such company
may sell its $25 par value stock at less than the par value
thereof.

September 30, 1943.

Securities Commission,
State House,
Indianapolis, Indiana.

Attention: Mr. Fred W. Hoffmark.

Dear Sir:

I have your letter of the 21st in which you ask the follow-
ing question:

"Do the Articles of Incorporation of Horton Manu-
facturing Company sufficiently authorize it to sell its
$25.00 par value stock at less than the par value
thereof?"

Article 6(c) of the Articles of Incorporation of the com-
pany provides:

"All or any part of the preferred stock and the
common stock may be issued and disposed of from time
to time in such manner to such person or persons, and
for such consideration, as may be determined by the
Board of Directors."

The question raised by your letter is whether Article 6(c)
of the Articles of Incorporation sufficiently complies with Sec-
tion 6(c) of the Indiana General Corporation Act (Chapter
215 of the Acts of 1929, Sec. 25-205 Burns' 1933 Statutes),
which provides in part as follows:

"Shares of stock having a par value may be issued
for an amount of consideration not less than the par
value thereof, unless the Articles of Incorporation pro-
vide that such shares may be sold at less than their par
value, in which case such shares may be issued for
such consideration as may be fixed from time to time
by the Board of Directors in accordance with such
provision."
It is apparent, of course, that in framing Article 6(c) of the Articles of Incorporation, the Horton Manufacturing Company has not used the exact language of the statute. Is it necessary in order to sell the stock at less than its par value to provide in the Articles of Incorporation that such stock may be sold at less than par value by using the identical statutory language? It has been frequently held in Indiana that statutes should be construed liberally to effect the legislative intent and purpose. As stated in State ex rel. v. Casteel, 110 Ind. 174 at 183:

"The cardinal rule in the construction of statutes is to discover and give effect to the intention of the Legislature. The construction adopted will give effect to the intention of the law-making power, and will not subordinate it to an isolated clause. It will give effect to the leading and controlling purpose of the statute, rather than bend to particular sentences or clauses, and this, as all the authorities agree, is the great object of judicial interpretation."

An application of that principle of statutory construction is found in Mercantile Commercial Bank v. Southern Indiana Coal Corporation, 93 Ind. App. 313 at page 328:

"It is not the duty of the courts to explain away the plain provisions of statutes, but rather to give them the force and effect evidently intended by the Legislature, which, in this case, must have been to protect minority stockholders from transactions such as here."

The obvious purpose of Section 6(c) of the Indiana General Corporation Act was for the protection of actual and potential creditors of the corporation: to provide such creditors with some notice that the capitalization of the corporation should not be fully relied upon in extending credit. Since the legislative purpose of that section may be accomplished without using the exact language of the statute in the Articles of Incorporation, there appears to be no valid reason why language which has the effect of so notifying creditors cannot be used by the incorporators. The language used by the Horton Manufacturing Company in its Articles of Incorporation would
serve to place such a creditor on notice that more or less than the par value of the stock might be received. Under those circumstances, I am of the opinion that there has been a substantial compliance with the statutory requirements and that the stock may be sold at less than par value if so resolved by the Board of Directors.

DEPARTMENT OF CONSERVATION: Whether department may sell a tract of land originally acquired as a part of the Greene-Sullivan State Forest.

October 1, 1943.

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

Dear Mr. Barnhart:

This is in response to your recent letter inquiring as to the right of the State to sell a certain twenty acre tract of land originally acquired as a part of the Greene-Sullivan State Forest.

From your letter and a memorandum of Mr. Carpenter, the State Forest Inspector of your department, it appears that the twenty acre tract of land does not lend itself to forestry purposes; that only a small percentage of the trees planted on the tract have survived; and there is no forestry growth on the land. There are no improvements on this twenty acres and it is not of any use to any institution of the State. The question is whether or not the land can be sold under authority of Sec. 11 of Ch. 162 of the Acts of 1889 found in Burns' Ind. Stat. Ann. 1933, Section 62-216, which is as follows:

"The auditor of state is hereby authorized and directed to sell, under the provisions and conditions of this act, all lands of the state upon which there is no public building, or which is not in actual use by any of the institutions of this state, or which has not been set apart by law for state purposes, the proceeds thereof to be paid into the general fund in the treasury of state: Provided, That the square known as Univer-