and so long as the relocation connects with some part of the state highway system, I think it may be justified as a relocation if public convenience will thereby be better served. Because of the nature of the question, this opinion is necessarily quite general. There may be cases in which the facts are sufficiently conflicting to justify the designation of a new highway to carry out the purpose of the commission as a practical matter, rather than the relocation of an old one. The obligation will rest upon the commission in each case to establish the factual basis for the relocation in accordance with some provision of section 17, supra, and as applied to your particular question, in accordance with the principles announced in this opinion.

CONSERVATION DEPT.: Big Long Lake—authority of conservation department to acquire private dam and water rights to maintain water level.

August 3, 1933.

Kenneth M. Kunkel, Director,
Division of Fish and Game,
Conservation Department,
Department of Public Works,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of July 26 enclosing a communication received from Dr. C. E. Munk, of Kendallville, Indiana. The enclosure refers to certain water rights, dam and floodgate at the outlet of Big Long Lake in LaGrange County, which are now privately owned but which could be acquired by the cottage owners on said lake or by other parties who might be interested in maintaining the present level of such lake. The letter points out that the dam and the water rights in connection with the same could be so used by a disinterested owner as to lower the present level of the lake as much as seven feet, and asks that the Department of Conservation acquire and exercise dominion over the dam and appurtenant water rights so as to maintain perpetually a proper lake level. Your letter, in turn, inquires concerning your powers and/or duties in this connection.

Section 4742 Burns Annotated Indiana Statutes, Supplement of 1929, gives the Department of Conservation the following authority through its Division of Lands and Waters:
“1. To have the care, custody and control of the several preserves and parks owned by the state, other than the state forest reserves.

*   *   *   *

“4. Subject to the approval of the governor, to purchase lands for parks or preserves and scenic and historic places. For the purpose of acquiring lands for parks or preserves and scenic and historic places, the commission may exercise the right of eminent domain, in the manner hereinafter provided.

“5. To receive and accept in the name of the people of the state by gift or devise, the fee or other estate therein of lands or scenic or historic places.” (My italics.)

Section 4743, Burns Annotated Indiana Statutes, Revision of 1926, gives the Department of Conservation the power, and makes it its duty, through the Division of Fish and Game:

“5. To acquire lands or water and build or acquire the necessary equipment for the propagation of fish and game, and to engage in the propagation of such species of fish and game as the commission may determine to be for the best interests of the state.” (My italics.)

The provisions of the statutes quoted above are the only ones that I find authorizing your department to acquire and maintain lands or property. It would appear from the language that the authority is limited to lands and appurtenant property acquired and maintained either as a park, a preserve, a scenic or historic place, or a site for the propagation of fish and game. Unless your department should consider the site of the dam and mill pond in question desirable for one of the purposes specifically mentioned, it is my opinion that you would not have the authority to acquire, accept or maintain such property.

Clearly, the matter inquired about is one of considerable importance, but chiefly so to the owners of cottage sites on Big Long Lake. It is a matter that should be handled by an association of such interested parties, or by one of them individually.