“The term ‘accept’ as used in the contract shall be construed to mean the actual commencement of work or an agreement in writing with the employer to do so.”

There is a noted difference between the language of the rules and regulations and a part of the contract of Mrs. A with the first agency as follows: That portion of the contract is noted herein as reading “* * * or an agreement with employer to report for work.” It does not say written agreement with employer. From your request, the facts are that Mrs. A received no written agreement from the employer for whom she first was to start work. Had she received a written agreement from the first employer it would then follow that she would be bound to pay for the services to the employment bureau. The facts, however, are that she had no written agreement with the employer and by reason of this fact the employment bureau with whom she first contracted has no right of action, first, because she had not actually commenced work for the employer, and, second, that she had no written agreement with the employer that she would report for work.

The Brown Efficiency Bureau, Inc., the party designated as the first employment agency, should change the term “accept” so that the contract read in part as follows: “The term ‘accept’ as used in this contract shall be construed to mean the actual commencement of work or an agreement in writing with the employer to do so.”

CONSERVATION, DIVISION OF: State owned lands—Power of State to sell or lease Kankakee swamp lands, Newton County.

February 15, 1936.

James H. Vandenbark,
Assistant Director, Fish and Game Division,
Conservation Department,
Indianapolis, Indiana.

Dear Sir:

I have at hand your inquiry of January 4, regarding the possibility of selling or leasing certain lands in Newton county, bordering on the Kankakee River, which belong to the State of Indiana.
Chapter 173 of the Acts of 1899 (Sections 62-601 to 62-604, inclusive, Burns 1933 Indiana Statutes) provided for the original sale of certain swamp lands, on a day to be fixed by the Auditor of State. This Act, however, made no provision for subsequent sales of such lands as were not sold on the original sale date, and applied only to certain described lands in Starke county.

Chapter 198, Acts 1889, (Sections 62-605 to 62-610, Burns 1933 Indiana Statutes) provided for the sale of lands in Newton county included within the meander lines of Beaver Lake, as established by the United States survey. Under this Act, however, the privilege of buying these lands was extended first to certain claimants, provided proper steps for purchase were taken by such claimants before October 1, 1889. If purchase proceedings were not instituted by the claimants by the date fixed, the Act provided that such lands might then be sold under the general laws regarding the disposal of State lands.

Chapter 193, Acts 1923, (Sections 62-618 to 62-621, Burns 1933 Indiana Statutes) likewise provided for the sale by the Auditor of State, "as now provided by law", of certain swamp meandered lands lying along the Kankakee River. This Act, however, embraced only Kankakee lands lying in St. Joseph, Laporte and Starke counties.

The foregoing statutory provisions are the only ones which I find authorizing the sale of lands which might be deemed to include the lands now under consideration. It will be noted from the statutory provisions hereinbefore set out that the only present authority, if any, for the sale of lands such as those which are the subject of your inquiry, is under the statute authorizing the sale of State lands generally. This Act is Chapter 162 of the Acts of 1889, Section 1 of which provides for the sale under direction of the Auditor of State of "lands known as Swamp or Indemnity Lands, Saline Lands, or University Lands, to which the state may acquire title under the provisions of any existing grant from the government of the United States, and all other lands of the State hereinbefore described and not set apart by law for State purposes." (Sec. 62-206, Burns 1933 Indiana Statutes.) (My italics.)

Section 7 of the last above named Act, moreover, authorizes and directs the Auditor of State "to rent any of the lands of the State until the same are sold or otherwise disposed of." (Section 62-212, Burns 1933 Indiana Statutes.)
Section 11 of the same Act provides in part 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 aside by law for state purposes ***." Section 62-216, Burns 1933 Revision. (My italics.)

As pointed out in your letter, the question regarding the authority of the State under this general statute to sell the lands under consideration arises because of the provisions of an Act passed by the General Assembly of Indiana in 1927, which Act provides as follows:

"All lands now owned by the state of Indiana which border upon or lie adjacent to any lake or stream and which are not otherwise used or occupied or intended for use or occupation by any institution, department or office of the state government, shall be under the charge, management, control and supervision of the department of conservation: Provided, That the state of Indiana hereby reserves the right and power to sell, transfer and convey, as provided by law, rights of way for railroads, street and interurban railroads, switch tracks, lateral railroads, pipe lines, gas-pipe lines, water-pipe lines, sewer lines, head race or tail race for hydro development, electric transmission lines, telephone lines and telegraph lines, to any public utility organized under the laws of Indiana." (Chapter 130, Acts 1927; Sec. 60-719, Burns' 1933 Indiana Statutes.)

In my opinion the last mentioned Act repealed by implication all former acts authorizing sale of State lands under the direction of the Auditor of State, insofar as concerns State lands "which border upon or lie adjacent to any lake or stream". It was the evident intention of the legislature, as clearly expressed in the Act itself, that this particular land should be placed directly under the control of the Department of Conservation, and it seems equally obvious that the legislature intended the control and supervision of said Department to be exclusive. But if the Act did nothing else, it certainly placed these lands in the class of lands which have "been set
aside by law for state purposes," within the meaning of such phrase as used in the general statute providing for sale of State lands, as hereinbefore referred to.

The next consideration is to determine whether or not any authority is given to the Conservation Department to sell or rent lands under its supervision and control. It is well settled that State officers cannot dispose of lands of the State, and have no power or authority over the same, except such as has been or may be conferred upon such officers by positive statute.

McCaslin v. State ex rel., 99 Ind. 428;
State vs. Portsmouth Saving Bank, 106 Ind. 435.

I find no statute authorizing the Conservation Department to sell, rent or otherwise dispose of the title to, or of any interest in, the lands under its supervision. Neither do I find any statute authorizing the acquisition by others of any of the lands which are under the jurisdiction of the Conservation Department, except such limited authority as is conferred by Chapter 146 of the Acts of 1929. The latter Act specifically authorizes the purchase of swamp, saline and meander lands owned by the State "and bordering on lakes and streams," by persons, associations, corporations, municipalities, political subdivisions or combinations thereof, by the means and in the manner provided therein. The purchase must be made, however, for public park and forest purposes.

In conclusion, it is my opinion that there is no authority for either the sale or leasing of the lands referred to in your inquiry, excepting only as the purchase of such lands is authorized by Chapter 146, Acts of 1929, supra, "for public park and forest purposes."