Mr. Robert P. Heyne, Commissioner  
Department of Correction  
804 State Office Building  
Indianapolis, Indiana 46204  

Dear Mr. Heyne:

This is in response to your request for my Official Opinion concerning two questions: First, whether the Department of Correction may legally sell products manufactured by convicts incarcerated in its institutions to any person for his own use so long as such products are not for resale; and secondly, whether handicraft items made by inmates of the Indiana State Prison may be sold in a store set up on the prison grounds.

ANALYSIS

The statutes in question are Acts of 1939, Ch. 127, Sec. 1 as amended and found in Burns' (1969 Supp.), Sec. 10-4923 and Acts of 1917, Ch. 83, Sec. 1 as found in Burns' (1956 Repl.), Section 13-101. The 1917 Act reads as follows:

"The boards of trustees of the Indiana Reformatory, the Indiana State Prison and the Indiana State Farm [department of correction] are hereby empowered and authorized to manufacture such articles as are used by the state, its institutions and its political divisions, and to produce such articles and products as may be found practicable, and to sell the surplus, if any, upon the market."

The Indiana Supreme Court construed this language in Ove Gnatt Company v. Jackson et al. (1933), 205 Ind. 51, 184 N. E. 553. The Court held that such manufacture was not limited to articles which the state found useful, but included any article the manufacture of which contributed to the proper and healthful employment of the prisoners, regardless of whether these articles could be used by the state and to sell the surplus on the market.
The last proviso in Burns' Section 10-4923, *supra*, reads as follows: "Provided: That nothing in this act shall be deemed to prevent the state of Indiana or any of its institutions from selling the products of such institutions to an individual for his own use only and not for resale." This language is clear and needs no interpretation.

**CONCLUSION**

Both by Indiana law and by your administrative practices, the answers to both your questions have been "yes." The Department of Corrections can legally sell products produced by inmates so long as the purchaser buys for his own use and not for resale. Burns' Indiana Statutes, Section 13-101, *supra*, as interpreted by Ove Gnatt v. Jackson, *supra*, provides authority for the proposition that the type of article to be produced in state penal institutions is determined by whether such production contributes to the proper and healthful employment of the prisoners and *not* whether the articles produced are useful to the state. The employment of prisoners in such constructive ways is part of the rehabilitation process. Thus, the Department of Corrections is able to sell surplus items to an individual for his own use and not for resale, and the Department of Corrections is also able to establish a prison store for the sale of handicraft items made by the inmates as part of their rehabilitation program.