Since your inquiry does involve the Indiana Constitution, Art. 4, Sec. 28 it must be determined whether the act in question is in conflict therewith. A conflict is apparent for the reason that the act in question discloses no express declaration of an emergency in the body of the act, and the act contains no preamble.

In view of the foregoing it is my opinion Acts of 1961, Ch. 182, fails to meet the mandatory requirements of the Indiana Constitution, Art. 4, Sec. 28 with respect to the declaration of an emergency, as required by said constitutional provision. Accordingly, the provisions of Section 34 of said Act providing for the effective date of Acts of 1961, Ch. 182, must be disregarded, and said act cannot become effective until the 1961 Acts of the Indiana General Assembly are duly promulgated by the Governor of Indiana, after distribution of same as required by the Indiana Constitution.

It is my further opinion that if the Acts of 1961 are duly promulgated by the Governor prior to July 1, 1961, then, and in that event, the effective date of Ch. 182 of the Acts of 1961, *supra,* would be July 1, 1961, for the reason that such date would constitute a *legal effective date,* and not an *emergency date* in conflict with any statements contained in this Opinion.

OFFICIAL OPINION NO. 22

May 16, 1961

Mr. Donald E. Foltz, Director
Indiana Department of Conservation
603 State Office Building
100 North Senate Avenue
Indianapolis, Indiana

Dear Mr. Foltz:

This is in answer to your request for an Official Opinion concerning the authority of the Indiana Department of Conservation over natural and man-made channels connected with the various lakes in this state. After reciting that your authority is limited by law to the shore line of the lake your first two questions read as follows:

"1. Are the waters or shore lines of natural channels considered to be the shore lines of the lakes to which they connect?

"2. Do the waters or shore lines of man-made channels become the shore lines of the lakes to which they connect?"

There are two statutes vesting control of public fresh water lakes in the Department of Conservation, neither of which differentiates natural channels from man-made channels and neither of which defines shore lines specifically to include channels. These are Acts of 1947, Ch. 181 and Acts of 1947, Ch. 301.

Acts of 1947, Ch. 181, Sec. 1, as found in Burns' (1960 Repl.), Section 27-654 reads as follows:

> "The state of Indiana is hereby vested with full power and control of all of the public fresh water lakes in the state of Indiana both meandered and unmeandered and the state of Indiana shall hold and control all of said lakes in trust for the use of all of its citizens for fishing, boating, swimming, the storage of water to maintain water levels, and for any purposes for which said lakes are ordinarily used and adapted, and no person owning lands bordering any such lakes shall have the exclusive right to the use of waters of any such lake or any part thereof."

This section vests control of the fresh water lakes in the state for the general use of the public for recreation as well as for the purpose of storage of water to maintain the water levels of the lakes.

Acts of 1947, Ch. 181, Sec. 2, as found in Burns' (1960 Repl.), Section 27-655 reads, in part, as follows:

> "It shall be *unlawful* for any person *to extend the shore line* of meandered or unmeandered public fresh water lakes in Indiana, *by filling* or depositing into the waters of any such lake soil, earth, gravel, sand, stone, or any other substance for the purpose of creating building sites or *for any* other *purpose* whatsoever. * * * the *drainage* or *filling* of any such lake is hereby

> *declared to be unlawful: Provided,* however, the Indiana *department* of conservation *may grant to the owner of* any *land abutting* upon such lake permission to *extend the shore line* of such lake *by filling in,* upon the filing of an application so to do by such owner and after an investigation on the merits of said application by the Indiana department of conservation." (Our emphasis)

Acts of 1961, Ch. 257, amends the definition section of the above-quoted Acts of 1947, Ch. 181, and reads, in part, as follows:

> "Acts 1947, c. 181, s. 3 is amended to read as follows: Sec. 3. For the purpose of this act, the water line or shore line of a public fresh water lake shall mean the line formed on its bank or shore by the water surface at the legally established average normal level. Where the water level has not been legally established, the water line or shore line shall be the line formed by the water surface at its average level as determined by existing water level records, or if such records are not available, by the action of the water which has marked upon the soil of the bed of the lake a character distinct from that of the banks in respect to vegetation as well as the nature of the soil. * * *"

Note that the 1961 amendment defining shore lines makes no mention of natural channels or man-made channels, but rather, defines shore line in terms of the water surface of the lake when said surface can be found at:

1. the legally established water level of the lake;

2. the average water level of the lake as determined by existing water level records, if a water level has not been legally established by court action;

3. where the water level of the lake has made a character distinct from that of the banks in respect to vegetation as well as the nature of the soil, in the case where there are no average level records available.

It is my opinion that these conditions mean that the shore line can be determined by where you find the water level to be in the above three circumstances.

The 1961 amendment, above quoted, appears to be consistent with another act on the general subject of "protection of lakes," said act being Acts of 1951, Ch. 290, Sec. 24, as found in Burns' (1960 Repl.), Section 27-652, which reads, in part, as follows:

> "* * * the shore or water line shall mean the line which is formed around the lake by the intersection of the water in the lake with the adjoining land when the surface elevation of the lake is normal or at its average level or at its average normal level as established by law."

Acts of 1947, Ch. 301, Sec. 1, as found in Burns' (1960 Repl.), Section 27-620, reads as follows:

> "The natural resources and the natural scenic beauty of Indiana are declared to be a public right, and the public of Indiana is hereby declared to have a vested right in the preservation, protection and enjoyment of all the public fresh water lakes, of Indiana in their present state, and the use of such waters for recreational purposes."

As in the Acts of 1947, Ch. 181, previously discussed, the above-quoted act vests control of public fresh water lakes in the state for the general use of the public for recreational purposes. Note that the above-quoted act does *not* vest this control for the purpose of storage of water to maintain water levels of the lakes, as does Acts of 1947, Ch. 181.

Acts of 1947, Ch. 301, Sec. 3, as found in Burns' (1960 Repl.), Section 27-622, reads as follows:

> "It shall be unlawful for any person, firm, corporation or any court, board of commissioners, body of viewers or drainage commissioners, to order or recommend the construction, reconstruction, recleaning or repair of any ditch or dam *or any project* which will affect, or is likely to affect, a lowering of *the water level* of any public fresh water lake, regulated or

> otherwise, which covers an area of ten [10] acres or more." (Our emphasis)

As a practical application, in terms of the above quote, I believe it is logical to presume that where one cuts into the normal shore line of a lake for the purpose of dredging a channel, thus extending the shore line, this would lower the water level of the lake in that said water flows into the channel and thus is "spread" over a larger area.

Acts of 1961, Ch. 258 amends the definition section of Acts of 1947, Ch. 301 and also amends the section of said act applying to jurisdiction of the Department over lakes for the purpose of issuing permits.

Acts of 1961, Ch. 258, reads, in part, as follows:

> "Acts 1947, c. 301, s. 2 is amended to read as follows: Sec. 2. For the purpose of this act, the natural resources of public fresh water lakes shall mean the water, fish, plant life and minerals, and the natural scenic beauty shall mean the natural condition as left by nature without man-made additions or alterations. The water or shore line of a public fresh water lake shall mean the line formed on its bank or shore by the water surface at the legally established average normal level. Where the water level has not been legally established, the water line or shore line shall be the line formed by the water surface at its average level as determined by existing water level records, or if such records are not available, by the action of the water which has marked upon the soil of the bed of the lake a character distinct from that of the bank in respect to vegetation as well as the nature of the soil. * * *"

Note that the above-quoted amendment is, in part, identical to the 1961 amendment to Acts of 1947, Ch. 181 in regard to the meaning of the words "shore line" wherein "shore line" is defined in terms of the water surface of the lake when said surface can be found at one of the same three conditions formerly discussed. As in the earlier discussed amendment, the definition of "shore lines" makes no mention of natural channels or man-made channels.

Acts of 1961, Ch. 258 amends Acts of 1947, Ch. 301, and reads as follows:

> "Acts 1947, c. 301, s. 4 is amended to read as follows: Sec. 4. It shall be *unlawful for any person,* firm, corporation, board of county commissioners, body of viewers or drainage commissioners *to encroach upon the lake level* of the water *or shore line* of any such lakes as now exist, in law or in fact, *by excavating, filling in, or otherwise causing a change* in the size or affecting the natural resources, scenic beauty and contour of such lake below the water line or shore line, without first securing the written approval of the Indiana Department of Conservation." (Our emphasis)

This section clearly authorizes the Department to issue permits for excavating, filling-in, or otherwise causing a change in the shore line of public fresh water lakes.

Your third question reads as follows:

> "3. If the answers to one (1) and two (2) above are 'yes,' do the provisions of the Acts of 1947, Chapters 181 and 301 apply to both natural and man-made channels?"

I believe that the foregoing discussion of these two acts and the 1961 amendments answer this question, and it is my opinion that Acts of 1947, Ch. 181, as amended by Acts of 1961, Ch. 257; and Acts of 1947, Ch. 301, as amended by Acts of 1961, Ch. 258, both apply to natural and man-made channels connected to public fresh water lakes and that the shore line of the lake as well as the authority of your Department follows the water into said channels.

You state in your letter that:

> "* * * Before the Department approves these projects it requires the owner to dedicate the waters in the newly constructed channels to the public in as much as once the channels are connected to the lakes they become a part of the lake."

It is my opinion that this is good administrative policy and that the dedication of the waters in the newly constructed

channels to the public clearly places these channels under the jurisdiction of the State of Indiana as set forth in the aforementioned acts because, upon dedication, they become public waters and a part of the public waters of the lakes to which the channels are connected subject only to riparian rights legally determined.

OFFICIAL OPINION NO. 23

May 19, 1961

Mr. Arthur Campbell, Chairman
Board of Correction
804 State Office Building
Indianapolis 4, Indiana

Dear Mr. Campbell:

This is in reply to your request for an Official Opinion relative to the administration of the program of state aid for the support of court probation services.

Acts of 1959, Ch. 272, Sec. 1, as found in Burns' (1959 Supp.), Section 9-2910, established a program enabling the state to give financial aid to support the court probation services of the several counties. Other sections of the 1959 Act deal with the purpose, limitation on the amount of aid, procedure for obtaining the aid, and finally Section 6 thereof appropriates the sum of $250,000 to finance the program.

Section 3 of the 1959 Act, *supra,* as found in Burns' (1959 Supp.), Section 9-2912, reads as follows:

> "State financial aid to courts, may be granted only upon the condition that such courts use the services of certified probation officers. The Department of Correction, with the approval of the State Budget Committee, may approve and grant state financial aid to any court, up to, but not in excess of fifty per cent [50%], in cases of financial distress and extreme need for probation services; and, may decrease the amount of state aid when financial, and other relevant, conditions appear to warrant such decrease. Provided, That if the amount of state aid covers fifty per cent [50%]