"Purpose" as defined by Webster's New International Dictionary, Second Edition, means: "that which one sets before himself as an object to be attained, the end or aim."

Mint is an aromatic plant, produced from the soil and is recognized in this state as being a farm commodity.

In our determination of this question, we have been unable to find any jurisdiction in which this exact question has been determined. However, from the research made regarding your query and applying the court's thinking that "any practices, whether or not themselves farming practices, which are performed by a farmer on a farm, incidental to or in conjunction with such farming operation is agriculture," we must conclude that boilers used by a farmer on his farm for the distillation of "mint" produced by him are exempt from inspection.

OFFICIAL OPINION NO. 45
August 11, 1950.

Mr. Edwin Steers, Sr.,
Member of State Election Board,
108 E. Washington Building,
Indianapolis, Indiana.

Dear Sir:

I have your request of recent date, requesting an Official Opinion which reads as follows:

"Section 29-5803 of Burns Revised Statutes, 1949 Replacement provides among other things as follows:

'The Board of Commissioners of every county in this state in which is located a city having a population of thirty-six thousand (36,000) or more, according to the last preceding United States census, shall, and the Board of Commissioners of all other counties in this state may, on the requisition of the County Election Board adopt and purchase or procure for use in the various precincts of the county, any voting machine approved in the manner set forth in this
article by the State Election Board, and none other.’

“What we would like to know is whether or not in counties having a population of thirty-six thousand (36,000) or more it is absolutely compulsory that the Board of Commissioners of such county upon the requisition of the County Election Board, purchase and procure for use in the various precincts in the county approved voting machines. We would also like to know whether or not it is compulsory for the County Council to approve an appropriation for that purpose.”

In answering your letter it is necessary to note the situation which exists in Indiana. Under the 1940 census, the following counties contain cities of a population of 36,000 or more:

Allen, Delaware, Lake, Madison, Marion, St. Joseph, Vanderburgh, and Vigo.

And there are ten counties that have a population of 36,000 but did not contain cities with a population of 36,000. These counties are:

Cass, Elkhart, Grant, Henry, Howard, Knox, LaPorte, Madison, Monroe, Tippecanoe and Wayne.

With these facts in mind it is necessary to determine the meaning of the words used in the statute. The two cardinal rules of statutory construction are: that the primary purpose of all construction is to determine the legislative intent and the words and phrases must be given their plain, ordinary and usual meaning unless a contrary intent is clearly evidenced.

Snider v. State ex rel. (1934), 206 Ind. 474, 478;
State v. Ritter’s Estate (1943), 221 Ind. 456, 48 N. E. (2d) 993;
City of Indianapolis v. Evans (1940), 216 Ind. 555, 567;
Morrison v. State ex rel. (1913), 181 Ind. 544, 549.

With these basic rules in mind it then becomes necessary to examine the rules concerning the interpretation of the words
“shall” and “may”. In the case of Brown v. Hecht Co. (1943), 137 F. (2d) 689, 692, the Court undertook to explain the basis of a seeming conflict in this regard as follows:

“To most laymen, the question whether the word ‘shall’ in a statute is mandatory would doubtless seem to answer itself. The legal proposition that the word is not necessarily mandatory and may be ‘merely directory’ is a more or less technical one. Sometimes this proposition means only that violation of a statutory mandate may entail no consequences when the statute prescribes none; as when waivers of notice are allowed to validate a corporate meeting held without notice although a statute provides that notice shall be given. Sometimes it means only that the author of a mandate may be privileged to change or break it. Thus it has been held that a court or an administrative body may waive some of its own rules despite the presence in the rules of the word ‘shall’, and that a legislature may change the means by which it has itself provided that process ‘shall’ be served upon a corporation. In some of the State court cases on which the dissenting opinion relies, the proposition is a euphemism which covers judicial refusal to follow a legislative mandate addressed to the court. In some contexts, perhaps, it has been found by way of genuine statutory construction that a particular ‘shall’ was more or less equivalent to ‘may’. It is nonetheless true that the word ‘shall’ in a statute is normally ‘the language of command’. We think the word has its normal meaning in § 205 (a).”

The Court further said in regard to the use of “shall” and “may” together:

“* * * It is recognized that the use of ‘may’ and ‘shall’ in one sentence implies that each word is used in its own ordinary sense and not in the ordinary sense of the other. A single sentence § 205 (a) provides that the Administrator ‘may’ apply for an order and that an order ‘shall’ be granted. If Congress had been using ‘shall’ in the sense of ‘may’ there would have been no reason for using ‘may’ instead of ‘shall’ in regard to the Administrator.”
Although the case presented by this Act does not seem to have been ruled on directly in Indiana there are several cases holding that the word "shall" is always presumed to have been used in its imperative sense. For example:

Board etc. v. People's National Bank (1909), 44 Ind. App. 578, 581;
Morrison v. State ex rel. (1913), 181 Ind. 544, 549;
State ex rel. v. Mecker (1914), 182 Ind. 240.

In this last cited case the Court said in this regard:

"* * * The first question, then, which we have to consider involves a construction of the word 'shall' as used in the above section. As a general rule of statutory interpretation the presumption is that the word 'shall', as used in any given law, is to be construed in an imperative sense, rather than directory, and this presumption will control unless it appears clearly from the context or from the manifest purpose of the act as a whole that the legislature intended in the particular instance that a different construction should be given to the word."

On the basis of these authorities and particularly in view of the contrasting use of the words "may" and "shall" in the statute at hand it is my opinion that it is absolutely compulsory for the Board of Commissioners of counties containing cities of 36,000 or more according to the last preceding United States Census upon requisition of the County Election Board to purchase and procure for use approved voting machines. However, the terms of the statute are counties containing a city having a population of 36,000 or more and this would not include counties having a population of 36,000 but not containing such a city.

You ask further whether it is compulsory for the County Council to approve an appropriation for that purpose. Generally, under the former Act the County Council must appropriate all monies to be expended by the County subject only to the exceptions set out in Section 1, Chapter 110 of the Acts of 1935, same being Burns 26-522 which provides in part as follows:
"* * * or money which any statute expressly provides shall be paid for a purpose therein stated out of the county treasury without being first appropriated for such purpose by the county council. In all the above enumerated instances payment may be made out of the county treasury upon the authority and in the manner prescribed by law without appropriations by the county council."

Section 20 of Chapter 208 of the Acts of 1945, same being Burns 29-3105, provides the usual procedure for obtaining an appropriation for election expenses. This Section provides in part as follows:

"Each board shall prepare annually a budget estimate in which it shall set forth an itemized list of its expenditures for the preceding year and an itemized estimate of the amount of money necessary to be appropriated for the ensuing year and submit the same at the time and in the manner and form other county budget estimates are now or may hereafter be required to be filed.

"All materials, supplies and equipment of any and every sort which are to be paid for out of the county treasury shall be purchased as now provided by law. Payment of same shall be upon claims filed with the county auditor, verified and approved by the county election board, and the county auditor shall draw his warrant or warrants on the county treasurer in payment thereof."

However, Section 384 of Chapter 208 of the Acts of 1945, same being Burns 29-5804 reads as follows:

"Payment for voting machines purchased or procured may be provided for in such manner as is deemed best for the interests of the county."

Some enlightenment in this matter is given us by the Court in Board, etc. v. Babcock (1904), 33 Ind. App. 349, 352. That case involved a suit on a claim for having furnished election supplies for which there was no appropriation. The Court in
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construing a statutory provision, substantially the same as Burns 26-522 heretofore set out, said:

"* * * After enumerating these exceptions that section concludes: ‘In all the above enumerated instances payment may be made out of the county treasury upon the authority and in the manner prescribed by law without appropriations by the county council. In all other instances no warrant shall be drawn upon, or money paid out of the county treasury, unless an appropriation by the county council therefor has been made, for the calendar year in which the payment is made, and which appropriation remains unexhausted.’ This language is plain and needs no construction. The legislature having expressly enumerated the exceptions, we can not read into the statute an additional exception which presumably was intentionally omitted."

The Court then concluded:

"It is true that the time within which the ballots must be printed and made ready for distribution is limited, that great care is required by the statute in doing the work, and that it is necessary that the work should be done within the limited time; yet it is not clear that an estimate of the expense of printing the ballots can not be made with as much certainty as many other of the estimates required by the statute. It can not be presumed that an estimate or an appropriation by the county council will be so inadequate as to make it impossible for the board to have the work done. If unexpected conditions should arise when the ballots are to be printed, and it is not possible to have the work done for the amount appropriated, we think there is no question that an additional appropriation might be made under the provisions of § 5594a1 Burns 1901. See Turner v. Board, etc., 158 Ind. 166; Board etc. v. Mowbray, 160 Ind. 10; Gish v. Board, etc., 31 Ind. App. 485.

"We think the claim appellee seeks to recover is within the statute, and, for failure to aver an existing appropriation by the county council to pay the claim, the demurrer to the complaint should have been sustained."
Therefore in answer to your second question, it is my opinion that in view of the foregoing authorities the county council is required to make an appropriation when voting machines are required to be obtained. Generally such expenditures should be budgeted as provided in Burns 29-3105 and if not budgeted the necessary funds should be made available by an emergency appropriation.

OFFICIAL OPINION NO. 46

August 21, 1950.

R. W. Elrod, Secretary,
Indiana State Veterinary,
Examining Board,
Room 477, State Board of Health Building,
1330 West Michigan Street,
Indianapolis, Indiana.

Dear Sir:

Your letter of July 21, 1950, requesting an official opinion, reads as follows:

"In Re: Veterinarians, License to practice—Examinations.

"With reference to the above captioned subject matter, an official opinion is respectfully requested covering the scope of that particular section of the law, pertaining to an EXAMINATION AS TO QUALIFICATIONS to which applicants must submit in order to secure a license to practice Veterinary medicine and surgery.

"Burns, Indiana Statutes (1933), 63-1703 provides in part:

'In order to procure such license, the applicant shall submit to an examination as to his qualifications to practice veterinary medicine and surgery, in such manner as the Board shall provide.'