means "service under a regular contract for five (5) successive years".

From the foregoing, I am of the opinion that any teacher given such consecutive contracts specified in each of your foregoing questions, on the regular form of teachers' contracts, in the same school city corporation or school town corporation, would become a tenure teacher in such school corporation. This is true for the reason if such contracts were "regular teacher contracts" all of the pertinent terms and conditions regarding employment referred to in the foregoing cases would be set out. In such a case, I do not believe such a teacher would be considered a part-time teacher for the first year she was under contract in any of the cases referred to in your questions.

However, I deem it necessary to point out that if such teacher as shown by her contract was hired as a part-time substitute or casual teacher, it would probably change the character of her employment to such an extent that she could not thereby acquire tenure.

OFFICIAL OPINION NO. 58

September 24, 1947.

Mr. Clarence E. Ruston,
State Examiner,
State Board of Accounts,
304 State House,
Indianapolis, Indiana.

Dear Mr. Ruston:

This is in answer to your request of September 24, 1947 for an official opinion on the following facts and questions:

> "In submitting the budget request to the county council the form used shows the basis used by the county department of public welfare in estimating the amount requested. As an example, in the request for personal services appears the following: '102 B, Salary of Visitors—3 @ from $150 to $——, $5,400'. In the particular case, the county council in the ordinance for appropriations shows:

" 'That for the said fiscal year there is hereby appropriated out of the County Welfare Fund the following: 102 B, Salaries of Visitors, $4,140'.

"The County Board of Public Welfare appealed to the State Board of Tax Commissioners and on appeal the following order was made:

" 'The following budget items are hereby ordered restored: Item 102 B, Visitor's salary to the minimum of $5,400.00'.

"In June the county department of public welfare employed a new visitor at the salary of $175.00 per month. This sum is within the salary range established by the Indiana Personnel Board and approved by the State Budget Committee. At the time of this appointment and fixing of the salary, the unexpended balance of the appropriation for visitor's salary was $2700.00.

"Based on these facts, the following questions are presented:

"1. Do appropriations control rates of salaries and number of persons to be hired, or do they control as to gross amounts to be expended and types of expenditures such as personal services including visitors?

"2. May the county department of public welfare fix a salary of an employee at a different rate than that shown in the budget request?

"3. If the salary is fixed by the county department of public welfare, as shown in the example, may the county commissioners allow and the county auditor issue a warrant in payment of the salary as set by the county department?"

Section 4, Chapter 200 of the Acts of 1947, Burns' 52-1123, is the latest and controlling statute relative to fixing the salaries of employees of the county department of public welfare. This section reads as follows:

"County staff. The county director, with the approval of the county board, shall appoint from eligible

lists established by the Indiana Personnel Board such number of assistants as he and the county board may determine to be necessary to administer the welfare activities within the county and to perform all other duties required of the department, and shall fix the compensation of such assistants within the salary ranges of the pay plan adopted by the Indiana Personnel Board and approved by the State Budget Committee and within the lawfully established appropriations: Provided, That the provisions of this subsection shall not apply to institutional employees of the several county departments of public welfare. The county director, with the approval of the county board shall determine as to the travel allowance to be allowed each assistant, and such allowance may be fixed by the county director, with the approval of the county board, at either an amount not to exceed twenty-five dollars per month or not to exceed five cents per mile for the use and operation of any motor vehicle owned or operated by any such assistant, but such travel allowances shall be limited by the lawfully established appropriation made for this purpose. Each such assistant so appointed shall be a citizen of the United States and have been a resident of such county for a period of at least two years prior to the date of his appointment, unless a qualified person cannot be found in the county."

Section 100 of the Welfare Act of 1936, Burns' 52-1303, provides as follows:

"County appropriations. (a) In the month of September, 1936, and annually thereafter, at the time provided by law, the county council shall make such appropriations out of the county welfare fund, based on the budget as submitted, as may be necessary to maintain the welfare services of the county and to defray the cost of the administration of such services as hereinbefore provided for the ensuing fiscal year, and shall, at the same time levy a tax in an amount necessary to produce the funds so appropriated."

It should be noted that in both sections referred to above the legislature uses the word "shall". It has been repeatedly held that, in a statute "shall" is mandatory and excludes the idea of discretion when addressed to a public official.

> 7 Words and Phrases, First Series, 6467;
> State v. Dousman (1871), 28 Wisc. 541-542;
> French v. Edwards (1871), 80 U. S. 506-515.

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 clearly appears 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 it.

> State, ex rel. v. Meeker (1914), 182 Ind. 240-243.

In the Meeker case, *supra,* the court further said:

> "It must be borne in mind that the county is not an independent municipality with vested rights of local self-government but exists only as a unit and agent of the State. Its officers perform local duties for the sovereign body, and the legislature may control such officers in the levy and collection of the county tax so long as such control is exercised in the same manner wherever the conditions are the same."

We are convinced also that the word "shall" was used by the legislature in section 12 in its imperative sense and we see no reason why it should not be so construed. Although it is true that the county council alone is authorized to make appropriations of money to be paid out of the county treasury (Sec. 5932 Burns' 1914, Acts 1899, p. 343), that fact does not prohibit the legislature from requiring the council, under stated conditions, to make such an appropriation and without reference to the usual procedure under the County Council Act. The members of such council are officers of a political subdivision of the State and are subject to the mandate of the sovereign power.

> State, ex rel. v. Meeker (1914), 182 Ind. 240, 247, 248, 249.

Another case of similar character is that of State, ex rel. v. Steinwedel (1931), 203 Ind. 457, wherein the court says:

> "The statute authorizes the school board to fix within certain limits the amount of salary for the attendance officer and provides that the county council shall appropriate and the Board of County Commissioners shall allow the funds necessary to make such payments. The school board fixed the amount of the salary for the year 1930-1931 and notified the county council and it was then the council's imperative duty to make the appropriation. The General Assembly may decide that certain activities of the business of government are so important that the supplying of funds to carry on these activities must not be left to the discretion of local authorities."

A more recent case very much in point was decided April 10, 1936, in which the court uses the following language:

> "The salaries of most public officers are fixed by the legislature. It has seen fit to delegate the discretion of fixing the compensation of election commissioners to the board of county commissioners. The statute does not provide that the compensation fixed by the board shall be subject to the approval of the county council, and the county council has no discretion in the matter, and is required to appropriate a sufficient amount to pay the compensation fixed by the board of commissioners."

Blue v. State ex rel. (1936), 210 Ind. 486, 1 N. E. (2nd) pp. 122-123. See also:

Opinions of Attorney General (1934), pp. 464, 514 and 515;

Opinions of Attorney General (1935), pp. 358-363.

By the terms of Sec. 4, Ch. 200, Acts 1947, Burns' 52-1123, the General Assembly provides that:

> "The county director, with the approval of the county board, shall appoint from eligible lists estab-

lished by the Indiana Personnel Board such number of assistants as he and the county board may determine to be necessary to administer the welfare activities within the county and to perform all other duties required of the department, and shall fix the compensation of such assistants within the salary ranges of the pay plan adopted by the Indiana Personnel Board and approved by the State Budget Committee and within the lawfully established appropriations. * * *."

It is not within the power of the county council to deprive the County Board of Public Welfare of such assistants as may be necessary to properly carry out the purposes of the Act. As was said in the case of Blue v. State, *supra:* "Neither the County Council nor the courts can assume the authority and discretion expressly delegated to the Board of County Commissioners." Applying this statement to the questions asked, the County Council cannot assume the authority and discretion delegated to the "county director with the approval of the county board."

It is also stated in the Blue case that the "budget statute contemplates only an estimate or approximation of the amount of money required for any branch of the government."

Blue v. State, *supra,* 1 N. E. (2nd) 123.

It seems clear then when a County Council makes an appropriation for assistants, investigators, etc., whose number and salary are in the discretion of the County Director of Public Welfare, with the approval of the County Board, any attempt by the council to limit the number of the staff is ineffective and beyond its power. Such an attempt should, in my opinion, be disregarded as forming no part of the appropriation ordinance.

This practically answers your first question. The County Council cannot, by its appropriations, control the salaries fixed by the County Director and approved by the board, except as limited by statute, but the board cannot exceed the total amount appropriated, until and unless there is an additional appropriation.

It is well settled by the decisions of the Supreme Court that where the Legislature has definitely fixed and determined the amount of salary to be allowed an official, or has specifically authorized a certain officer, board or body, to fix and determine such salary, and such officer, board or body acts in pursuance of the authority so vested in them by statute, their action in so doing under such statute is equivalent to a specific appropriation for such purpose, and it is the imperative duty of the proper officials to provide the funds required to meet such allowances.

State ex rel. v. Steinwedel (1932), 203 Ind. 457-473;
State ex rel. v. Meeker (1914), 182 Ind. 240-247 to 249;
Opinions of Attorney General (1943), page 718.

The appropriation of $5400.00 for investigators is a blanket appropriation for such employees to be used at the discretion of the Director with the approval of the County Board of Public Welfare.

1937 Ind. O. A. G. 434, 439, 440;
1945 Ind. O. A. G. 7, 17, and 18;
Blue v. State (1936), 210 Ind. 486, 488, 489, 1 N. E. (2), 122, 123.

Under Section 4, Chapter 200, Acts 1947, *supra,* the discretion of said Director and County Board are only limited by the minimum and maximum salary authorized by the salary plan established by the Indiana Personnel Board and approved by the Budget Committee.

1. In answer to your first question, when the foregoing authorities are applied to the facts presented, it is clear the appropriations do not control the rates of salaries of the persons to be hired or types of expenditures for such personal services of such visitors. As long as the salary fixed is within the above authorized minimum and maximum salary authorized it may be used for such increased salaries as it is a blanket appropriation.

2. Your second question is answered by answering the first. The county director, with the approval of the county board

is given the authority to fix the compensation of the assistants. The limitations upon the authority are set forth in the statute. The salary fixed must be within the range established by the Indiana Personnel Board and approved by the State Budget Committee, and there must be an appropriation available. In this case an appropriation is at present available and for that reason I have expressed no opinion as to deficiencies in appropriations.

3. Your third question is answered in the affirmative. In the example quoted, it is my opinion that the salary has been fixed according to law and is due and owed to the employee when the services have been given and an appropriation is available for its payment. It should be allowed by the commissioners and when so allowed comes under the terms of Sec. 26-813 Burns' I. S. which reads as follows:

> "Upon the allowance of any claim against any county in the State of Indiana by the board of commissioners of such county, and for the payment of which claim appropriation has been made by the proper authority, the county auditor of such county shall issue his warrant therefor."

OFFICIAL OPINION NO. 59

September 24, 1947.

Hon. C. E. Ruston,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of September 4th requesting my official opinion as follows:

> "The Cannelton News and the Perry County Democrat are both published in the city of Cannelton, Indiana.
>
> "The Library Board of the city of Cannelton caused the budget to be published in both newspapers.