I call your attention to the case of Fleckles v. Hille, 83 Ind. App. 715, 716, in which the court said:

"The term 'agriculture' is defined as the art or science of cultivating the soil, including the planting of seed, the harvesting of crops, and the raising, feeding and management of livestock and poultry."

The word "manufacture" is defined as:

"To make (wares or other products) by hand, by machinery, or by other agency; as to manufacture cloth, nails, glass, etc.; to produce by labor, esp., now, according to an organized plan and with division of labor, and especially with machinery.

"To work, as raw or partly wrought materials, into suitable forms for use; as, to manufacture wool, iron, etc.

"Anything made from raw materials by the hand, by machinery, or by art, as cloths, utensils, machinery, etc."

Webster's New International Dictionary.

From these definitions it seems clear that the raising of agricultural products should not be included in the term "manufacture."

The answer to your question is, therefore, in the negative.

AUDITOR OF STATE: Defacto Township Trustee, what constitutes such officer. School funds, distribution of, to defacto school officer.

April 16, 1940.

Hon. Frank G. Thompson,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that a request has been made upon you for payment of common school relief to Noah E. Wagner as trustee of Brown Township,
Martin County, Indiana. You state that the case is in litigation as to who actually is the trustee of said township. Enclosed with your letter is a copy of the certificate of the Clerk of the Circuit Court of Martin County certifying that a suit was instituted in Martin Circuit Court on March 13th, 1940, entitled "The State of Indiana, on the Relation of Noah E. Wagner, as Trustee of Brown Township, Martin County, Indiana, v. Lee O. Cobb, as Auditor of Martin County, State of Indiana," and that this cause is still pending. Also accompanying your letter is a copy of the statement by the members of the Advisory Board for Brown Township, Martin County, Indiana, in which statement it is certified that Noah E. Wagner is now and has been transacting the official business as Township Trustee of Brown Township such as contracting and paying teachers, bus drivers, et cetera. This certificate is dated March 10th, 1940.

The statement of the Clerk of the Martin Circuit Court, without further details, is not of any particular consequence. In order to make the statement of value there should be a further statement as to what the purpose of the suit is. The statement purporting to be signed by the Advisory Board is of somewhat more importance because, if accepted as true, it does show that Noah Wagner is performing the duties of the office of Township Trustee of Brown Township.

Assuming that the request for payment referred to by you is in the proper amount which, under the statute is allocated to Brown Township for the purpose of aiding in the conduct of its schools, I think that the Auditor is protected in making the payment to one who claims to be the proper officer to receive it and who is actually in possession of the office and performing the duties thereof. In other words, Noah E. Wagner would be the de facto trustee and the State would be protected in making payments to him upon that basis until the question of his right to conduct the schools has been definitely settled.

It does not appear in your letter but, as I understand it, underlying your question is the claim that Brown Township of Martin County no longer exists as such from which it might be argued that there could be no de facto officer in the absence of an office which might be filled by a de jure officer; and generally speaking, this statement of the principle holds
good. However, in this case the underlying question is as to whether the township as such continues to exist, and until that question is definitely settled, it seems to me that the state should either make distribution to the one professing to act or should withhold it altogether.

Following the first course, it seems to me that it can hardly be claimed that there is a diversion of the funds from the purposes for which they exist, whereas to follow the second course would unnecessarily jeopardize and embarrass the conduct of the schools for which the fund exists.

A somewhat similar question, limited, however, to the question of the payment of the salary of an officer to the *de facto* officer was raised in the case of the City of Terre Haute v. Burns, 69 Ind. App. 7. The question there was whether the payment by the City of Terre Haute of the salary of the City Civil Engineer to a *de facto* officer barred the right of the *de jure* officer to recover from the municipality. The court held that the prevailing rule was to the effect that the *de jure* officer could not recover from the municipality. In that case, on page 23, the Court said:

"The prevailing rule above announced is generally held to be supported by public policy. That disbursing officers and third persons dealing with reputed public officers in actual possession of the office and discharging the duties thereof can neither be expected to know nor be required at their peril to inquire into the validity of the title to such office or the qualifications of such officer; that as to such persons the occupant of the office so discharging its duties must be held to be what he appears and assumes to be, *viz.*, a duly authorized and qualified public official; that any other rule would impede the discharge of public business and tend to uncertainty and inefficiency in discharging the duties of the office and in some instances occasion unnecessary loss or hardships."

If this rule holds good with respect to the payment of the salary of an officer, it seems to me that there are even stronger reasons in support of the payment of the school relief money to the person who is actually conducting the schools which that particular relief money was intended to aid. In other words,
it could not be claimed that there had been a diversion of the funds from the purpose for which they exist. The very most that could be said would be that the wrong officer was disbursing them.

In conclusion, in view of the fact that the Clerk of the Circuit Court's certificate is so incomplete, I suggest that payment be withheld until it is definitely ascertained that the question as to whether Brown Township continues to exist is still in litigation.

ACCOUNTS, STATE BOARD OF: Clerks not entitled to fees for services rendered in the admission of persons to the Coleman or Robert Long Hospitals.

April 17, 1940.

Mr. E. P. Brennan,
State Examiner, State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Mr. Brennan:

I have your letter of April 10, 1940 in which you request an official opinion on the following questions:

"1. Are Clerks of the Circuit Court entitled to receive a fee of $5.00 for the duties required of them in connection with the admission of persons to the Robert Long or the Coleman Hospitals, which are operated by the Trustees of Indiana University? (See Ch. 6, Acts of 1939.)

"2. Are Clerks of the Circuit Court entitled to receive the $5.00 fee provided in Chapter 39, Acts of 1937, (a) if after a person has been adjudged insane by the court, and before being admitted into the hospital such person dies; (b) if prior to being adjudged insane by the court the person dies or the complaint is withdrawn?"

Your first question refers, of course, to Chapter 6 of the Acts of 1939, called the "Hospitalization of Indigents Act". The Act itself does not provide expressly for a $5.00 fee or,