As Senate Bill No. 155 did not go into effect until March 2, 1939, we are clearly of the opinion that said bill does not affect in any way the right of a non-resident holder of real estate to file and obtain a mortgage exemption in 1939.

In other words we are of the opinion that said Act is not effective as to non-residents until March 1, 1940.

LIBRARY, INDIANA STATE: Petition for levy for county library tax, whether defeated by fact that number of remonstrators exceeds petitioners in any one township.

April 13, 1939.

Hon. Christopher B. Coleman, Director,
Indiana State Library,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion concerning the effect of a remonstrance against the levying of a county library tax as provided in chapter 124 of the Acts of the General Assembly of 1939, approved March 9, 1939.

Your question is as follows:

"If the number of freeholders signing the remonstrances in any one township exceeds those who sign the petition in that township, will such fact defeat the levy as provided in said Act?"

In my opinion the answer to your question is that such fact would not necessarily defeat the levy. However, I do not think the answer to this question, as stated, is quite sufficient to meet fully the questions which you have in your mind, and for that reason I will discuss the above Act more fully.

Section 1 of this Act provides for the case of a county in which there is no free public tax supported library in any city or town therein. Section 2 provides for the case where the library board of any public library established in any city or incorporated town of the State shall file notice with the Board of County Commissioners of any county of the consent of such board to make its library open and free to all the people of the county who do not already have free library privileges on the condition of the county contributing to the support of such
public library. As applied to the particular question, the language of both sections is substantially alike. For that reason I have selected the language of section 2 as the basis for the interpretation.

Section 2 of said Act provides, in part, as follows:

"Whenever the library board of any public library established in any city or incorporated town in this State shall file notice with the Board of County Commissioners of any county of consent of such library board to make such library open and free to all the people of said county not already having free library privileges on the condition of the said county contributing to the support of such public library, such Board of Commissioners may and upon petition of twenty-five or more resident freeholders of each township in the county, not already taxed for public library purposes, shall make an annual appropriation and levy a tax of not less than one-tenth of a mill and not more than one mill on each dollar of taxable property in the said county, including the property of any city or incorporated town in the county not already taxed for public library purposes, unless a remonstrance or remonstrances against the same signed by as many resident freeholders of each such township in the county as have signed the petition shall be filed with the county auditor as hereinafter stated. Upon the filing of any such petition of twenty-five or more resident freeholders of each such township in the county, the county auditor shall cause notice of that fact to be published in two newspapers of general circulation in the county, one of which is published in such town or city wherein the library is located, if any there be. And within ten days after such publication any and every resident freeholder or group of resident freeholders shall have the right to sign and file with the county auditor their remonstrance or remonstrances against giving such aid, stating therein that he or they are opposed to levying a tax and making an annual appropriation for said purposes of a public library. At the first meeting of the Board of County Commissioners and not less than 10 days after such publication, the Board of
Commissioners shall proceed to consider and determine the matters thus presented as provided in section 1 of this Act. And if said board shall determine that a greater number of resident freeholders have signed the petition than the number who have signed a remonstrance or remonstrances against the levy of such tax and the making of such annual appropriation they shall thereupon make an annual appropriation and levy a tax as above provided and the county treasurer shall collect and pay the sum to such treasurer of city or town where such library is located to be held a part of the library fund and to be paid out in the same manner as other library funds. But if the Board of County Commissioners shall not so find, then the petition or petitions shall be dismissed and the board shall take no further action. * * *”

The ambiguity of the above section consists in the fact that in the opening sentence it apparently is made mandatory upon the Board of Commissioners upon the petition of twenty-five or more resident freeholders in each township in the county which is not already taxed for library purposes to make an annual appropriation and levy a tax of not less than one-tenth (1/10) of a mill and not more than one mill on each dollar of taxable property in said county, unless a remonstrance against the same is signed and filed within the time fixed by the statute by as many resident freeholders of each such township as have signed the petition. Interpreting the above language literally it would seem that unless the number of remonstrators in each township, considered singly, equals or exceeds the number of petitioners in the same townships, the petition would prevail; so that if the number of remonstrators in every township, except one, should greatly exceed the number of petitioners in the same townships but in that one township the number of remonstrators is less than the number of petitioners in the same township, the petition would still prevail. But when consideration is given to the later language in the section, in my opinion, this is not the result intended to be reached by the legislation.

It will be noted that, after the petitions are filed, it is made the duty of the county auditor to cause notice to be published of the filing of the petitions, whereupon ten days is allowed wherein any and every resident freeholder or group of resi
dent freeholders shall have the right to sign and file remonstrances; and when it comes to determining the question as to whether the petition shall be held to have succeeded or failed, the language of the statute is as follows:

“And if said board shall determine that a greater number of resident freeholders have signed the petition than the number who have signed a remonstrance or remonstrances against the levy of such tax and the making of such annual appropriation they shall thereupon make an annual appropriation and levy a tax as above provided and the county treasurer shall collect and pay the sum to such treasurer of city or town where such library is located to be held a part of the library fund and to be paid out in the same manner as other library funds. But if the Board of County Commissioners shall not so find, then the petition or petitions shall be dismissed and the board shall take no further action.”

In other words, the above provision seems to treat the question upon a county-wide basis so that if the entire number of petitioners is greater than the entire number of remonstrators, the petition carries so as to require an appropriation and levy to be made. If, on the other hand, the total number of remonstrators is greater than the total number of petitioners, the petition is required to be dismissed, it being provided that the board shall take no further action. This seems to me to be in conflict with the earlier provision in the section already referred to, but under well settled rules of statutory construction, even if this is true then the later provision prevails. See Stiers v. Mundy, 174 Ind. 651, at page 656.

Apparently the legislature intended to make the question of the levying of the tax and the making of the appropriation depend upon majorities computed upon a county-wide basis. It follows that the number of remonstrators in any particular township is of no significance except as such number may be reflected in the total of all townships. It is for that reason that in answering your question earlier in this opinion I have said that the fact that the number of remonstrators in any one township exceeds the number of petitioners in that township would not necessarily defeat the petition. The ultimate question is to be determined upon the basis of the total number of petitioners and the total number of remonstrators.
The question may be asked as to why the petitions are required to contain at least the names of twenty-five (25) freeholders from each township. I think the reason for this provision is clear. Since the tax is to be county-wide, it was doubtless believed that the petitions should represent a cross-section of the sentiment in all parts of the county. In other words, it would not be sufficient in a county with ten (10) townships participating to secure the names of two hundred fifty (250) from some one township, wholly ignoring the sentiment in other parts of the county. The legislation, therefore, requires that before the commissioners are required to act there must be a petition of at least twenty-five (25) freeholders from each township affected so that the petitions can be considered as representative of the entire county.

Summarizing, in my opinion, in order to start the proceedings for a mandatory levy and appropriation there must be a petition from not less than twenty-five (25) resident freeholders in each township involved, and if after notice and time have been given for filing all remonstrances the total number of petitioners exceeds the total number of remonstrators, the levy and appropriation becomes mandatory. If, on the other hand, the total number of remonstrators equals or exceeds the total number of petitioners, the petitions are required to be dismissed.

PUBLIC INSTRUCTION, DEPARTMENT OF: Whether county superintendents may have their salary increased at any time during term of office.

April 14, 1939.

Hon. Floyd I. McMurray,
Superintendent of Public Instruction,
Department of Education,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter referring to House Bill No. 175 of the 1939 session of the General Assembly, and submitting the following question:

"May the county superintendents have their salary increased at any time during their term of office as provided by this law?"