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?”
The above Act will appear as chapter 96 of the Acts of 1939, approved March 9, 1939, and effective by virtue of the provisions of section 2 thereof from and after July 1, 1939. The Act is an amendment of section 14 of chapter 21 of the Acts of 1933 entitled:

"An Act fixing the compensation of certain public officials, their deputies and assistants and fixing manner of payment thereof; authorizing the appointment of deputies and assistants; prescribing certain duties; making a division of deputy's and assistant's compensation unlawful and providing a penalty therefor; providing for the collection of fees and mileage and the disposition of same; repealing all laws in conflict therewith and fixing the time of taking effect."

After fixing the salary of the county superintendent in the several counties of the State in section 4 of said Act, it was provided in section 14 of the original Act that:

"The salaries of the county superintendent as herein stipulated may be increased upon written request of a majority of the township trustees to the county council, who may increase such salary to an amount which in the judgment of the county council may deem proper."

By the amendment of section 14 in 1939, it was provided that:

"The salary of the county superintendent, as herein stipulated, may be increased by a majority of the township trustees to an amount which, in the judgment of a majority of the township trustees, may seem proper, and the county council shall appropriate and the board of county commissioners shall allow the necessary funds to pay such increase in the salary of the county superintendent."

The several county superintendents of the State were elected in 1937 for a term of four (4) years, and the question now arises as to whether the provision of the 1939 Act above quoted authorizes an increase of the present salaries of the several county superintendents during the present term of office in view of the constitutional provision contained in section 2 of article 15 of the Constitution that:
"* * * the General Assembly shall not create any office, the tenure of which shall be longer than four (4) years, nor shall the term of office or salary of any officer fixed by this Constitution or by law be increased during the term for which such officer was elected or appointed."

It has been suggested that such salaries are not salaries "fixed * * * by law" within the meaning of the constitutional provision above referred to, but my investigation of the subject leads me to believe that the above suggestion is unwarranted. As chapter 21 of the Acts of 1933 stood before amendment, each one of the county superintendents was entitled to the salary fixed by the legislature in the Act and to such additional sum as may have been legally fixed pursuant to section 14 of the Act as it now exists. Clearly, if no increase had been legally allowed pursuant to the provisions of section 14 of the original Act, the salary of each superintendent would be the salary specifically stated in section 4 of the Act. It is equally clear that in case an increase had been legally provided pursuant to the terms of section 14, the salary of any official affected thereby would be the specific amount set out in section 4, plus the increase provided pursuant to the authority conferred in section 14. But in either event the salary would be a salary "fixed by law."

The situation as it stands at present, therefore, is simply this,—that each one of the county superintendents has now a salary "fixed by law" whether the same be the specific amount designated in section 4 of the 1933 Act or that amount augmented pursuant to the authority conferred in section 14 of said Act.

I think the authorities in support of this position are quite well considered and should be followed, although I do not find an Indiana case upon the subject. For example, take the case of United States Fidelity & Guaranty Company v. Guenther, reported in 281 U. S. at page 34. The appellant in that case had issued to the appellee, a resident of Cleveland, Ohio, an automobile insurance policy insuring him against loss and expense arising from claims upon him for damages in consequence of any accident occurring within the United States or Canada by reason of the use of his automobile and resulting in bodily injuries to another person. The policy provided that it was subject to the express condition that it "shall not cover
any liability of the assured while the automobile is being operated by any person under the age limit ‘fixed by law’ or under the age of sixteen years in any event.” While the policy was in force and while the automobile was being operated with appellee’s consent and permission by a minor seventeen years of age upon the highways and streets of the City of Lakewood, Ohio, the automobile collided with and inflicted personal injuries upon a third person. At that time there was in force in the City of Lakewood an ordinance which made it unlawful for anyone to permit a minor under the age of eighteen years to operate a motor vehicle upon the streets of said city. The statutes of the State of Ohio, however, fixed the age limit at sixteen instead of eighteen years. The injured person sued the appellee and recovered the judgment. The appellee thereupon paid the judgment and begun a suit against the insurance company to recover on account of his loss. The insurance company defended upon the ground that the automobile was being operated at the time of the injury by a person under the age limit “fixed by law,” and was successful in that contention, the court using the following language with respect to the question now under consideration, on page 37:

“This is not limited to the case where the age limit is fixed by ‘a law;’ a specific phrase frequently limited in a technical sense to a statute, which, to say the least, would have involved doubt as to whether a municipal ordinance was included. On the contrary the clause uses the broad phrase ‘fixed by law,’ in which the term ‘law’ is used in a generic sense, as meaning the rules of action or conduct duly prescribed by controlling authority, and having binding legal force; including valid municipal ordinances as well as statutes.”

In the case of Holloway, et al. v. Board of Commissioners of Borough of Haddonfield, reported in 160 Atl. p. 682, the question was again considered as to what is the meaning of the term “fixed by law,” and the court held that a term of office fixed by ordinance pursuant to statutory authority was “fixed by law.” To the same effect see In the Matter of the Petition of The Mutual Life Insurance Company of New York to Vacate an Assessment, reported in 89 N. Y. Rep., page 530.

Upon the basis of the above authorities and upon what appears to me to be a reasonable view of the subject, whether the
present salary of a county superintendent was fixed by the legislature because no steps had been taken to increase it pursuant to section 14, supra, or whether it had been fixed in part by the legislature and in part by the council as might have been done under section 14, supra, the result is the same, namely,—that such superintendents have a salary “fixed by law.” If that is true, then the authority to increase it pursuant to the amended section 14 would have to be exercised in conformity with the constitutional provision prohibiting the increasing by the General Assembly or by anyone to whom authority is delegated by the General Assembly of the salary of an officer during the term for which the officer was elected or appointed.

It follows that the answer to your question is in the negative.

PUBLIC INSTRUCTION, DEPARTMENT OF: Attendance officers, county, whether entitled to traveling expenses.

April 18, 1939.

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

Dear Sir:

I have before me your request for an official opinion interpreting the words “actual expenses” as contained in Burns Indiana Statutes Annotated (1933), section 28-502, especially with reference to whether said words include the traveling expenses of an appointive county attendance officer.

The context in which the words are used is as follows:

“Appointive attendance officers, unless otherwise provided in this Act, shall have their salaries fixed by the appointing board and shall receive from the county treasurer not less than three dollars ($3.00) nor more than five dollars ($5.00) per day for each day of actual service and shall further receive actual expenses necessary to the proper performance of their duties, said salaries and expenses to be paid by the county treasurer upon a warrant signed by the county auditor, and the