fraction of a cent deductions from the figured price to producers, is a trust fund to be held by him and disbursed as provided in sub-section V (f) of Exhibit B attached to Official Order No. 2, *supra,* the terms of which, in my opinion, are reasonably clear. Said sub-section apparently contemplates that distribution when made to producers as provided in the last literary paragraph thereof is to be made to producers supplying the market in the "marketing area" at the time the distribution is made. These fraction of a cent deductions, in my opinion, are a part of the price so far as concerns the distributor, but they are no part of the price so far as the producer is concerned. The price to him is the price fixed by the board which the distributors are required to pay directly to him, and his interest in this particular fund grows out of and is realizable only by virtue of and pursuant to the provisions of the foregoing sub-section. Your questions Nos. 1, 2 and 3 are answered accordingly.

WELFARE, DEPARTMENT OF PUBLIC: Salary of county director, how fixed. Mandate: may county board be mandated to fix county director's salary.

March 22, 1937.

Hon. Wayne Coy,
Acting Administrator,
Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion, in which you state in part as follows:

> "The Welfare Act of 1936 provides that the salary of a County Director for a county the size of Marion County should be $4,000 a year. Section 3 of House Bill No. 460, which has an emergency clause, provides that the compensation for County Directors shall be fixed by the County Board of Welfare, within the salary ranges established by the State Department, which shall be paid monthly in the same manner as the compensation of other county officers as provided by law.

"The State Board of Public Welfare, in accordance with this amendment, has fixed the salary of the County Director of Public Welfare in Marion County to be not less than $4,000 and not more than $4,200. The County Board of Public Welfare of Marion County has refused to fix the salary of the County Director."

You submit the following questions:

"1. Will an action in mandamus lie against the Marion County Board to fix the salary of the County Director?

"2. Has the County Board of Public Welfare any legal right to refuse to fix this salary?

"3. If and when the salary of the County Director of Marion County has been fixed by the County Board of Public Welfare, will it relate back to the date of his appointment?

"4. In any event as long as the minimum amount is $4,000, is he entitled to receive compensation based upon the minimum amount, the same to be paid by the County Auditor, if the County Board of Public Welfare does not pass on the same before the end of the month?"

Section 3 of chapter 41 of the Acts of 1937, referred to in your letter, which became effective upon its passage on March 2, 1937, provides in part as follows:

"If the county board shall fail or refuse to appoint a successor within thirty days after such removal, or if a vacancy occurring for any other cause shall not be filled within thirty days, the state board shall appoint a County Director and the director so appointed shall serve at the pleasure of the state board. The County Directors of the several counties shall be entitled to receive as compensation for their services *the amounts which shall be fixed by the county board within the salary ranges established by the State Department* which shall be paid monthly in the same manner as the compensation of other county officers as provided by law." (Our italics.)

In view of the above provision and upon the basis set out in your letter, I think the duty of the county board to fix the salary of the County Director of Public Welfare is mandatory.

Gruber, et al., v. State, ex rel., Welliver, 201 Ind. 280;
McDonald v. State, ex rel., 202 Ind. 409;
Chambers v. Davis, et al. (Cal.) 22 Pac. (2d) 27.

In the case of Gruber v. State, ex rel., *supra,* on page 284, the court in its opinion says:

> "An officer may be mandated to perform an act which the law specifically enjoins, or any duty resulting from any office. Sec. 1245 Burns 1926; *Flora, Trustee,* v. *Brown* (1923), 79 Ind. App. 454, 138 N. E. 767; *State, ex rel.,* v. *Lane* (1916), 184 Ind. 523, 111 N. E. 616. In *Flora, Trustee,* v. *Brown, supra,* the court, in regard to Sec. 1 of the Acts of 1913, p. 331, the original Act, which was finally amended by Acts 1921 pp. 322, 323, said as follows: 'In the concluding part of said section it is provided, that if a majority of the parents, guardians, heads of families, or persons having charge of children, who were enumerated for school purposes, etc., shall petition the trustee to establish and maintain in such township a high school or a joint high school and elementary school, said trustee shall establish and maintain such a school as petitioned for. This latter part of said section, the conditions being fulfilled, leaves no discretion with the trustee; it is now his duty to act in accordance with such petition, and the performance of this duty may be enforced by mandate.'
>
> "The said Act of 1921 is mandatory, as it provides that the township trustee, under the conditions specified in the statute, *shall* establish and maintain a joint high school and elementary school, as petitioned for in this proceeding. Under the proper petition, the trustee had no alternative but to act. He could, of course, use his judgment and discretion in carrying out the mandate of the statute, but could not disregard same."

The case of Chambers v. Davis, *supra,* is cited particularly because in that case the question dealt with is the question of the fixing of a salary. There are many cases, however, in Indiana which hold in conformity with the opinion in the case of Gruber v. State, ex rel., *supra,* the principle of which is well settled by the authorities.

I am unable to find anything in the language above quoted from the 1937 Act which would produce any doubt upon this particular question. The language itself is imperative in its nature. The county directors "*shall* be entitled to receive as compensation for their services the amounts which *shall* be fixed by the county board."

I am assuming that the county board has received notification of the salary range established by the State Department and upon that assumption your first question is answered in the affirmative.

The second question upon the same basis is answered in the negative.

A categorical answer to your third question is not sufficient to meet all conditions. I think that a salary once fixed remains the salary of the officer until a new salary is fixed, independent of whether the same officer is in office during all of that time; but since no salary has been fixed in this particular case, I think, when it is fixed, it will relate back to the time when the officer takes office after the effective date of the Act at the minimum, as provided in the Act. In other words, the Act contemplates that the board will act promptly in fixing a salary for the director, and while generally such a fixing cannot operate retroactively either to increase or decrease a salary, the intention is clear, I think, that the director shall, at least, receive the minimum amount, and to that extent the original fixing of the salary should relate back as to the minimum amount.

In answer to your fourth question, I desire to say that, in my opinion, the director would be entitled to receive compensation at the rate of $4,000.00 per year, based upon the minimum of the *range of compensation* as fixed by the state board for the period prior to the actual fixing of the salary of such officer by the county board, the same to be paid by the county auditor. This statement, however, should not be confused with the right to mandate the county auditor without reference to prior action by the county board. The rule

seems to be that mandamus will not lie to require an officer to perform an act where the performance of such act depends upon the act or approval of some third person or of some other board or commission.

> People, ex rel., v. Whealan, et al. (Ill.), 190 N. E. 698.

In the above case, which was an action in mandate to require the payment of the salary of an adult probation officer, the law required the fixing of such salary by the court with the approval of the county board in counties of the third class at not less than five thousand dollars and not more than six thousand dollars. The court had not fixed the salary of such officer. With reference to that situation the court, on page 701, used the following language:

> "It has long been the rule in this State that a relator in mandamus must show a clear and undoubted right to the relief prayed and a correspondent duty on the part of the respondent to do the act sought to be compelled. Hooper v. Snow, 326 Ill. 142, 157 N. E. 185; People v. Department of Public Works, 320 Ill. 117, 150 N. E. 655. This is a burden which rests on the relator, and it is incumbent on him to show every material fact necessary to establish the existence of such right and duty. People v. Sellars, 179 Ill. 170, 53 N. E. 545; Swift v. Klein, 163 Ill. 269, 45 N. E. 219; Chicago & Alton Railroad Co. v. Suffern, 129 Ill. 274, 21 N. E. 824. To compel the relief sought it was incumbent on the relator in this case to show that her salary had been fixed by the judges of the circuit and superior courts with the approval of the county board. This she did not do. Mandamus will not lie when an official act sought to be coerced depends upon the act or approval of a third person (MacGregor v. Miller, 324 Ill. 113, 154 N. E. 707), and while the county board had no power to reduce the number of adult probation officers from that fixed by the judges of the circuit and superior courts or to refuse to appropriate the salaries for such officers when such salaries had been fixed by those judges with the approval of the board, yet it can scarcely be said

that it may be required by mandamus to appropriate funds to pay a salary until the same has been fixed according to law."

Quernheim v. Asselmeier, 296 Ill. 494, 129 N. E. 828.

As applied to the present inquiry, the ruling in the above case would seem to require prior action by the county board fixing the salary of the director before mandate would lie against the county auditor, even though when fixed the salary of such officer could not be less than four thousand dollars per year.

INHERITANCE TAX DIVISION: Date of accrual of inheritance tax liability. Interest, whether collection of interest on inheritance tax liability is mandatory.

March 23, 1937.

Hon. Isaac Kane Parks,
Inheritance Tax Administrator,
State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Sir:

In re: Estate of Commodore P. Cornell—County of Fulton.

I have before me your letter requesting an official opinion with respect to the duty of the Treasurer of Fulton County growing out of the following statement of facts, viz:

The decedent in the above case died on September 9, 1932, leaving a last will and testament under date of December 19, 1931. The will, however, was not discovered until July 15, 1935, and the estate was therefore not opened until September 20, 1935. By the terms of the will the widow of a deceased son of the testator was given a life estate in real estate of such value that the tax assessed against such widow's portion amounts to $72.77. The executor of the estate desires to pay the tax freed from any interest charge. The County Treasurer is in doubt as to whether he can accept the principal in full payment of the tax and waive the interest thereon. You request an opinion with respect thereto.