

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.

Section 6-2413 of Burns Indiana Statutes, Annotated, 1933, referring to the payment of inheritance tax, provides in part as follows:

"If such tax is paid in estates of resident or non-resident decedents within one (1) year from the accrual thereof, a discount of five (5) per cent shall be allowed and deducted therefrom. *If such tax is not paid within eighteen (18) months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten (10) per cent per annum from the time the tax accrued,* unless by reason of necessary litigation or other unavoidable cause of delay, such tax can not be determined, in which event the court in estates of resident decedents, and the State Board of Tax Commissioners in estates of nonresident decedents, may reduce the interest to six (6) per cent per annum, which shall be charged upon such tax, from accrual thereof until the cause of such delay is removed after which ten (10) per cent per annum shall be charged." (Our italics.)

The italicized language, *supra*, is mandatory in its character and in my opinion requires the charging and collection of interest on such tax from the accrual thereof if not paid within eighteen months after "the accrual thereof," and unless by reason of necessary litigation or other unavoidable cause of delay the tax can not be determined, in which latter event the interest may be reduced to 6 per cent per annum from the accrual thereof until the cause of delay is removed.

There remains to be considered the further question as to the time when the tax may be said to have accrued. I think this question, however, is specifically answered by the statute itself, section 31 of which provides that "all taxes, imposed by this Act, shall be due and payable at the time of the transfer, except as herein provided." (Burns Indiana Statutes, Annotated, 1933, Sec. 6-2431). There is, of course, no doubt as to when the transfer in a case like this occurs. The transfer occurs at the time of the death of the decedent.

Referring again to section 6-2413, *supra*, then, it will be observed that if the tax is not paid within eighteen months from the death of the decedent in a case like this, interest shall be charged and collected at the rate of 10 per cent per

annum from the date of the death of the decedent, except in cases where the tax could not be determined within such time on account of litigation or other unavoidable cause of delay, in which event in the case of a resident decedent the court may reduce the interest to 6 per cent per annum from the accrual until the cause of delay is removed, and thereafter 10 per cent per annum shall be charged.

The Treasurer, however, has no right to reduce the interest in such a case, such power residing in the court. Unless, therefore, the tax has been reduced from 10 per cent to 6 per cent by the court in this case, the Treasurer, in my opinion, would be required to collect 10 per cent interest per annum from the death of the decedent.

**LIBRARY AND HISTORICAL DEPARTMENT, INDIANA:
Authority of county council over county library tax.**

March 23, 1937.

Hazel B. Warren, Chief,
Extension Division,
Indiana State Library,
Indianapolis, Indiana.

Dear Madam:

I have before me your request for an official opinion in answer to the following question:

“When the county commissioners levy a county library tax, can the county council cancel this action?”

You refer to sections 9702-9709 of Burns Indiana Statutes, Annotated, of 1926, which are section 41-510 to 41-517 of Burns Indiana Statutes, Annotated, of 1933.

The above sections provide for the establishment of county libraries and the appointment of members of county library boards; also the organization, powers and duties of such boards, including the power to levy a tax for the library purposes set out in the Act. The tax levying section is section 41-515 of Burns Indiana Statutes, Annotated, of 1933, which provides as follows: