

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.

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**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:

“It shall be the duty of the County Library Board, as organized under any section of this Act, to determine annually the rate of taxation that shall be necessary to establish, increase, equip and maintain the public library, and certify the same to the Board of County Commissioners, and to the County Auditor: Provided, That said levy shall not be less than two-tenths (.2) of a mill and not more than one (1) mill on each dollar of all the taxable property assessed for taxation in such county, city, town or township, as shown by the tax duplicate for the year immediately preceding the fixing of such levy. When the levy for such public library purposes shall be certified to the Board of County Commissioners and the County Auditor by the County Library Board, the same shall be placed upon the tax duplicate of such county, and collected in like manner as other county taxes are levied and collected.”

It will be observed from the foregoing that the County Library Board is charged with the duty of determining annually the rate of taxation necessary for the purposes of said library and to certify the same to the Board of County Commissioners and to the County Auditor. The concluding sentence of the section provides that when the levy is certified to the Board of County Commissioners and the County Auditor by the County Library Board “the same shall be placed upon the tax duplicate of such county and collected in like manner as other county taxes are levied and collected.”

This language is mandatory in its character and while the previous language is not as clear as it might be upon the subject as to who makes the levy, it apparently is the intention that the County Library Board shall make it, or at least that the amount having been determined by the County Library Board, the duty to make the levy is mandatory upon the county commissioners.

Whatever may be the view taken as to which of the two boards is the tax levying instrumentality, it is certain that that duty devolves upon one or the other. The County Council, in my opinion, has no authority over this levy. This should not, however, be confused with the authority of the County Board of Tax Adjustment.