INHERITANCE TAX DIVISION: Inheritance tax, taxation of jointly held estate.

November 22, 1937.

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

Dear Mr. Parks:

I have before me your request for an official opinion as to to the taxability under the Inheritance Tax Act of crops and farm animals grown and growing on the farm home of the decedent, assuming that all of the property acquired by the decedent and his wife, who was his sole heir, had been acquired by their joint efforts and that none of the personalty had been acquired by either the husband (decedent) or his wife separately, and that neither of them claimed a separate interest in the property. If I understand your question, however, the title to the real estate was in the decedent and that no claim as to joint ownership is made as to it.

I think this question is fully and uncontrovertably answered by the specific language of section 6-2401 of Burns Indiana Statutes, Annotated, 1933, which provides, among other things, as follows:

> "Whenever property is held in the joint names of two (2) or more persons or is deposited in banks, or other institutions or depositories in the joint names of two (2) or more persons and payable to either or the survivor, upon the death of one (1) of such persons, the exercise of the right of the surviving person or persons to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this Act in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint owner or joint depositor and had been devised or bequeathed to the surviving person or persons, by such deceased joint owner or joint depositor by will, exc^pting therefrom such part thereof as may be proved by the surviving joint owner or join owners to have originally belonged to him or them and

> never to have belonged to the decedent: Provided, however, That property jointly held shall not be taken to include real estate held by the entireties."

It will be noted that the above provision authorizes the submission of proof that the surviving joint owner or owners were in fact the owners of the property held in the joint names of themselves and the decedent and upon sufficient proof of such facts the transfer would not be taxable. However, in the absence of such proof, I think it is clear under the above quoted provision that the right to immediate possession of said property by the surviving joint owner or owners, however acquired, must be treated as a taxable transfer.

ACCOUNTS, STATE BOARD OF: Prosecuting attorneys, payment of expense for attendance at conference with Attorney General.

November 23, 1937.

Hon. William P. Cosgrove,
Chief Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your inquiry as to whether or not an appropriation by the county council is necessary before the payment of the expenses of the prosecuting attorney for attendance at the conference called by the Attorney General can be made from the general fund.

In reply to this question, your attention is directed to that portion of chapter 128 of the Acts of the Indiana General Assembly of 1937, which reads as follows:

> "The expenses necessarily incurred by any such prosecuting attorney in attending any such conference, including the actual expense of transportation to and from the place where such conference is held, together with his meals and lodging, if there be any, shall be paid from the general fund of the county, upon the presentation of a duly itemized and verified claim,