2. Where a person who has resided in one county in Indiana for several years and then moved to another county to live and after residing in this latter county for a few months, lost his mind, the proceedings to determine his mental condition should be brought in the county where he is actually residing at the time such mental infirmity occurred.

HIGHWAY COMMISSION, STATE: Method of dis-annexing territory from cities and towns.

April 11, 1938.

Hon. W. E. Hoffman,
State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of April 11, 1938, in which you submit the following questions:

"1. Under the statutes providing for disannexation of entire additions or subdivisions of a city, is it necessary to have all of the parties who own an interest in a lot sign the petition in order that that particular lot may be released on the petition, or is it sufficient if two out of three owners sign the petition?

"2. Would it be possible to have a lot counted in fractions; that is to say, if two out of three owners sign the petition, would it be possible to count two-thirds of a lot?

"3. What is the effect of the party signing a disannexation petition and then signing a remonstrance without withdrawing from the petition?"

In reply to your first question, your attention is directed to section 48-906, Burns' Indiana Statutes, 1933 Revision, which reads in part as follows:

"The owner or owners of one-tenth or more in number of the lots in any addition or subdivision to any city or town may file his, their or its petition in writing with the board of public works or common council
of any city or board of trustees of any town praying for the disannexation of said entire addition or subdivision, if one (1) side or more thereof, or any part of the same, shall form the corporate boundary of such city or town, setting forth a copy of such plat, notice of the filing of which and the hearing thereon shall be given as provided in this Act. Remonstrances against the granting of such petition may be filed by the owner of any lot or lots in such addition, and such order shall be made by the board or council hearing the same as shall be just and equitable in the premises: Provided, however, That if the owner or owners of more than one-half of the lots in such addition or subdivision file his, their or its remonstrance or remonstrances in writing against the granting of the petition for disannexation, the board or council hearing the same shall have no power or jurisdiction to proceed further, but shall at once dismiss such proceedings at the costs, if any incurred, of the petitioner or petitioners."

It will be noted from this section that the law requires the owner or owners of one-tenth in number of the lots in any addition to file a petition. The determining factor therefore in testing the sufficiency of the petition is as to the number of lots whose owners have signed the petition. Since the lot is the unit of measurement, it is my opinion that all parties who own an interest in a particular lot would be required to sign the petition before such lot could be counted as a unit on such petition.

I think it would not be possible, therefore, to have a lot counted in fractions.

In answer to your third question, it is my opinion that the filing of a remonstrance by a lot owner who had also filed a petition would operate as a withdrawal of his name from the petition. Having filed a remonstrance, I think the lot owner in legal effect would be saying to the board that he was not in favor of the disannexation.