The commission's powers in this regard are broad, but it is clear that such powers do not include the authority to introduce evidence in controversial commission proceedings.

By limiting the class of proceedings to those which are controversial it was the intention of the legislature to include only those proceedings which involve administrative adjudication and to exclude from the operation of the statute all other proceedings such as those connected with the rule-making process. This is obvious from a reading of the statute as a whole and especially because of the reference therein to "parties," "impartial fact-finding," "orders" and other terms applicable to the process of administrative adjudication.

It is axiomatic that an agent's authority cannot exceed the scope of his principal's powers. Therefore, the commission's staff members and agents have no authority which is not possessed by the commission itself.

Because the statutory law of the State prohibits the introduction of evidence by the public service commission in controversial proceedings conducted by said commission, it is unnecessary to consider the constitutionality of a statute purporting to create such authority.

OFFICIAL OPINION NO. 71

August 20, 1951.

Senator Leo J. Stemle,
524 Main Street,
Jasper, Indiana.

Dear Sir:

I have your request for an official opinion in which you ask the following questions:

"1. Can a person who was a candidate on either the Republican or Democratic ticket in the primary election and who was defeated, run as a candidate on an independent ticket in the general city election this fall for the same office that he sought the nomination for in the primary election?

"2. Can an independent ticket for the election of various city offices be filed with the election commis-
sion at any time from now until September 1 or must
the ticket have been filed within thirty days before
the primary election?"

Reference must first be made to Section 106 of the Election
Code (Chapter 208 of the Acts of 1945; Sec. 29-3801, Burns
The pertinent portions of this section are as follows:

"* * * The State election board and the county
election board shall cause to be printed on the respec-
tive ballots the names of the candidates nominated by
the conventions of any party that cast one-half of one
percent of the total vote of the state of all parties at
the last preceding general election, as certified to said
state election board or county election board by the
presiding officer and secretary of such convention, or
by the chairman and secretary of the political party
unit holding such convention, or in case of primary
election, by the officer legally required to make such
certification; and also the names of any candidates for
any office when petitioned so to do by electors qualified
to vote for such candidates, as follows: * * *" (Our
Emphasis).

This section was originally enacted in 1889 and no sub-
stantial amendment has been made to the language quoted
in subsequent amendments or reenactments.

In 1921 the General Assembly enacted Chapter 198, Chap-
ter 514 (Section 29-1006, Burns 1933) which was amended
in 1925 in a particular, not here pertinent. This section was
reenacted as Section 109 of the Election Code, Chapter 208
of the Acts of 1945 (Section 29-3804, Burns 1945 Supp.).
This section is as follows:

"The name of no independent candidate or of any
person who does not intend to affiliate with or support
duly chosen candidates of any existing and regular
party organization shall be printed upon any official
ballot used at any general or municipal election in this
state unless such person or candidate shall, at least
thirty (30) days prior to the date of the primary elec-
tion, file a declaration and petition with the secretary
of state, in the case of a candidate for member of the national house of representatives, member of the general assembly or judicial office; with the clerk of the circuit court, in the case of a county or township or city office; including judge of the city court, in the same manner and form as is herein or may hereafter be provided.”

For a period of many years the State Election Board has published in their pamphlet entitled “Election Laws of Indiana” an interpretation of this section of which the text in the 1940 edition is representative and is as follows:

“A person can not file as an independent candidate unless he has complied with the Act of 1921, which is Section (29-1006), but this statute only refers to a person who desires to be a candidate independently of any political organization and does not prevent a person from being a candidate of a new political group or party.

“The Acts of 1933, page 368, Section (29-1003), makes it the duty of the several Boards of Election Commissioners to print upon the ballot at the fall election the names of candidates for any state, county or congressional offices when petitioned so to do by qualified electors, which petition must be signed by one-half of one percent of the total vote of all parties cast for Secretary of State in the State, county or congressional district as the case may be, at the last preceding general election. The petitions should be filed with the Governor in the case of a state office, Clerk of the Circuit Court in the case of a county office, and in the case of the congressional candidate, duplicate originals should be filed with the Clerk of the Circuit Court in each county composing the district.

“It has always been the opinion of the State Board of Election Commissioners that the first statute above referred to did not prevent a person from being a candidate of a new political group or organization, even though he might have been a candidate at the preceding primary.
“Such a candidate could not be technically an independent candidate in that he would not be independent of any political party, but he could be a candidate of a new political party or group.

“In other words, a group of voters could organize at any time after the primary, a new local political party or organization, and determine to place a candidate or candidates for any office upon the ballot by petition.

“Each petitioner must sign the petition himself, give his residence and post office address, and the statute prescribes other requisites of such petition. For instance, it must state the name and residence of each candidate and that such candidate is qualified to hold such office and that the subscribers to the petition desire to and are legally qualified to vote for such candidate. The petition should also designate the name or title of the party or principle which said candidate or candidates represent, together with a simple figure or device by which they shall be designated on the ballot.

“Each person signing such petition must acknowledge the same before a Notary Public or other officer authorized to take acknowledgments.

“Petitioners of defeated candidates in the primary election held last May are eligible to sign the petition of a prospective third party candidate if they so desire.

“However, such a new political party or group must comply with the Acts of 1935, page 1554, which in substance provides that no political party or organization shall have the names of candidates printed upon the ballot if they advocate the overthrow by force or violence of the local, state or national government. Such Act provides that no newly organized political party shall have its names printed upon the ballot unless it files an affidavit by its officers, that it does not advocate the overthrow of local, state or national government by force or violence, and that it is not affiliated in any way with any organization which does.”
These pamphlets published by the Election Board have, by common knowledge and consent, been accepted generally as a practical construction of the election law, although until 1945 there was no express statutory provision authorizing the Board to interpret election laws. Such a practical construction by an administrative agency over a period of years is to be given great weight where the statutes are ambiguous, but where the intent of the legislature is clear, the practical construction cannot be followed in derogation of the legislative intent.

Referring again to Section 109, it is clear that the section is an exception to Section 106, excluding from the general class set forth in Section 106 those independent candidates and those persons who do not intend to affiliate with or support the duly chosen candidates of any existing and regular party organization who have not filed a declaration and petition at least thirty (30) days before the primary. Section 109 clearly excludes independent candidates who have not filed thirty (30) days before the primary and then proceeds to describe another class who are likewise excluded as follows: “Any person who does not intend to affiliate with or support the duly chosen candidates of any existing and regular party organization.”

Two questions present themselves: 1. At what point of time must the party organization be “existing and regular”? 2. Must it have more than one candidate?

As stated in Vol. 3, Sutherland, Statutory Construction, page 445:

“Statutes regulating the rights of citizens to vote are of great public interest, and, therefore, are given a broad interpretation to secure for the citizen his right to vote and to insure the election of those officers who are the people’s choice. * * *”

Section 109 is speaking of the official ballots to be printed at the time of a general or municipal election. In view of that I see no reason why the point of time at which a party should be “existing and regular” is other than at the time of a general or municipal election. I am therefore of the opinion that if the party is “existing and regular” at the time of the nomination of candidates for a general or munic-
principal election and all other sections of the election code have been met, a person may become a candidate for office under such party organization by petition.

Section 109 also requires that the person who desires to become a candidate by petition "intent to affiliate with or support duly chosen candidates of any existing and regular party organization * * *." Giving that provision its plain ordinary meaning, it becomes apparent that other candidates upon the same ticket are contemplated. That is consistent with the whole apparent purpose of Section 109 which is to prevent a candidate who is defeated in the primary from gaining a place on the ballot at the time of election as a completely independent candidate.

I am, therefore, of the opinion that Section 109 contemplates a bona fide affiliation with a regular and existing party or organization with other candidates for office. A further opinion is that a candidate for each individual office is not legally essential, as unchallenged election records will verify, and that the legislature intended as the manifest purpose in the enactment of Sec. 109 that an individual person cannot, after primary defeat, organize a political party to sponsor such individual as a candidate for the same office in the general election. Construing the before quoted sections of the Election Code together, it is apparent that the provision for the nomination of candidates of a minor political party by petition was not intended to stultify provisions requiring independent candidates to file before the date for primary elections.

Thus, your first question must be answered in the negative and the answer to your second question is that an independent candidate must file thirty (30) days prior to the primary election, but a legally organized independent party may file its roster at any time before September first.