of "rules and regulations promulgated by the department of education" certifies its findings to the board of education. The board of education then "under and pursuant to the regulations theretofore promulgated by such board," determines the additional amount of state aid which shall be allocated to the school corporation.

It is apparent that the intent of this enactment is that the state tuition fund shall be administered as a coordinate whole, both as to regular and extraordinary payments. It is also apparent that the state board of education is empowered to make uniform rules and regulations for the computation and allocation of extraordinary payments, to operate uniformly upon given facts. It is my conclusion, that if the regulations of the board provide for the allowance of those extraordinary relief payments on the basis of units or of instructors translated into units, then since it has already ruled that licensed principals and supervisors are additional units, those principal and supervisor units may be counted in the total units for state aid purposes. In other words, if principals and supervisors are considered as units for regular grants from the state tuition fund, these same principals and supervisors may be considered as units for state aid grants.

In this opinion I have not considered it necessary to determine whether Chapter 263 repeals by implication Sections 6, 7 and 10 of Chapter 167 of the Acts of 1933 since there is no conflict between the terms of the two acts.

INDIANA STATE BOARD OF ELECTION COMMISSIONERS: Primary Elections: Declarations of candidacy in primary elections may be filed by duly authorized agent or attorney-in-fact of candidate.

April 14, 1944.

Opinion No. 40

Indiana State Board of Election Commissioners,
Indianapolis 4, Indiana.

Gentlemen:

This will acknowledge receipt of your letter dated April 8, 1944, which requests as follows:
"Will you please let us have your opinion as to whether or not a declaration of candidacy is legal and valid where executed and filed on behalf of the candidate by an attorney-in-fact or whether or not it is necessary that such declaration be executed in person by the candidate before such candidate is entitled to have his name placed upon the ballot."

It is my understanding that this question is predicated on a case where an enlisted man in the armed forces has so filed for prosecuting attorney.

Your question requires an interpretation of the provisions of the Indiana Primary Election law which is Burns' 1943 Pocket Supp., Section 29-502, et seq.

Section 29-513 reads in part as follows:

"The name of no candidate shall be printed upon an official ballot used at any primary election, unless at least thirty (30) days and not more than sixty (60) days prior to such primary election, a declaration shall have been filed with the secretary of state in the case of a candidate for member of the national house of representatives, members of the general assembly, judicial office; with the clerk of the circuit court in the case of county office, city office, township office, member of a county committee, by the candidate in substantially the following form:

County of ____________ ss:
State of Indiana

"I, the undersigned, do hereby certify that I am a qualified voter of ____________ precinct of the township of ____________ or the ____________ ward of the city or town of ____________ county of ____________ state of Indiana, and that I am a member of the ____________ party and reside at No. ____________ on ____________ street, and request that you place my name on the official primary ballot to be voted on for the office of ____________ at the primary election to be held on the ____________ day of ____________, 19___, as representing the principles of the ____________ party.

"Filed in the office of ____________ this ______ day of ____________, 19___."
Section 29-515 provides in part that "The election commissioners shall arrange the names of all candidates for each office for whom nomination papers have been filed under the designation of the office, in alphabetical order according to the surnames. * * *"

Section 29-516 reads in part as follows:

"(a) At least thirty (30) days before any county primary preceding a general election, the secretary of state shall transmit to the clerk of the circuit court of each county a certified list containing the names and post-office addresses of each person for whom declarations of candidacy have been filed in his office, and entitled to be voted for at such primary, together with designation of the office for which he is a candidate, and the party he represents. The clerk of the circuit court shall forthwith upon receipt thereof publish under the proper party designation the title of each office, the names and addresses of all persons for whom nomination papers have been filed, or all offices, giving the names and addresses of each, the date of the primary, and the hours during which the polls will be open. * * *"

I am unable to find any specific language contained in the Primary Election Act which specifically authorizes and empowers the secretary of state, the clerk of the circuit court, or the Board of Election Commissioners to pass upon and determine the qualifications of any candidate or the validity of a certificate which has been transmitted by a designated officer to the Board of Election Commissioners, except as contained in Section 29-1015, which section prohibits the printing on the ballot of the names of any candidates or party emblem which advocates the overthrow by force or violence of local and national government. This section provides that upon an affidavit being filed with the Board of Election Commissioners alleging certain facts that the Board of Election Commissioners shall make such investigation as it deems necessary to determine the character and nature of the political doctrines advocated by such party or list of candidates.

It is a well established rule of statutory construction that primary election laws should be liberally construed and their provisions held to be directory except where it clearly appears from the express language contained in the statute that the
provisions are mandatory. In support of this rule, I quote the Supreme Court of Indiana in the case of Jones v. State, ex rel., 153 Ind. 440 on 446 as follows:

"In considering the question presented, we must not lose sight of the fact that the purpose of all election laws is to secure to electors the correct expression of their choice in the selection of public servants; and that irregularities on the part of election officers not going to the time or place, or other vital matter of the election, or their omission of acts not declared to be essential to the validity of the election, are to be held directory only in support of the voter's right to have his ballot counted as cast. * * *.”

This case is cited with approval by the Supreme Court in the case of Cave v. Conrad, 216 Ind. 304.

The court of appeals of New York in the case of Lauer v. Board of Elections of New York City, 262 N. Y. 416, 187 N. E. 561, construed the primary election law of New York, and states the rule of construction of primary election laws in the following language:

"* * * The Election Law should not be so interpreted as to defeat the very object of its enactment, which was to insure fair elections, an equal chance and opportunity for every one to express his choice at the polls. It also seeks to give the parties and independent nominators equal facilities to present their candidates and issues a reasonable length of time before election day.”

Missouri has a primary election law which is comparable to the Indiana primary election law. Revised Statute of Missouri, Section 11550, reads as follows:

"The name of no candidate shall be printed upon any official ballot at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, as provided in this article, stating his full name, residence, office for which he proposes as a candidate, the party upon whose ticket he is to be a candidate, that if nominated and elected to such office he will qualify,
and such declaration shall be in substantially the following form:

"I, the undersigned, a resident and qualified elector of the (________ precinct of the town of _______), or (the ________ precinct of the _____ ward of the city of __________), county of ________ and state of Missouri, do announce myself a candidate for the office of ________ on the ________ ticket, to be voted for at the primary election to be held on the first Tuesday in August, ________, and I further declare that if nominated and elected to such office I will qualify."

In the case of State, ex rel. Dodd et al. v. Dye, County Clerk, decided by the Missouri Court of Appeals in 1942, the provisions of the above section of the statute were construed. In this case the facts were as follows: One Dodd acting for himself and certain other candidates filed a declaration of candidacy for various offices for himself and the other candidates. The county clerk with whom the declarations were filed refused to recognize any of the declarations except that filed by Dodd himself. The action was a proceeding in mandamus to compel the clerk to print the names of the persons for whom the declarations of candidacy had been filed upon the primary election ballot. In passing upon the validity of the declarations filed by Dodd acting as agent and attorney-in-fact for the other candidates, the court of appeals of Missouri used the following language:

"It is contended here that the respondent refuses to place said names on the Primary Election ballot for two separate and distinct reasons, namely: First, that the declarations of candidacy of the relators were not accompanied by proper receipts filed with and at the time said declarations were filed, showing that the candidates had paid to the Treasurer of the Pulaski County Republican Central Committee the fees required by law to be paid in such cases; and second, that the relators had not personally signed said purported declarations.

"Taking the last of these reasons first, we are forced to the conclusion that there is no merit to this con-
The petition says these declarations were all signed by relator Charles M. Dodd, 'without the authority, knowledge or consent of said relators.' Of course he had a right to sign for himself and this statement at least implies that if he had had the authority to sign for the others, it would be all right, and we think and hold that to be true. Did he have authority and did he act within the scope of his authority in signing said declarations for the others? We think, under the uncontradicted facts in this case, that he did have authority, or at least, the other relators ratified his acts in so signing their names to said declarations. * * * This proceeding in this court, wherein each of these relators appeared by hired counsel, shows that each of them had either authorized Dodd to sign his or her name, or at least had ratified his act in so doing, and each accepted the same as his or her individual act. We must hold against the respondent on this point."

Reported in 163 S. W. 2d 1055 on 1057.

The only other authority which we have found dealing with the right of a candidate to file a declaration of candidacy by an attorney-in-fact is the case of Smith v. Bowman, decided in 1928, 126 Kansas 576, 269 P. 500, construing the Kansas Primary Election law. The Kansas Primary Election law contains provisions not found in the Indiana Statute, to-wit: The Kansas Statutes require an affidavit to be executed by the candidate and also the law contains a section authorizing candidates for a city office to file a declaration of candidacy by an authorized agent. Because of the difference between the Kansas Primary Election law and the Indiana Primary Election law, I do not believe that the case of Smith v. Bowman, supra, holding that a declaration of candidacy must be filed by the candidate in person is decisive or controlling in the instant matter.

In view of the fact that it is the policy of the law to liberally construe Primary Election laws so that the voters may have a fair and equal chance and opportunity to express their preference and choice at the polls upon candidates and also to give equal facilities to all persons to present their candidacies to the electors and in the absence of any specific authority delegated to the clerk and the Board of County
Election Commissioners to pass upon the qualifications of candidates or the validity of a declaration of candidacy which has been certified to them, it is my opinion that it is the duty of the Board of Election Commissioners under the Indiana Statutes to accept, at its face value, the certification of the name of the candidate from the secretary of state and to cause his name to be placed upon the official primary ballot unless enjoined from so doing by a court of competent jurisdiction in an action duly instituted by some person having sufficient interest in the premises to maintain such an action.

STATE BOARD OF ACCOUNTS. County Councils—Meetings—Can not adjourn or continue meeting for longer period than following day or from Saturday until Monday.

April 18, 1944.

Opinion No. 41

Hon. Otto K. Jensen,
State Examiner,
Department of Inspection and
Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

This will acknowledge receipt of your letter dated April 13th, 1944, which reads as follows:

"The County Council of Marion County was legally called to meet on Friday, March 24, 1944 and at the meeting adjourned until Saturday morning at 10 o'clock, March 25th with the understanding among the members that there would be no quorum and that designated members would meet and adjourn until Monday. On Saturday two members of the council, neither of whom was an officer of the council, met and for lack of a quorum adjourned until Monday, March 27th, at 10 o'clock.

"The council met on Monday, March 27th, at 10 o'clock and at such meeting passed a resolution to re-