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-
turn the entire school fund from Marion County under
the authority of Chapter 181 of the Acts of 1943.

"The question is now presented to this department
as to whether the council of Marion County, at its
meeting held on Monday, March 27, 1944, had legal
authority to adopt a resolution to elect to accept the
terms of said Chapter 181 to surrender the school
funds therein specified.

"I would like to have your opinion upon the questions
thus presented."

An answer to your letter requires an interpretation of the
provisions of Chapter 154, Acts of 1889, commonly known
as the county reform law. (Burns' 1933, Section 26-501,
et seq.)

Section 26-501 reads as follows:

"There is hereby created in the several counties of
this state a body to be known as a County Council and
styled, according to the name of the county, 'The
_______ County Council.'"

Section 26-502 provides that a county shall be divided into
four councilmanic districts and a member of the county
council shall be elected by the voters in each district and three
councilmen at large to be elected by the voters of the entire
county.

Section 26-507 provides in part as follows:

"The meetings of the council shall be held at the
county seat, and in the office of the county auditor,
unless the board of county commissioners provide some
other room in which the council choose to sit. There
shall be a regular meeting of every council at ten
o'clock a.m. on the second Saturday after its election,
for the purpose of organization, and such other busi-
ness as may come before it. * * * There shall be a
regular annual meeting of the council on the first Tues-
day after the first Monday of September, of every
year, for the purpose of fixing the rate of the tax levy
and making appropriations, and there shall be such
special meetings as may be called by the auditor of the
county, or by a majority of the members of the council,
in the manner following: * * *.” (Our emphasis.)
The section then proceeds to provide the kind and time of notice to be given of such special meeting.

Section 26-508 reads as follows:

“The council when in session may adjourn from day to day, and from Saturday to a following Monday, until the business before it is completed, and prescribe its own rules, but its sessions shall be public.” (Our emphasis.)

Section 26-509 provides that the county auditor shall act as clerk and keep an accurate and complete minute and journal of the proceedings.

Section 26-511 reads as follows:

“A majority of all the members shall constitute a quorum. It shall require in every case a majority vote of all the members to pass an ordinance, and in certain cases hereinafter specified, it shall require a greater vote.” (Our emphasis.)

The above language contained in Sections 26-508 and 26-511 is clear, explicit and unambiguous and it is clearly stated that the county council, when called in special session, must remain in session until its business has been completed, except that such council “may adjourn from day to day, and from Saturday to a following Monday.” This language clearly excludes the idea that the council may meet pursuant to call on a certain day and adjourn to meet upon any other day, except the following day, or from Saturday until the following Monday. It further is expressly stated that a majority of all the members shall constitute a quorum. This means that there must be at least four out of the seven members of the county council present in order to transact any business upon any occasion. The law with reference to the validity and legality of any action taken by a governmental body or agency, contrary to the provisions of the statute creating such body or agency, is fully and aptly stated by the Supreme Court of Indiana in the case of Terre Haute Gas Corporation v. Johnson, —— Ind. ——, 45 N. E. (2d) 484 on page 489, as follows:

“* * * Thus, it has been held that the powers of a municipal council must be exercised at a meeting
which is legally called; that action of all the members of the council separately is not the action of the council; and that an agreement entered into separately by the members of the council outside a meeting is not binding. * * * *"

Your letter states that the Marion County Council was regularly called to meet on Friday, March 24, 1944, and at that meeting adjourned until Saturday morning at 10:00 o'clock, March 25, 1944. On March 25, 1944, only two members of the Marion County Council were present at the meeting adjourned from the preceding day. It is apparent that on Saturday, March 25, a majority of the said members of the Marion County Council necessary to constitute a quorum, under Section 26-511, were not present. Therefore, there was no legal meeting of the Marion County Council held on March 25, 1944. In the absence of a quorum being present, no motion or business of any kind could be legally transacted on Saturday, March 25, 1944, and therefore the motion made by one of the two members of the Marion County Council who were present at that time to adjourn the meeting until Monday, March 27th, was a nullity and afforded no basis whatever for a valid or legal meeting of the council held on March 27th, 1944. The only way that the Marion County Council could have met on March 27th, 1944, would have been pursuant to a call for a special meeting regularly made pursuant to the provisions of Section 26-507, or pursuant to a motion of adjournment made at a valid meeting held on Saturday, March 25, 1944, which, according to the statements of fact contained in your letter, was not done.

In conclusion, it is my opinion that the Marion County Council was not legally in session on Monday, March 27th, 1944, and any action, resolutions or ordinances purported to have been enacted by said council upon that date, are null and void and of no legal force and effect.