ELECTION COMMISSIONERS, STATE BOARD OF: Whether newly nominated candidate for office may continue as such notwithstanding he is inducted in the armed service; whether such officer, if elected, may qualify and hold the office.

July 17, 1942.

Mr. Fred C. Gause, Member
State Board of Election Commissioners,
1300 Fletcher Trust Building,
Indianapolis, Indiana.

Dear Mr. Gause:

In your letter of June 17, 1942, you set forth two problems. Your first question is as follows:

"The State Board of Election Commissioners has had submitted to it many questions concerning the right of persons who have been nominated as candidates for public office to continue as such candidates if they are called into the service of the armed forces of the United States.

"In view of the large number of cases in which this question is arising we would appreciate an opinion from you as to whether a person who has been nominated as a candidate for public office at the coming election, and who is inducted into the military service of the United States, may continue as such candidate."

Your first question as to whether or not a nominee may continue as a candidate for office may be answered quite simply. There is no prohibition in either the statutes or the Constitution of Indiana which would prevent any person, otherwise eligible to be a candidate for public office in Indiana, from being a candidate because he is a member of the armed forces of the United States. It is my opinion that any member of the armed services, whether he volunteers or is inducted, or whether he is commissioned as an officer or is a non-commissioned officer or private, may be a candidate for any public office in this State.

You also state that:

"The question has also arisen as to whether such a person, if elected while in the military service, may
qualify and hold the civil office to which he is elected. "It may be that it would be impossible to answer the last question at this time because of the fact that the answer thereto will depend upon the status of the elected person at the time his term of office would begin, and that such question will have to await the arrival of such time."

In your letter you suggest the probable impossibility of answering this question now. It seems quite obvious to me that no categorical answer to this question can be given because of all the possible contingencies that may be involved. First of all, a member of the armed forces might be unable to qualify by taking the oath of office, filing his bond, et cetera. Again, his ability to assume and hold the office to which he was elected might depend upon his position or rank in the armed forces. If he is a commissioned officer in the armed forces, he would be ineligible to hold the office to which he was elected by virtue of Article 2, Section 9 of the Constitution of Indiana which prohibits a person from holding two lucrative offices at the same time. It has been held by our Supreme Court that a commissioned officer in the armed forces of the United States is ineligible to hold an office in this State.—(Kerr v. Jones, 19 Ind. 351.) Again the right of such a person to assume and hold an office to which he might be elected might depend upon the nature of the office. If the office were of such a nature that it could be conducted by a deputy, all other obstacles being removed, he might be able to assume and hold the office and have his deputy conduct it. If, on the other hand, the office were one which demanded the official's personal attention such as a County Commissioner or Judge, then a person who was absent and serving with the armed forces, could not assume or hold the office. These are only a few of the contingencies that might arise, but they are sufficient, I believe, to show that it is impossible to answer now the second question which you present.

If cases arise involving the eligibility of a member of the armed forces to serve in an office to which he has been elected, each case will have to be decided upon the law, facts and circumstances involved.

To summarize, a member of the armed forces of the United States, otherwise eligible to be a candidate for public office
in Indiana, is not barred from being a candidate because of such service, but his ability to qualify and hold the office in the event of his election might be affected thereby.

SECRETARY OF STATE: Whether Secretary may receive election certifications other than the first certification.

July 21, 1942.

Hon. James M. Tucker,
Secretary of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in part as follows:

"On May 7, 1942, Taylor I. Morris, Clerk of the Henry Circuit Court, certified to the office of Secretary of State certain results of the Primary Election held May 5, 1942.

"This certification was made on the prescribed form and was filed in this office within the time prescribed by law. Today Mr. Morris has forwarded to me for filing an amended certificate which he asks to be substituted for the one sent me by him on May 7.

"Mr. Morris certifies that in compiling the returns of the Primary Election for the various candidates voted upon in that election that he erroneously certified the results from 43 precincts as the entire total for the county. He further informs me that he erroneously neglected to include 9 additional precincts which are in his county thus making a total of 52 precincts. "In his amended certification he has set out the correct total for the votes cast in all of the said 52 precincts and requests that this amended certification be substituted for the one previously sent by him. * * *"

You submit the following question:

"Do I have the authority under the law to substitute the amended certificate showing the true vote cast in