Mr. Edwin Steers, Sr.,
Member, State Election Board
108 E. Washington Street
Indianapolis 4, Indiana

Dear Mr. Steers:

This is in reply to your recent letter, wherein your request an Official Opinion based on the following:

"In a first class city there are six councilmanic districts, and each party is authorized to name a candidate from each district. The law further provides that at a city election nine councilmen are to be elected. We would, therefore, like to have your opinion as to whether or not the nine candidates for the city council receiving the highest number of votes are to be considered elected regardless of the councilmanic district from which they are nominated, or whether or not the councilman from each district receiving the highest number of votes shall be considered elected together with the three additional candidates receiving the next highest vote being declared elected, thus making the total of the nine authorized."

Your question undoubtedly has arisen as the result of language appearing in 1938 O. A. G., p. 144 and 1947 O. A. G., p. 42, No. 11 having to do with the procedure for electing councilmen in cities of the second, third, fourth and fifth classes; and although the statutes involved in those opinions may be considered as confusingly similar to the statute governing the election of councilmen in cities of the first class, the statutes upon which said opinions were based are distinguishable and should not necessarily be considered as governing the present question.

The statutory provisions pertaining to the nomination and subsequent election of candidates for city councilmen in a city of the first class are found in the Acts of 1909, Ch. 143, Secs. 1, 2, and 3, as amended and found in Burns' (1950 Repl.), Sections 48-1205 to 48-1207 inclusive. This Act applies to
cities having a population of 200,000 or over. The Acts of 1933, Ch. 233, Sec. 1, as amended and found in Burns’ (1950 Repl.), Section 48-1201, provides that cities having a population of 250,000 or over shall be denominated cities of the first class. Therefore, Sections 48-1205 to 48-1207, supra, are applicable to cities of the first class, and are as follows:

48-1205. “The number of councilmen in cities having a population of two hundred thousand [200,000] or over, according to the last preceding United States census, shall be nine [9], and no more, and such councilmen shall be known as Councilmen-at-Large, and shall be elected by the electors of the entire city, and such councilmen shall not be elected by wards, but nothing herein shall have the effect to displace any councilman now in office, but such councilmen now in office shall so continue until the terms for which they were elected shall be completed. The salary of each of such councilmen shall be six hundred dollars [$600] per year.’’ (Our emphasis)

48-1206. “Any city or cities coming within the provisions of this act for the purpose of carrying out the same shall, by the common council of said city or cities, be divided into six (6) districts, to be known as Councilmanic Districts, each district to contain, as nearly as possible, an equal number of electors, and not more than one [1] candidate of any political party or organization shall be named or nominated from either or any one of said districts.” (Our emphasis)

48-1207. “Any persons, political party or organization nominating candidates for city officers, to be voted for at any election in cities having a population of two hundred thousand [200,000] or more, according to the last preceding United States census, by means of choosing persons as such candidates at a convention, or at a primary election, or by petition or otherwise, pursuant to law, shall have the right to nominate and cause to be placed on the ballot to be voted at such city
election, the names of six (6) candidates, one (1) from each councilmanic district, for the office of city councilman and no more, and the names of any six (6) candidates for said office, nominated and duly certified to the board of election commissioners according to law, shall be placed on the official ballot to be voted at such election under such party name and device as the political party or organization making such nomination shall have lawfully chosen. And each and every legal voter casting his ballot for city officers shall have the right to vote for ANY nine (9) candidates for the office of councilman, and the nine (9) who shall receive the largest number of votes of those cast for candidates for the office of councilman shall be declared elected.” (Our emphasis)

As your letter states, there shall be six councilmanic districts in a city of the first class as required by Burns’ 48-1206, supra; and, as your letter further states, this section requires that not more than one candidate of any political party or organization be “named or nominated” from either or any one of said districts. Also referred to in Burns’ 48-1207, supra, extends only to the naming or nomination of the candidate and does not in terms include the specific requirement that one councilman shall be elected from each of the six councilmanic districts. As your letter further points out, the law requires that the common council of a city of the first class shall consist of nine members as provided by the Acts of 1933, Ch. 233, Sec. 4, as amended, as found in Burns’ (1950 Repl.), Section 48-1204 and as provided by Burns’ 48-1205 and 48-1207, supra.

Notwithstanding that the common council of such a city “shall” consist of nine members, it is noted that each party may name or nominate only six candidates, so that the purpose of the Acts of 1909, Ch. 143, as amended, supra, among other things, appears to be that of guaranteeing bipartisan representation on the city council of such a city, rather than that of guaranteeing to each councilmanic district the election of a councilman from that district.

The situation is altogether different from the procedure provided by the Acts of 1933, Ch. 233, Sec. 9, as amended, as
1959 O. A. G.

found in Burns' (1950 Repl.), Section 48-1220, having to do with the election of councilmen in a city of the second class, wherein is contained the following provision applicable thereto:

"* * * Provided, That in cities of the second class there shall be elected in each of the councilmanic districts herein provided one councilman, and the whole city shall elect three [3] councilmen-at-large. * * *"

(Our emphasis)

The statutes applicable to cities of the first class do not contain any such provision, but to the contrary Burns' 48-1205, supra, expressly provides that all nine councilmen "shall be known as councilmen-at-large and shall be elected by the electors of the entire city," evidencing the intent that each councilman elected represent all councilmanic districts rather than representing a particular district. Of particular note is the fact that Burns' 48-1207, supra, guarantees to each and every legal voter casting his ballot for city officers the right to vote for "any" nine candidates for the office of councilman. This right affords every voter the opportunity of voting for any number of candidates not exceeding nine and such person can vote for any combination of candidates in making his selection so long as he does not exceed the maximum of nine. Although it may seldom, if ever, happen, it is conceivable for a sufficient number of voters to select and vote for a combination of candidates of any two or more political parties or organizations whereby there would be one or more councilmanic districts having no candidate elected therefrom since Burns' 48-1207, supra, requires that "the nine [9] who shall receive the largest number of votes of those cast for candidates for the office of councilman shall be declared elected."

Although in the ordinary situation, because of the common practice for voters to vote a straight ticket, each councilmanic district would usually have at least one of the nominees from that district elected, nevertheless from the strict legal standpoint it is my opinion that your question must be answered by stating that the nine candidates for city council receiving the highest number of votes in a city election of a city of the first class shall be declared elected regardless of the councilmanic district from which they were nominated.