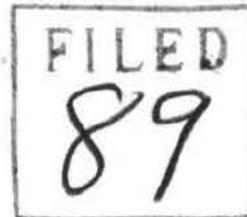


ELECTIONS: National director of political party may not withdraw names of presidential and vice presidential candidates.

October 21, 1952

10/22/52

Honorable Walter H. Toberman  
Secretary of State  
Jefferson City, Missouri



Dear Mr. Toberman:

This department is in receipt of your request for an official opinion which reads as follows:

"Enclosed is a letter received this date from Mr. Lar Daly, relative to the withdrawal of the names of the candidates for president and vice president of the AMERICA FIRST PARTY.

"We respectfully request your opinion as to our duties in the matter."

The enclosed letter quoted verbatim reads as follows:

"October 15, 1952

"Walter Toberman  
Secretary of State  
Jefferson City, Mo.

"Mr. Secretary:

"This is to officially inform you that, on October 11, 1952, the Board of Directors of the America First Party officially voted its dissolution. Similar action was also taken as regards the MacArthur for President Committee. The new name of this organization is now the 'MacARTHUR FOR EISENHOWER AND AMERICA FIRST'.

"As the person who filed the incorporation papers for the America First Party, with MacArthur and Byrd as its candidates, in your office, on August 26, 1952, I hereby now make formal request

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that the America First Party, and its candidates, be withdrawn from the Missouri ballot.

"If the ballots are already printed in the various counties of Missouri, and you feel that your office and the offices of the various county officials have charge of the printing of the ballots, do not have the authority to spend additional taxpayers money by having the ballots reprinted without the America First Party and its candidates appearing thereon, then I make the following offer to you, as the representative of the people of Missouri in the matter.

"On behalf of the 'MacARTHUR FOR EISENHOWER AND AMERICA FIRST', I am authorized to inform you that we will pay the costs of reprinting all the Missouri ballots, if you will remove the names. Thanks for all past courtesies and co-operation, I remain,

/s/ "Lar Daly  
"Nat'l Director"

A reading of the above discloses that one Lar Daly, ostensibly the National Director of the America First Party, requests you to withdraw the names of the candidates for president and vice president of the America First Party from the ballot to be used in the forthcoming general election.

The records of the office of the Secretary of State disclose that on August 25, 1952 a state convention of the America First Party was held in Kansas City, Missouri. At such time temporary officers were elected and a platform was drawn up. Presidential electors from the thirteen electoral districts of Missouri were chosen and the names of these electors were certified to the office of the Secretary of State. At the same time there were certified the names of Douglas MacArthur and Harry F. Byrd as the presidential and vice presidential nominees of "the America First Party of Missouri".

The sole question presented for discussion in this opinion is whether a "national director" of a party may withdraw the names of candidates for president and vice president from a state ballot.

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Section 111.420, RSMo 1949, provides in part as follows:

"2. A vote for any of such candidates for president and vice-president shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state. The respective party state committees shall certify in writing the nominations of such presidential and vice-presidential candidates to the secretary of state at some time before the secretary of state is required by law to certify the candidates of the several political parties and groups of petitioners to the several clerks of the county court or to election commissioners. In presidential years an instruction shall be on the ballot as follows: 'A vote for names of candidates for president and vice-president is a vote for the electors of that party, the names of whom are on file with the secretary of state.'"

Section 120.840, RSMo 1949, reads as follows:

"The state committee of any political party may call a convention of delegates, to be apportioned, chosen or elected in such manner as it may prescribe, for the purpose of nominating presidential electors, electing delegates to national conventions, electing members of national committees, adopting or making such declarations of party principles with reference to national questions as may be deemed advisable and to do and to perform any other act not prohibited by or inconsistent with sections 120.300 to 120.840."

A similar question was presented to the Supreme Court of Missouri, in banc in the case of *ex rel. Bates vs. Crittenden*, 164 Mo. 237. In that case the question presented was whether the State Central Committee of the Democratic Party could set aside the action of a county convention in nominating a ticket for the party. The Court said:

"The right of the people to select their own public servants is an inherent principle

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of Democracy, and before a committee organized for the efficient management of party affairs of the State at large can set aside the action of a party acting under its own local government, it must first be shown that the local organization has either become disrupted and disorganized, and it is necessary to reorganize it, or that the nominations made for a particular election have been procured by fraud or in disregard of the usages and customs of the party, and it inevitable follows that the nominees of the local organizations whose nominations are to be set aside shall be accorded a hearing and a time and place fixed for that hearing, of which they shall have reasonable notice and an opportunity to present their evidence."

Applying the rule laid down in the above opinion to the facts in the instant case, it would be seen that the national officers of the America First Party may not withdraw or set aside nominees made by a state convention or by the state committee unless it be shown that the nominations had been procured by fraud or in disregard of the usages and customs of the party and further that the nominees had been accorded a hearing and an opportunity to present evidence. It does not appear that such requirements were met in the present situation.

#### CONCLUSION

It is, therefore, the opinion of this department that the Secretary of State is not authorized to withdraw from the ballot the names of the candidates for president and vice president of the America First Party solely upon the basis of a letter from the "national director" of said party requesting the Secretary of State to do so.

Respectfully submitted,

ARTHUR M. O'KEEFE  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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