

ELECTIONS: : Mr. Paul W. Preisler, candidate for Repre-  
 CHALLENGERS: : sentative in Congress from the Second Con-  
 WATCHERS: : gressional District on the Nonpartisan ticket  
 POLITICAL PARTIES: : is not entitled to have challengers and  
 : watchers present at the polling places within  
 : said Congressional District; St. Louis City  
 : Nonpartisan Committee is not entitled to  
 : have challengers and watchers present at  
 : said polling places in the absence of a  
 : showing that said group is a political party  
 : within the meaning of Secs. 120.140 and  
 : 120.160, RSMo Cum. Supp. 1953.  
 : .....

October 22, 1954

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Honorable Michael J. Doherty  
 Chairman  
 Board of Election Commissioners  
 for the City of St. Louis  
 208 South 12th Boulevard  
 St. Louis 2, Missouri

Dear Mr. Doherty:

By letter of October 4, 1954, you requested an official opinion as follows:

"Under date of October 1, 1954, the Board of Election Commissioners received a letter from Oscar J. Albrecht, Chairman of the Saint Louis City-Non-Partisan Committee, 4455 Wallace 16, St. Louis, Missouri, wherein he states in substance that the St. Louis City Non-Partisan Committee elected him as Chairman of said Committee, and further, he states in substance, that challenger and watcher certificates for persons to act as such for the Non-Partisan Ticket will be assigned by him and that such persons shall be admitted to the precinct polling places to which they are assigned by him. A copy of his letter is enclosed which is self-explanatory.

"For your information, one Paul W. Preisler, who is a nominee for Congress from the Second Congressional District, is supported by said Committee, according to said letter.

"Should Oscar J. Albrecht, Chairman of said Committee issue challenger and watcher certificates, then, in that event, will you please advise as to whether or not this Board is obliged to recognize and accept such challengers and watchers."

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The letter to which you refer reads:

"St. Louis, Mo.  
October 1, 1954.

"The Honorable Board of Election Commissioners  
of the City of St. Louis, Mo.  
208 So. 12th St.  
St. Louis, Mo.

"Gentlemen:

"The members of the St. Louis City Non-Partisan Committee which is supporting the election of Paul W. Preisler to Congress from the Second Congressional District have elected me, Oscar Albrecht, the undersigned, Chairman of the St. Louis City Non-Partisan Committee. There are no other candidates on the Non-Partisan ticket in the general election of November 2, and Mr. Paul W. Preisler recognizes me as the duly elected chairman of the St. Louis City Non-Partisan Committee.

"Since some confusion might result at polling places on November 2, unless precinct election officials are properly informed, I request that the Board suitably notify such precinct election officials in all precincts of the Second Congressional District, that challenger and watcher certificates for the persons who will act as challengers and watchers for the Non-Partisan ticket will be signed by me, Oscar Albrecht, and that such persons shall be admitted to the precinct polling places to which they are assigned by me to perform the usual duties of challengers and watchers.

"If any legal questions or matters arise in connection with this request, or other matters relating to the Non-Partisan ticket in the election of Nov. 2, please communicate with Mr. Paul W. Preisler, 3709 Juniata St., (16) who is authorized to act as my attorney.

"A reply as to the action taken by the Board will be appreciated.

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"(Signed) Respectfully yours,

OSCAR J. ALBRECHT.

COPY Chairman, St. Louis City Non-Partisan Com  
4455 Wallace (16), St. Louis, Mo."

Section 118.510, RSMo 1949, which provides for challengers and watchers at the polling places in the City of St. Louis was declared by the Supreme Court in the case of Preisler vs. Calcaterra, 243 S.W. (2d) 62, to be unconstitutional. The Court further stated that Section 10613, R.S. Mo. 1929, supposedly repealed upon enactment of Section 118.510, is still in force and effect. Section 10613, R.S. Mo. 1929, which is applicable to the City of St. Louis, reads:

"At every registration and election, each one of the political parties shall have the right to designate and keep a challenger at each place of registration, revision of registration and voting who shall be assigned such position immediately adjoining the judges of election inside the polling or registration booth, as will enable him to see each person as he offers to register or vote, and who shall be protected in the discharge of his duty by the judges of election and the police. And authority signed by the recognized chairman or presiding officer of the chief managing committee of a party in any such city, shall be sufficient evidence of the right of the challenger for such party to be present inside the registration or polling place. But in case any challenger does not or cannot produce the authority of such chairman, it shall be the duty of such judges of election to recognize a challenger that shall be vouched for and presented to them by the persons present belonging to such political party, or who shall be vouched for by the judge representing such party.

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The chairman of the managing committee of each political party for such city may remove any challenger appointed by him, and substitute another in his place. The challenger so appointed and admitted to the room where such ballot box is kept shall have the right and privilege of remaining during the canvass of the votes, and until the returns are duly signed and made. Each political party shall also have the right to a challenger placed conveniently outside of the polling booth, but not in the way of the voters. In addition to such challengers, each of the political parties casting votes at such polls, at the close of the polls shall have the right to the admission of two persons of their political faith into the room where such ballots are to be canvassed, to watch such canvass, which watchers may be selected as above prescribed in case of challengers; and in the absence of such selection, it shall be the duty of the judges of such election to admit into such room two persons of each political party so voting at such election, and who shall be vouched for by the judge or judges representing such political party, to be present during the canvass of such votes and the making of such returns; that such persons shall be of good character and sober, and shall in no wise interfere with such canvass. The police shall in no manner interfere with the entrance of such watchers into such room, but they shall keep order; and in case of any disorderly conduct on the part of any bystanders or watchers, it shall be the duty of the police, upon request of the judges, to exclude such persons from such room, and upon such watcher or watchers being excluded from such room, the judge or judges representing the same political party as the rejected watcher may select other watchers in their stead."

Therefore, if the members of the St. Louis City Nonpartisan Committee constitute a political party the group is entitled to have challengers and watchers at the polls in the forthcoming General Election. If they

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do not constitute a political party the group is not entitled to challengers and watchers.

We know from the case of State ex rel. Preisler vs. Toberman, 269 S.W. (2d) 753, that Mr. Preisler filed his declaration of candidacy for Representative in Congress from the Second Congressional District on the Nonpartisan ticket. His declaration was pursuant to Sections 120.360 and 120.450, RSMo 1949. Those sections read:

"120.360. Deposit to general revenue fund, when.--Any person desiring to file declaration papers or propose as a candidate on any independent or nonpartisan ticket, who does not announce by declaration papers as a candidate for any political party as defined by sections 120.300 to 120.650 and is not a member of a political party having a state and county committee, or treasurer thereof, shall pay the sum of money required by sections 120.300 to 120.650 to be paid by the candidate for the office for which he proposes to the state or county treasurer, as the case may be, take a receipt therefor and file said receipt with his declaration papers, said sum of money so paid shall go into the general revenue fund of the state or county."

"120.450. Method of preparing tickets--method of voting.--At all primaries there shall be as many separate tickets as there are parties entitled to participate in the primary election. There shall also be a nonpartisan ticket upon which, under appropriate title of each office, shall be printed the names of all persons by whom declaration papers have been filed, as required by sections 120.300 to 120.650, who do not announce by such declaration papers as candidates for any political party as defined by sections 120.300 to 120.650. The names of all candidates shall be arranged under the appropriate title of the respective offices and under the proper party designation upon the party ticket or upon the nonpartisan ticket, as the case may be. The names of the candidates for each office shall be altered

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on the ballots used in the several election districts or precincts so that each name shall appear thereon substantially an equal number of times at the top, at the bottom and in each intermediate place, if any, or the lists or group of names in which such candidate's name belongs. The names of the candidates shall be printed, and at the left of the name of each candidate, at the beginning of each line upon which the candidate's name is printed, a small square shall be printed, the sides of which shall be not less than one-fourth of an inch in length. The title of the office and the name of all candidates for that office shall be separated from the title of the following office and group of candidates by a line not to exceed four points in width. At primary elections at which committeemen or committeewomen of any party are to be elected, in addition to the names of candidates for offices printed on the ballot, there shall be printed thereon at least one blank line with a square to the left of the same, as herein specified, for the purpose of allowing the voter to write in the name of his choice for office. As nearly as practicable, the ballot shall be in the form described in sections 111.420 and 111.430. At the head of each such ticket, immediately following the date of such election, shall be printed the following: 'Instruction to voters; Place an X in the square opposite the name of the person for whom you wish to vote.' The voter shall cast his vote in accordance with this instruction and shall vote in no other manner. All officers charged with the preparation and distribution of such ballots shall cause the printer's forms to be so transposed and the ballots so made up as to carry out the intent of this provision. If any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot shall not be counted for such person. On any day of

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nomination of public officers in any primary election precinct, each qualified elector shall be entitled to receive from the judge of the election one ballot of the political party participating in such election for which he desires to vote. It shall be the duty of such judges of election to deliver such ballot to the electors. Before delivering any ballot to the elector, the two judges of election having charge of the ballot shall write their names or initials upon the back of the ballot except as provided by law."

Therefore, we must conclude that Mr. Preisler is not the nominee of any political party. His declaration on the Nonpartisan or Independent ticket is antithetic to the idea that he constitutes or represents a political party. Therefore, he is not entitled to have challengers and watchers at the polls in the forthcoming General Election.

The St. Louis City Nonpartisan Committee does not appear to be an established political party within the meaning of Section 120.140, RSMo Cum. Supp. 1953, which provides:

"1. The term 'political party' as used in sections 120.140 to 120.230 shall mean any 'established political party' as hereinafter defined and shall also mean any political group which shall hereafter undertake to form an established political party provided for in sections 120.140 to 120.230; provided, that no political organization or group shall be qualified as a political party, or given a place on a ballot, which organization or group advocates the overthrow by violence of the established constitutional form of government of the United States or the state of Missouri.

"2. An 'established political party' is hereby declared to be a political party which, as to the state, at the last general election for state and county officers, polled for its candidate for governor more than two per cent

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of the entire vote cast for governor in the state; and, as to any district or political subdivision of the state, a political party which polled more than two per cent of the entire vote cast in such district or political subdivision at such election.

"3. A political party, which in any congressional district, senatorial district, county, township, school district, municipality or other district or political subdivision of the state, polled more than two per cent of the entire vote cast within such congressional district, senatorial district, county, township, school district, municipality or other district or political subdivision of the state, where such district or political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district or political subdivision, is hereby declared to be an 'established political party' within the meaning of sections 120.140 to 120.230 as to such district or political subdivision."

Nor does it appear that such group has become a new political party within the meaning of Section 120.160, RSMo Cum. Supp. 1953, which provides:

"1. Any group of persons hereafter desiring to form a new political party throughout the state, or in any political subdivision greater than a county and less than the state, shall file with the secretary of state a petition, as hereinafter provided, and any group of persons hereafter desiring to form a new political party, in any county shall file such petition with the county clerk; and any group of persons hereafter desiring to form a new political party in any political subdivision less than a county shall file such petition with the clerk or board of election commissioners of such political subdivision, as the case may be. Any such petition for the formation of a new political party throughout the state, or in any district or political subdivision as the case may be, shall declare as concisely as may be the intention of the signers thereof to form a new political party

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in the state, district or political subdivision; shall state in not more than five words the name of the proposed political party; shall contain a complete list of candidates of all offices to be filled in the state or district or political subdivision, as the case may be, at the next ensuing election then to be held; and, if the new political party shall be formed for the entire state, shall be signed by a number of qualified voters in each of the several congressional districts which shall equal one percent of the total number of votes cast in such district for governor at the next preceding gubernatorial election, or by a number of qualified voters in each of one half of the several congressional districts which shall equal two per cent of the total number of votes cast in such district for governor at the next preceding gubernatorial election. If the new political party shall be formed for any district or political subdivision less than the entire state, the petition shall be signed by qualified voters equaling in number not less than two per cent of the number of voters who voted at the next preceding general election in the district or political subdivision in which such district or political subdivision, voted as a unit for the election of officers to serve its respective territorial area.

"2. The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at the next ensuing election the list of party candidates for offices to be voted for throughout the state, or for offices to be voted for in the district or political subdivision less than the state, as the case may be, under the name of, and as candidates of such new political party. If, at the ensuing election, any candidate or candidates of the new political party shall receive more than two per cent of all votes cast at such election in the state, or two per cent of the total vote cast in any district or political subdivision of the state,

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as the case may be, then such new political party shall become an established political party within the state or within the district or political subdivision, as the case may be, under the provisions of the laws regulating the nominations of established political parties at state primary elections as now, or hereafter may be in force.

"3. Any such petition shall be filed at the same time and shall be subject to the same requirements and provisions that are hereafter contained in regard to the nomination of any other candidate or candidates by petition."

Therefore, we conclude that said group is not a political party and thus is not entitled to have challengers and watchers at the polls in the forthcoming General Election.

#### CONCLUSION

In the premises, it is the opinion of this office that Mr. Paul W. Preisler, candidate for Representative in Congress from the Second Congressional District on the Non-partisan ticket, is not entitled to have challengers and watchers present at the polling places within the Second Congressional District; nor is the St. Louis City Non-partisan Committee entitled to have challengers and watchers present at said polling places in the absence of a showing that said group is a political party within the meaning of Sections 120.140 and 120.160, RSMo Cum. Supp. 1953.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON  
Attorney General

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