

ELECTIONS:
POLITICAL PARTIES:
PRIMARY ELECTIONS:
CANDIDATES:

A new political party which received more than two percent of the vote cast in the last general election (November 5, 1968) for its statewide candidate is an "established political party" and entitled to participate in the August 1970 primary elections in the state and its political subdivisions.

OPINION NO. 153

April 1, 1970

Honorable G. William Weier
Prosecuting Attorney
Jefferson County
P. O. Box 246
Hillsboro, Missouri 63050



Dear Mr. Weier:

This is in reply to your request for an official opinion from this office as follows:

". . . [U]nder these Statutes [Sec. 120.140, RSMo 1959] on definitions has the American Party who had no gubernatorial or local candidates running for office become an established political party and thereby removed itself from the requirement of refiling of petition as required under Section 120.160, R.S.Mo."

Your second question is as follows:

". . . [D]oes the 1969 amendment [of Section 120.160] requiring a second election to become an established political party affect the status of the American Party even though the statute was enacted after the American Party had become an established party, keeping in mind Section 120.140, after the 1968 general election under the 1953 law [Section 120.160, RSMo 1959]."

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Your third question is as follows:

". . . [I]f you find that they [the American Party] are an established political party, whether they are established as a State wide political party entitled to file for any office or as a political party depending on the vote in each district or political subdivision and entitled to file for only those offices."

Under Section 120.160, RSMo 1959, which was in effect until October 13, 1969, the American Party qualifies as an "established political party." Section 120.160, RSMo 1959 provided as follows:

"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 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 per cent of the total number of votes cast in such district for governor at the next

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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, 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 hereinafter contained in regard to the nomination of any other candidate or candidates by petition."

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Since in the November, 1968, general election the American Party candidate for President received 11.4% of the total vote cast in the State for President (1969-70 Official Manual, State of Missouri, page 1195), the American Party became an "established political party" under Section 120.160(2) quoted above.

The Seventy-Fifth General Assembly amended Section 120.160 by passage of Senate Bill No. 135 which became effective October 13, 1969. This Section as amended provides in part as follows:

"5. The filing of a valid petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at the next 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 election immediately following the election at which the names of the candidates of the party first appear on the ballot, any candidate or candidates of the new political party shall receive more than two percent of all votes cast at such election in the state, or two percent of the total vote cast in any district or political subdivision of the state, as the case may be, then the 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 provided by law, except that if in any ensuing election the party fails to have a candidate or fails to receive two percent of the total votes cast at such election in the state, district or political subdivision, as the case may be, the party shall no longer be deemed an established party.

Article I. Section 13, of the Constitution of Missouri, provides:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective

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in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted." (Emphasis added.)

In the case of Lucas v. Murphy, 348 Mo. 1078, 156 S.W.2d 686 (1941), the Supreme Court of Missouri defined retroactive or retrospective laws as "those which take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past." (at 690). Moreover, "Statutes will not be held to affect transactions which antedate them, unless the intention of the Legislature for them to retroact is clear, and especially is this the rule when the opposite construction would render a statute unconstitutional and void." Supreme Council of the Royal Arcanum v. Heitzman, 140 Mo. App. 105, 111, 120 S.W. 628 (1909). Later cases hold that a law is said to be "retroactive only when it is applied to rights acquired prior to its enactment." Barbieri v. Morris, 315 S.W.2d 711, 714 (Mo. 1958).

It is clear that amended Section 120.160 acts only prospectively. To hold otherwise would call into question the Constitutionality of this section. Therefore, the pre-existing status of the American Party as an "established political party" under the previous Section 120.160 is not affected by the enactment of Senate Bill 135.

Under Section 120.160, RSMo 1959, once the American Party became established "within the state", persons had a right to file for the next primary election (August, 1970) as candidates for elective office under the designation of the American Party. Had any persons so filed between November 5, 1968, and October 13, 1969, their candidacy for nomination under the American Party designation clearly and unquestionably would be valid. The question arises as to whether the amended Section 120.160 would prevent filing for the August, 1970 primary of candidates under the American Party designation after October 13, 1969.

The established status of the American Party originates from Section 120.160 RSMo 1959. Under that section, the American Party became an "established political party within the state . . . under the provisions of the laws regulating the nominations of established political parties at state primary elections as now, or hereinafter may be in force."

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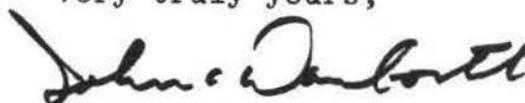
The right of any person to file in the August, 1970, primary as candidate for nomination under the American Party designation became vested as of November 5, 1968, the date on which the American Party obtained its status as an "established political party." To hold otherwise would call into question the constitutionality of amended Section 120.160 under Article I, Section 25 of the Constitution of Missouri guaranteeing the right of every eligible person to become a candidate for an office. Preisler v. City of St. Louis, 322 S.W.2d 748 (Mo. 1959).

CONCLUSION

It is therefore the opinion of this office that the American Party is an established political party in the State of Missouri and all political subdivisions of the State for the purpose of nominating candidates at the August, 1970 primary since said party received more than two percent of the vote cast for president and vice president at the November, 1968 election.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harvey M. Tettlebaum.

Very truly yours,



JOHN C. DANFORTH
Attorney General