

ELECTIONS:
CANDIDATES:
LEGISLATORS:
SPECIAL ELECTIONS:

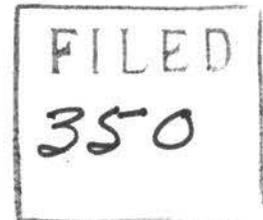
The American Party is an "established political party" within the 30th Legislative District of Missouri and has authority to nominate a candidate of such party for the

special election to be held in such district June 29, 1971, to fill a vacancy caused by the death of the representative from such district. The tender of a certificate of nomination of a candidate of the American Party for such office made to the Secretary of State June 15, 1971, should be accepted and filed by the Secretary of State.

OPINION NO. 350

June 17, 1971

Honorable James C. Kirkpatrick
Secretary of State
State of Missouri
Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This is in answer to your letter of June 16, 1971, in which you ask whether a certificate of nomination filed in your office at 3:20 p.m. on Tuesday, June 15, 1971, was timely and whether the certificate is entitled to be accepted and filed by the Secretary of State. The certificate of nomination is one stating that Sterling Lacy was nominated as the American Party candidate for state representative from the 30th Legislative District for the special election to be held on June 29, 1971. The special election is one called by the Governor to fill a vacancy in the office of representative from the 30th Legislative District caused by the death of Representative Patrick J. O'Connor.

Two questions must be answered in order that it can be determined whether tender of the certificate of nomination on June 15, 1971, authorizes such certificate to be filed by the Secretary of State. The first question is whether the American Party is an "established political party" within such representative district, and the second question is whether the certificate was lawfully filed on the fourteenth day preceding the date of the special election.

This office held in Opinion No. 588, rendered December 18, 1970, to James C. Kirkpatrick that the American Party is no longer an "established political party" for the purpose of nominating candidates for statewide offices in Missouri because the only candidate of the American Political Party for state office received less than two percent of the vote in the November 1970 election. However, you

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have informed us that one or more candidates of the American Party received more than two percent of the vote cast in the precincts constituting the 30th Legislative District although there was no candidate of the American Party for the office of representative from the 30th Legislative District. We hold that under the provisions of paragraph 5 of Section 120.160, RSMo 1969, a party, any candidate of which receives two percent of the vote in a district, continues as an "established political party" within such district until an election is held at which no candidate of such party receives two percent or more of the vote cast in the precincts comprising such district. Such paragraph provides as follows:

"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." (Emphasis added)

It is therefore our view that the American Party is at present an "established political party" within the 30th Legislative District and is authorized to nominate a candidate for the office of representative in such district as are the other "established political parties."

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It is our view that the tender of the certificate of nomination of Mr. Lacy as the American Party candidate in the 30th Legislative District on June 15 for the election to be held on June 29, 1971, is timely and should be accepted and filed by the Secretary of State.

Paragraph 2 of Section 120.550, RSMo 1969, provides in part:

"Nominations to fill vacancies caused by death shall be filed, as the case may be, either with the secretary of state not later than fifteen days before the day fixed by law for the election of the person in nomination or with the election authority not later than ten days before such election. . . ."

We are enclosing Opinion No. 89 rendered September 6, 1955, to William E. Tipton holding that Section 120.550 is not applicable to a special election to fill a vacancy in the office of state senator. Such opinion is also applicable to a special election to fill a vacancy in the office of state representative. Such opinion was withdrawn only insofar as such opinion held that a candidate at such special election could not be nominated by a petition of electors. Therefore, the provision in paragraph 2 of Section 120.550, that the nomination to fill a vacancy caused by death shall be filed with the Secretary of State not later than fifteen days before the day fixed by law for the election to fill the vacancy does not apply to nominations of candidates at a special election to fill a vacancy in the office of a member of the House of Representatives. We find no other statutory provision as to the last date upon which such a certificate can be filed, and it is our view that in these circumstances certificates of nomination can be filed at any reasonable time before the election. We believe that if the certificate is filed at such time that the Secretary of State can certify to the officials conducting the election and such officials can arrange for the printing of ballots and conduct of the election generally the certificate is filed within a reasonable time. We believe it to be clear that fourteen days is ample time for the Secretary of State to accept the filing and certify such nomination to the officials conducting the election and for such officials to prepare ballots and otherwise arrange for the election.

CONCLUSION

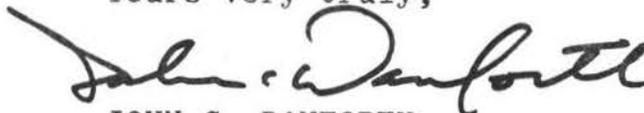
It is the opinion of this office that the American Party is an "established political party" within the 30th Legislative District of Missouri and has authority to nominate a candidate of such party for the special election to be held in such district June 29, 1971, to fill a vacancy caused by the death of the representative from such district. It is the further opinion of this office that

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the tender of a certificate of nomination of a candidate of the American Party for such office made to the Secretary of State June 15, 1971, should be accepted and filed by the Secretary of State.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in black ink and is positioned above the printed name and title.

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 89
9-6-55, Tipton