

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**H. SCOTT SUMMERS,
APPELLANT
vs.**

**BREE SHAW and LINDSAY GRAVETT
RESPONDENTS**

DOCKET NUMBER WD76053

DATE: DECEMBER 24, 2013

Appeal from:

The Circuit Court of Schuyler County, Missouri
The Honorable Jack N. Peace, Judge

Appellate Judges:

Division Two: Victor C. Howard, Presiding Judge, Joseph M. Ellis, Judge and Anthony Rex Gabbert, Judge

Attorneys:

Timothy A. Reuschel, for Appellant

Ivan L. Schraeder, for Respondent Bree Shaw

April S. Wilson, for Respondent Lindsay Gravett

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

H. SCOTT SUMMERS, APPELLANT

v.

BREE SHAW and LINDSAY GRAVETT, RESPONDENTS

WD76053

Schuyler County, Missouri

Before Division I: Victor C. Howard, Presiding Judge, Joseph M. Ellis Judge and Anthony Rex Gabbert, Judge

H. Scott Summers appeals the trial court's judgment denying his petition for declaratory judgment. Summers was appointed by the governor in December 2010 to fill a vacancy in the prosecuting attorney office of Schuyler County. He asserts that the court erred in finding that the county clerk of Schuyler County had authority to place the office on the 2012 election ballot because that office was not up for election until 2014 under section 105.050, RSMo 2000. The judgment is reversed, and the case is remanded with directions.

REVERSED AND REMANDED.

Majority Opinion Holds:

Where section 105.050 specifically covers vacancies in the office of prosecuting attorney while section 105.030 generally covers vacancies in "any state or county office originally filled by election of the people," the more specific, section 105.050, applies and provides that the appointment to fill the vacancy shall continue until the next regular election for prosecuting attorney, which is in 2014 pursuant to section 56.010. The county clerk, therefore, did not have authority to place the office on the 2012 ballot, and Lindsay Gravett, who was elected prosecuting attorney at 2012 election, was prohibited from assuming the office.

Dissenting Opinion Holds:

The majority opinion holds that the plain language of Section 105.050 evidences a clear legislative intent to set apart prosecutors from the general rule in Section 105.030. The dissent finds that the legislative history of these statutes suggests otherwise and, therefore, Section 105.030 gave the county clerk authority to place the office of prosecuting attorney on the 2012 election ballot.

Further, Summers had notice that the clerk was placing the office of prosecuting attorney on the 2012 election ballot at least seven months prior to the general election, but waited until after the general election to pursue his claims. Summers had an obligation to pursue pre-election remedies. For the foregoing reasons, the dissent would affirm the circuit court's judgment.

Opinion by: Victor C. Howard, Judge

Date: December 17, 2013

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