

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI, EX REL., RACHEL TOWNSEND,

Appellant

v.

MARY JO SPINO, CLERK OF THE JACKSON COUNTY LEGISLATURE, ET AL.,

Respondents

DOCKET NUMBER WD72524

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 22, 2010

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Sandra Carol Midkiff, Judge

Appellate Judges:

Special Division: Thomas H. Newton, C.J., James Edward Welsh and Gary D. Witt, JJ.

Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL., RACHEL TOWNSEND, Appellant
v. MARY JO SPINO, CLERK OF THE JACKSON
COUNTY LEGISLATURE, ET AL., Respondents.**

WD72524

Jackson County

Before Division Special Division Judges: Thomas H. Newton, C.J., James Edward Welsh and Gary D. Witt, JJ.

Rachel Townsend appeals the circuit court's judgment denying her petition for writ of mandamus against the Clerk of the Jackson County Legislature Mary Jo Spino, the Kansas City Board of Election Commissioners, the Jackson County Board of Election Commissioners, and the Missouri Secretary of State. Townsend contends that all Missouri counties are required by statute to conduct a general election for prosecuting attorney in 2010. In response to Townsend's appeal, Spino filed a motion to dismiss the appeal for a lack of a final judgment.

APPEAL DISMISSED

Special Division holds:

(1) Because the circuit court entered its judgment on May 24, 2010, the circuit court's judgment does not become final for purposes of appeal under Rule 81.05 until June 23, 2010. Because a final judgment is a prerequisite to appellate review, this court is without jurisdiction to review Townsend's claim.

(2) Although Rule 81.05(b) provides that a premature notice of appeal shall be considered as filed immediately after the time the judgment becomes final for the purpose of appeal, the filing of Townsend's appeal on June 24, 2010, after the judgment becomes final on June 23, 2010, does not aid Townsend. Section 115.121.5, RSMo Cum. Supp. 2009, requires that notice of the primary election be given six weeks prior to the primary election date. That notice, therefore, must be given by June 22, 2010. Thus, if we were to consider Townsend's appeal filed as of June 24, 2010, her appeal would be rendered moot, and we would not review it.

(3) Moreover, even if we were to consider the merits of Townsend's appeal, she would not prevail. Given the conflict between section 56.010 and the Jackson County Charter provision regarding the cycle for the election of a prosecuting attorney, a mandamus action is not appropriate. Further, to the extent that Townsend is challenging the validity or constitutionality of the county charter provision and state statute regarding Spino's alleged ministerial duty, such a challenge is not appropriate in a mandamus action.

Opinion by: James Edward Welsh, Judge

June 22, 2010

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.