

DE 77-01 - January 12, 1977

**Resign-To-Run
Chapter 99, F.S.**

*To: Steven L. Josias, Esquire, City Attorney, 6700 Southwest 13th Street, Pembroke Pines, Florida
33023 Prepared by: Division of Elections*

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Your have asked whether one, while holding elective and salaried municipal office, may simultaneously qualify for City Council (the term of which would run concurrently with his present office) and resign effective immediately consistent with Section 99.012, F.S., the "Resign-To-Run" law.

First, it is clear that the candidate is such an officer seeking to qualify for another office of concurrent term as would make him subject to Section 99.012(2), F.S.

In the case of McClung v. McCauley, 238 So. 2d 667 (Fla. App. 4 1970), as noted in your letter of inquiry, Judge of Industrial Claims McCauley qualified, on last day of qualifying, for the office of Court of Record Judge. McCauley's term as Judge of Industrial Claims was, at least in part, concurrent with the term of the office sought. He resigned instanter from such office on the very day that he qualified for the Court of Record Office (having left his qualifying papers the day before with the Clerk for formal filing on the last day of qualifying). That day Judge McCauley flew to Tallahassee, resigned as Industrial Claims Judge (an Executive Branch Office, Section 440.45, F.S.) and was appointed Court of Record Judge.

The District Court held that the "Resign-To-Run Law" had not been violated, and that it was not the exclusive means of qualifying for office. Without regard to the judicial character of the office at issue in McClung v. McCauley, the Court held that notwithstanding the 10-day-prior-to-qualifying language of the statute, one may "resign instanter and totally and thus become a nonincumbent. . . . Thus, he may qualify as any other, up to the qualification deadline. ..." at 670.

Thus, resignation 10-days prior to qualifying — which the Attorney General has interpreted to mean 10-days before the first day of qualifying period, A.G.O. 070-74 (June 1970), and which Judge McCauley, *supra*, did not satisfy — is not the exclusive means of validly qualifying. (Mr. Justice Ervin, during his tenure as Director of the Division of Elections, by opinion of May 11, 1976, here attached, so advised one seeking election to the Legislature and then currently serving on a District School Board.)

However, in Lambeth v. Gluckler, 302 So. 2d 429 (Fla. App. 4 1974), also noted in your letter, the Court held that a city officer who on the last day of qualifying did file qualification papers for county office and filed a resignation effective when determined by the Town Commission — which turned

out to be four days later — failed to comply with Section 99.012, F.S., and his name could not be printed on the ballot for county office.

In fine, resignation instant and totally, though not 10-days prior to qualifying, will predicate a valid qualification.

In the matter at hand, the city officer did not resign 10-days prior to qualifying, but did, or will resign instant and totally in order to qualify. Accordingly, he appears to have complied with Section 99.012 (2), F.S., establishing procedure and methodology for qualification, as interpreted by the District Court, having come within the decisional exception sounded in McClung v. McCauley, op cit.

Your enquiry is answered accordingly.