

RESCINDED

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Resign-to-Run Law Police Officers

To: Captain Walt Mills, Vero Beach Police Department and Sam P. McCall, Chief of Police, P.O. Box 1389, Vero Beach, Florida 32960

Prepared by: Division of Elections

This is in response to your recent letter in which you posed the following questions:

1. If a Sheriff of a county is retiring from his position, does a City Police Officer that is not under his supervision or authority have to take a leave of absence from the City to run for the Sheriff's position which is being vacated?
2. Since the Chief of Police is the superior and his position is appointed, not elected, does the Resign-to-Run Law apply to the City Police Officer?
3. If the City Police Officer does have to take a leave of absence by law, when is the exact date in July that his leave of absence shall be put into effect and also when will the officer be able to return to work if he is defeated in the primary or general election?
4. Can the officer take any vacation time accrued during his time of running for elected office or must it be strictly leave without pay?

All of these questions require a construction of the Resign-to-Run Law, 99.012, F.S. I have attached a copy of that section for your reference.

Each of the above questions will be answered in order:

Answer 1: The city police officer must take a leave of absence in order to run for Sheriff's office. Section 99.012(7), F.S.

Answer 2: The Resign-to-Run Law applies to the officer because the Resign-to-Run Law applies to "officers" as distinguished from "employees." The Division of Election and the Attorney General's Office have ruled a number of occasions that police officer are "officers" because they share the sovereign power. However, Section 99.012(7), F.S. provides an exception for police officer from the Resign-to-Run Law. This, a police officer need not resign-to-run for office unless he is running against an individual who has the authority to appoint, employ, promote, or otherwise supervise him. If the police officer is not running against such an individual, he must still take a leave of absence.

Answer 3: The leave of absence must begin no later than when the police officer qualifies as a candidate, i.e., when he pays his qualifying fee and files his qualifying papers. The time period for qualifying is noon, July 8 through noon, July 22. The police officer will be able to return to work if he is defeated in the primary or general election.

Answer 4: Section 99.012(7), F.S., must be read strictly to require a leave of absence without pay during his time of running for elected office.

In summary, this police officer need not resign-to-run for the office of sheriff. He must, however, take a leave of absence from employment without pay beginning no later than when he qualifies for office. He may return to work if defeated in the election. He may not take accrued vacation time during his leave of absence.