

DE 80-35 - October 21, 1980

**Resign-To Run Law
Section 99.012**

To: Bernard Kimmel, M.D., 375 Valley Forge, West Palm Beach, Florida 33405

Prepared by: Division of Elections

This is in response to your letter of October 11, 1980 which we consider to be a request for advisory opinion pursuant to Section 106.23, F.S. (1979). Your question can be restated as follows:

Must a member of the Palm Beach County School Board whose term expires on November 17, 1980 resign to run in a special primary to fill the vacancy in Republican nomination to Florida House of Representatives seat. District 82?

You have indicated that your school board term expires on November 17, 1980. If elected to the Legislature, your term of office begins upon election, that is, November 4, 1980 which is the general election date, Article III, Section 15(d), Florida Constitution of 1968. Therefore, the term of your present office would overlap that of the legislative office you seek. If any part of the term of office of an elected official runs concurrently with the term of officer for which he seeks to qualify, the said elected official must resign to run, Section 99.012(1), F.S. (1979). The Resign-to-Run law provides that to be eligible to run, such resignation must be tendered not less than ten days prior to the first day of qualifying for the office he intends to seek.

Because the original Republican nominee withdrew, a vacancy in nomination occurred, subsequent to the qualifying period set by general law. Upon a petition for mandamus filed by the Republican State Executive Committee, the Supreme Court ordered the Governor to call a special primary election as required by Section 100.111(3)(a), F.S. (1979). The Governor complied with the Supreme Court order and in accordance with the Governor's Order, the Division of Elections established by emergency rule a special qualifying period from September 22, 1980 to September 25, 1980 to enable names of qualified candidates to be printed on the October 7, 1980 primary ballot. However, because of the lateness of the Governor's action and consequently the late special qualifying period, notice of special election could not be published at least ten days prior to the first day set for qualifying for office. Therefore, it was impossible for any prospective candidate, like yourself, to resign from public office at least ten days before the first day set for qualifying.

In light of these circumstances, a public office so situated has only one option under the Resign-to-Run Law - resign effective immediately before qualifying. In McClung v. McCauley, 238 So. 2d 667 (Fla. 4th D.C.A. 1970), the court held that a public official could resign instantaneously, thus becoming a non-incumbent and qualify as any other citizen.