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RESIGN-TO-RUN S. 99.012, F.S. (1981)

To: Ms. Juanita Gesling, 11620 - 78th Avenue, Apartment B105 Seminole, Florida 33542

Prepared By: Division of Elections

This is in response to your request for an opinion on substantially the following questions:

> Is the act of resignation in accordance faith s. 99.012 a unilateral act on the part of the individual resigning and requiring only its reception and recording by the qualifying official and no act of acceptance by the governing body?
>
> Does the provision "irrevocably resigning" apply to individuals holding elective municipal offices of mayor and councilman.
>
> Does the provision "irrevocably resigning" preclude the individual concerned from withdrawing the resignation at a subsequent time prior to the effective date?

You have indicated that you have announced your intention to qualify as a candidate for the Florida House of Representatives in the 1982 primary and general elections. Further that you are currently a municipal elective officer as Mayor, City of Seminole, Pinellas County, with a two year term of office from March 1982.

In response to question one, there are two views on whether an acceptance is necessary to render a resignation effective. According to some authorities, no acceptance is necessary especially when the resignation is unconditional and purports to take effect immediately. 63 Am. Jur. 2d, Public Officers and Employees, S. 161. However, the generally prevailing view that has been followed in this state is stated in the case of State ex rel. Gibbs v. Lunsford, 158 So 441 (Fla. 1939) in which the Florida Supreme Court held that to be effective a resignation must be accepted by competent authority either in terms of, or by something tantamount to, an acceptance, such as the appointment of a successor.

In rendering this opinion I am cognizant of the Gibbs decision requiring acceptance of a resignation before it becomes effective. However, the Gibbs decision was rendered before the enactment of Ch. 80-70, s. 1, Laws of Florida. (Now s. 99.012, F.S. (1981), and was based on constitutional and other statutory provisions not relevant to this discussion.

Section 99.012(3), F.S., provides in pertinent part:

> "Any incumbent public officer whose term of office or any part thereof runs concurrently to the term of office for which he seeks to qualify shall

> resign his office pursuant to the provisions of this section and shall execute an instrument in writing directed, except as provided below, to the Governor, irrevocably resigning from the office he currently occupies. . . (I)n the case of a county or municipal public officer, the resignation shall be directed and presented to the officer with whom he qualified for the office from which he is resigning, or, in the case of an appointed official, to the officer or authority by whom he was appointed to the office from which he is resigning, with a copy to the Governor and the Department of State. . . ."(Emphasis Supplied)

The requirement that county or municipal officers file their resignation with the qualifying or appointing authority rather than the governing or collegial body on which the incumbent serves and the irrevocable nature of the resignation, evinces an intent by the legislature that such resignation is a self- executing, unilateral document rather than dependent upon some formal acceptance or response. Indeed, it would be very usual for the qualifying officer to be charged with the responsibility of formally accepting the resignation of an elected official rather than merely acknowledging receipt and recording it in his or her records, The lack of a requirement for a legislative or collegial body to act on a resignation further supports the rationale that acceptance of a resignation is not required under s. 99.012(3). F.S.; There is no provision for a resignation to be submitted to a governing body on which an official serves other than on a courtesy basis.

Therefore, I am of the opinion that the submission of a resignation under s. 99.012, F.S., is a unilateral or self-executing act by the individual or incumbent public officer and no formal acceptance or response is required by an elected or governing body.

Your first question is answered accordingly.

Based on the discussion below, your second question is answered in the affirmative.

It is clear the "irrevocably resigning" provision of s. 99.012(3), F.S., cited above, applies to the municipal offices of mayor and councilman. This section requires all incumbent public officers, whose term of office or any part of it that over-laps with a term of office sought, to irrevocably resign in writing from the office currently held. The only difference between the submission of a resignation by county or municipal officers and other appointed or elected officials is the person to whom the resignation is submitted. Thus, here the language of a statute is so plain and unambiguous as to fix legislative intent and leave no room for construction, admitting but one meaning, courts (or administrative agencies) may not depart from the plain language employed by the legislature. State ex. rel. Florida Jai Alai, Inc., vs. State Racing Commission, 112 So. 2d 825 (F1a. 1959). Consequently, I am of the opinion that a county or municipal officer must comply with the resign to run law, s. 99.012(3), F.S., by irrevocably resigning in writing their position whenever seeking an office whose term is or will be concurrent with the present term of office.

Your second question is answered accordingly.

Webster's Third New International Dictionary (unabridged edition), 1966, defines irrevocable as:

“Incapable of being recalled or revoked: past recall: unalterable."

It is a rule of statutory construction that words of common usage, when used in a statute, should be construed in their plain and ordinary sense. American Bankers Life Assurance Co. v. Williams, 212 So. 2d 777 (F1a. 1st DCA 1968). Further, it has been held that courts (or administrative agencies may not see a morning different from the ordinary and common usage connotation of the word, unless on consideration of the act as a whole and the subject matter to which it relates, they are necessarily led to a conclusion that the legislature intended a different meaning to be ascribed to its language. Florida National Bank v. Simpson, 59 So 2d 751 (Fla. 1952); 33 ALR 2d 581; Abenkay realty Corp. v. Dade County, 185 So. 2d 777 (F1a. 3d DCA 1966).

Applying the above rule of statutory construction, I cannot determine any reason to ascribe a different meaning to the language used by the legislature requiring a resignation tendered pursuant to s. 99.012. F.S.,
as being irrevocable, i.e. unalterable and incapable of being recalled or revoked.

Therefore, I am of the opinion that once an incumbent office holder submits his or her resignation pursuant to the resign to run law, s. 99.012. F.S., it cannot be withdrawn, revoked or rescinded at any subsequent time.

Your third question is answered accordingly.

SUMMARY

A resignation submitted pursuant to s. 99.012, F.S., is a unilateral or self-executing act by the individual or incumbent public officer and no formal response or acceptance is required by a governing or elected body.

A county or municipal officer must comply with the resign to run law, s. 99.012, F.S., by irrevocably resigning in writing his or her position whenever seeking an office whose term is or will be concurrent with the present term of office.

Once an incumbent officeholder submits his or her resignation pursuant to the resign to run law, s. 99.012, F.S., it cannot be withdrawn, revoked or rescinded at any subsequent time.