

**DE 90-11 - March 16, 1990**

**Resign-to-Run  
Section 99.012(2), F.S.**

*To: Mr. Robert L. Hamilton, City Attorney, City of Orlando, 400 South Orange Avenue, Orlando, Florida 32801*

*Prepared by: Division of Elections*

This is in reference to your request for an opinion from the Division of Elections regarding the Resign-to-Run Law. The Division of Elections has authority to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including local officers having election related duties. You are City Attorney for the City of Orlando, so that the Division has authority to issue this opinion to you.

Your question is:

When a resignation is submitted pursuant to the Resign-to-Run Law in order to run for another public office, when does a vacancy in the office which is currently held occur?

One of your city commissioners whose term of office expires in 1991 may run for a seat on the county commission. The election for the county commission seat will occur in November 1990. Under the Resign-to-Run Law, Section 99.012(2), Florida Statutes, the city commissioner is required to submit an irrevocable letter of resignation no later than 10 days prior to the first day of qualifying for the county commission seat.

The Resign-to-Run Law provides that the resignation must be effective no later than the date the commissioner would take office, if elected, or the date his successor takes office, whichever occurs earlier.

The City of Orlando's general election will be held September 4, 1990 with elected city officials assuming office on October 1, 1990. You state that the most logical course would be for the commissioner to tender a resignation with an effective date of October 1, 1990 so that the position could be filled during city's general election.

During your research on this subject, you found the Division of Elections' Opinion DE 80-16, which suggests that the resigning official does not have the ability to choose an effective date for his resignation and that the "vacancy" in office occurs immediately upon the tender of resignation.

Section 99.012(2), Florida Statutes, has been amended since DE 80-16 was issued by the Division. At that time this subsection read, in pertinent part, as follows:

(2) [S]aid resignation shall be effective not later than the date upon which he would assume office, if elected to the office to which he seeks to qualify, the expiration date of the term of the office which he presently holds, or the general election day at which his successor is elected, whichever occurs earliest.

The Legislature amended this by Chapter Law 83-15, Section 1, to read, in pertinent part, as follows:

(2) [S]aid resignation shall be effective not later than the date upon which he would assume office, if elected to the office for which he seeks to qualify, or the date at which, under law or the State Constitution, the person elected to an unexpired portion of his term is required to assume office, whichever occurs earlier.

The legislative changes are significant. Prior to the adoption of Chapter Law 83-15, the resignation for a municipal officer would have to have been effective no later than the date he assumed office, if elected; the expiration date of the term of the office which he presently holds; or, the general election day at which his successor is elected, whichever occurred earliest. With the adoption of Chapter Law 83-15, the resignation for a municipal officer is either the date the officer assumes office, if elected, or the date, under law or the State Constitution, the person elected to an unexpired portion of his term is required to assume office, whichever occurs earlier.

The remainder of Section 99.012(2), Florida Statutes, reads in pertinent part:

With regard to an elective office, such resignation shall create a vacancy in the office, thereby permitting persons to qualify as candidates for nomination and election to that office in the same manner as if the term of such public officer were otherwise scheduled to expire; or, in regard to an elective municipal or home rule charter county office, such resignation shall create a vacancy which may be filled for the unexpired term of the resigned officer in such manner as provided in the municipal or county charter.

In DE 80-16 the Division opined "that a public officer's tender of resignation before qualifying creates a vacancy in his office which could be filled as provided in Section 99.012(2), Florida Statutes...."

While the public officer's tender of resignation before qualifying creates a vacancy in office effective at a future date, which under the Resign-to-Run Law permits persons to qualify as candidates for nomination and election to that office in the same manner as if the term of such public office were otherwise scheduled to expire, there is no vacancy in the office until the effective date of the resignation. In addition, Section 99.012(2), Florida Statutes, provides:

[I]n regard to an elective municipal or home rule charter county office, such resignation shall create a vacancy which may be filled for the unexpired term of the resigned officer in such manner as provided in the municipal or county charter. (Emphasis added.)

The key words in the statute for the purposes of answering your question are "unexpired term." When a resignation is submitted which is effective at a future date, the unexpired term is the term of office

remaining after the effective date of the resignation.

Therefore, the city commissioner whose term of office expires in 1992, must submit a letter of resignation at least 10 days prior to the first day of qualifying for a county commission seat in the 1990 elections. Such resignation must be effective no later than the date he would take office, if elected, or the date his successor would take office, whichever occurs earlier. There is no vacancy in the office until the effective date of the resignation.

Therefore, the operant date for your city commissioner's resignation is no later than the date he would take office, if elected, as there is no vacancy in office until the effective date of his resignation and, the filling of an unexpired term is not possible until there is a vacancy.

### **SUMMARY**

When a resignation is submitted pursuant to the Resign-to-Run Law from a municipal officer in order to run for another public office, a vacancy in the municipal office occurs upon the effective date of the resignation.