

DE 87-18 - October 19, 1987

Resign-to-Run Law

Sections 99.012(2) and 99.012(7), F.S.; Art. VIII, SS. 11(1)(G) and 11(6), Fla. Const. 1885; and Art. VIII S. 6(E), Fla. Const. 1968

To: Mr. Stephen T. Garrison, Chief of Police, Virginia Gardens Police Department, 6498 Northwest 38 Terrace, Virginia Gardens, Florida 33166

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the following question:

Whether the Chief of Police of the Village of Virginia Gardens in Dade County must resign or take a leave of absence to run for public office?

The Resign-to-Run Law requires an elected or appointed officer to resign irrevocably when seeking an elected office when the term of the office the person is running for is concurrent with the office he presently holds. S. 99.012(2), Fla. Stat. However, the Resign-to-Run Law has an exemption from the resignation requirement for an officer who is a subordinate personnel, deputy sheriff or police officer unless that person is seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote or otherwise supervise the person and who has qualified for reelection to that office. S. 99.012(7), Fla. Stat. However, that person is required by the Resign-to-Run Law to take a leave of absence without pay from employment during the time in which he is seeking election to public office.

The Chief of Police of the Village of Virginia Gardens is exempt from the resignation requirement of the Resign-to-Run Law when running for public office unless he is running against someone who has the authority to appoint, employ, promote or supervise him and who has qualified for reelection to that office. See DE 87-17 (October , 1987) and DE 84-26 (July 10, 1984). However, pursuant to Section 99.012(7), Florida Statutes, he must take a leave of absence without pay from his employment during the period in which he is seeking election to public office.

There has been some question in the past as to whether general laws applicable to municipalities apply to municipalities in Dade County as Article VIII, Section 11(1)(g), of the 1885 Florida Constitution (Article VIII, Section 11(1)(g) of the 1885 Florida Constitution was carried forward by Article VIII, Section 6(e) of the 1968 Florida Constitution), granted to the electors of Dade County the power to adopt a home rule charter in which each municipality would have the power to "make, amend or repeal its own charter" and that the home rule charter would be exclusive and the Legislature would have no power to amend or repeal the charter of any municipality in Dade County. 1982 Op. Atty. Gen. Fla. 082-11 (March 2, 1982).

Article VIII, Section 11(6) of the 1885 Florida Constitution provided, however, that the previously

referenced section did not apply to general laws which relate to any municipality in Dade County and any other municipality in the state. The Supreme Court of Florida held in Dade County v. Dade County League of Municipalities that when these two sections are read together, they prohibit the Legislature from regulating or controlling municipalities in Dade County by special or local act. 104 So.2d 512 (Fla. 1958).

The Third District Court of Appeal in a resign-to-run conflict between general law and a Dade County Municipal Charter concluded that when there is a conflict between a Dade County Municipal Charter and the general law of the state, the general law prevails. City of Hialeah v. Martinez, 402 So.2d 602 (Fla. 3d DCA 1981).

Therefore, even if the Village of Virginia Gardens or the home rule charter of Dade County should have a conflicting provision regarding the Resign-to-Run Law, the Resign-to-Run Law prevails.

SUMMARY

The Chief of Police of the Village of Virginia Gardens need not resign to run for public office. However, he must take a leave of absence without pay during the period in which he is seeking election to public office. If the charter of the Village of Virginia Gardens or the home rule charter of Dade County should have a conflicting provision regarding the Resign-to-Run Law, the Resign-to-Run Law prevails.