

DE 78-25 - May 25, 1978

Resign-To-Run Application To Sheriff
ART. IV, s. 1, FLA. CONST., s. 99.012, 100.031, 100.041, F.S.

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Prepared by: Division of Elections

Your recent letter requested an opinion of this office to the following question:

What is the effect of the Resign-to-Run Law to a county sheriff whose term expires in January, 1981 and desires to be a candidate for the legislature in 1978?

Florida's legislature has determined that a person may not be a candidate for a public office the term of which runs concurrently with another office presently held. The pertinent portion of Florida's so-called "resign-to-run" law states:

"(2) No individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning from such office not less than 10 days prior to the first day of qualifying for the office he intends to seek. Said 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. With regard to elective offices, said resignation shall create a vacancy in said office thereby permitting persons to qualify as candidates for nomination and election to that office in the some manner as if the term of such public officer were otherwise scheduled to expire;. . . .

(3) 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. The resignation shall be presented to the governor with a copy to the Department of State except that, in the case of a county. . . public officer, the resignation shall be directed and presented to the officer with whom he qualified for the office from which he is resigning . . . with a copy to the governor and to the Department of State. The resignation shall become effective and shall have the effect of creating a vacancy in office as provided herein, and the public officer shall continue to serve until his successor is elected or the vacancy otherwise filled as provided in subsection (2)." s. 99.021(2), (3), F.S.

In the example which you have presented, the terms of office of a legislator elected in 1978 and a county sheriff whose term ends in January, 1981 overlap and thus run concurrently. The resign-to-run law would be applicable as a result.

As a prerequisite to the qualifying officer (secretary of state in the case of legislative office) accepting this individual's qualifying papers as a candidate for the legislature, a resignation from the office of sheriff must be presented in writing to the supervisor of elections (with a copy to the governor and the Department of State (no later than ten (10) days prior to the first day of candidate qualifying, s. 99.012 (3), F.S.

Qualifying of candidates for elective public office begins at 12 noon on the 63rd day prior to the first primary election, s. 99.061(1) and (2), F.S. In 1978 the first day of qualifying will be July 11th. Therefore, the resignation must be submitted no later than July 1, 1978.

This resignation must comply with the statutory requirements as to the effective date of the resignation. In this regard the Division of Elections is guided by a very thorough opinion of the Attorney General which reviewed the statute's application. 1972 Op. Att'y. Gen., Fla. 072-201 (June 20, 1972). As applicable to the instant situation it reads in part:

SUMMARY

A sheriff presently serving a term of office scheduled to expire in January 1981 must comply with s. 99.012, F.S., and submit a resignation no later than July 1, 1978 to be a candidate for the state legislature. The resignation must be effective no later than the first Tuesday after the first Monday in January, 1979. A successor will be elected sheriff at the November, 1978 general election to fill the unexpired term to January, 1981. The governor may appoint someone to serve as sheriff in the period between the general election and the successor taking office.