

DE 80-16 - June 19, 1980

**Resign-To-Run Law
s. 99.012, F.S.**

To: Samuel S. Goren, Esquire, City Attorney, 6601 Boulevard of Champions, North Lauderdale, Florida

Prepared by: Division of Elections

Your request for an opinion relating to Section 99.012, Florida Statutes (1979), can be restated:

What is the effective date of resignation of the Mayor of North Lauderdale who intends to resign office before qualifying as a candidate for the Broward County commission and wants the resignation to be effective on the date he assumes office, if elected?

Section 99.012, Florida Statutes, provides that certain public officers must submit an irrevocable resignation as an eligibility condition for elective office. The subsection also provides for the earliest deadline upon which such a resignation shall be effective.

In the present case, the Mayor of North Lauderdale wants to make his resignation effective on November 18, 1980, the date upon which he will assume office as a county commissioner, if elected. See Section 100.041(2), Florida Statutes.

However, under the Resign-to-Run Law, the public officer has no power to choose an effective resignation date, Section 99.012(2), Florida Statutes, states, in pertinent part:

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.

Therefore, the Mayor's resignation could be effective on the date his term expired or upon the date his successor is elected, whichever event occurs sooner than November 18, 1980. The mayor could also choose to resign effective immediately. See McClung v. McCauley, 238 So. 2d 667 (Fla. 4th DCA 1970). The questions are: When does the resignation of the Mayor create a vacancy in office that can be filled in the manner provided by municipal charter and when is the effective resignation date of the Mayor?

There are no judicial, Attorney General or Election decisions which directly answer these questions. Therefore, the Division seeks a construction of the statute that serves the purposes and intent of the Resign-to-Run Law. The purposes of the Law have been expressed by the Supreme Court in Holley v. Adams, 238 So.2d 401 (Fla. 1970):

The Legislature, in its wisdom, considered it inequitable for an elected official or appointive official holding office to use the prestige and power of that office in seeking election to a higher or different office. Furthermore, the Legislature agreed that by providing for prospective resignations the people of the State of Florida would not be compelled to bear the unnecessary cost of special elections occasioned by elected or appointed officials who, while holding one office, seek and obtain another elective office.

Accordingly, we opine that a public officer's tender of resignation before qualifying creates a vacancy in his office which can be filled as provided in Section 99.012(2), Florida Statutes, which states, in pertinent part:

. . . said 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.

This construction is further reinforced under Section 99.012(3), Florida Statutes, which states in pertinent part:

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 (1).

The Mayor's resignation brings into operation Section 4.2 of the Municipal Charter of the City of North Lauderdale which provides for the election of the Mayor's successor by special election "... which special election shall be done not faster than sixty (60) *days after the death, resignation, forfeiture of office* or removal of the Mayor." The successor would take office within ten days of the election as provided in the special act for Broward County. Thus, under the Municipal Charter, a special election to fill the vacancy in the Mayor's office could occur prior to November 18, 1980. If the special election is held and the vacancy is filled, the Mayor's effective date of resignation would be the date his successor takes office. The Mayor could continue to serve until his successor takes office.

While a special election is expensive and undesirable, it is unavoidable here; it is the manner provided under the Municipal Charter for filling a vacancy in the Mayor's office.

SUMMARY

The Mayor's tender of resignation before qualifying has the effect of creating a vacancy which can be filled as provided in Section 99.012(2), Florida Statutes. The public officer's effective date of resignation would be the date his successor takes office in the manner provided by municipal charter and special act.