

DE 80-23 - July 29, 1980

**Supplemental Opinion Relating to DE80-16
Resign-to-Run Law
Section 99.012, Florida Statutes**

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

Prepared by: Division of Elections

Your request for a supplemental opinion relating to Division of Elections Opinion 80-16, issued June 19, 1980, can be restated:

May the city of North Lauderdale schedule a special election to coincide with a primary or general elections or must the city call a special election strictly pursuant to its municipal charter in order to fill a vacancy created by the resignation of the Mayor.

The Resign-to-Run Law does not interfere with the operation of municipal and county charter as to a vacancy in office. A municipal officer's tender of resignation before qualifying creates a vacancy in office which may 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..." (emphasis add)

Essentially, you ask if the City of North Lauderdale must follow its charter to fill a vacancy in office created by the Mayor's resignation or whether it can schedule a special election concurrently with the primary or general election.

While the municipal charter appears to establish a date certain for a special election, there is nothing in the Resign-to-Run Law which prohibits filling the vacancy in a special election held concurrently with the primary or general election. One purpose of the Resign to Run Law is to eliminate unnecessary special elections. Holley v. Adams. 238 So. 2d 401 (Fla. 1970). The city can choose an election date based on its own interpretation of its charter requirements.