

DE 81-5 - November 18, 1981

**Resign-To-Run Section
99.012, F.S.**

To: Honorable Ernest O. Barkley, Jr. Mayor, Town of Gretna, U.S. Highway 90, Post Office Drawer A, Gretna, Florida 32332

Prepared by: Division of Elections

This is in response to your inquiry on substantially the following questions:

If a Councilman presently seated on the Council has thirteen (13) months remaining on his present term as councilman and he would like to run for the office of Mayor, is he required to resign? If the answer to the preceding question is affirmative, when would the councilman have to resign?

It is my understanding that the election of Mayor for the town of Gretna will be conducted on the 1st Tuesday in December with the person elected taking office in January, 1982. It is my further understanding that the term of office of the incumbent councilman who is desirous of running for the Mayor's seat in the next mayoral election expires in December, 1983.

Section 99.012(3), Florida Statutes provides in pertinent part that:

"(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 this 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 Department of State except that, in the case of a county or municipal public officer, the resignation shall be directed and presented to the officer with whom he qualified for the office from which he is resigning, or, in the case of an appointed official, to the officer or authority by whom he was appointed to the office from which he is resigning, with a copy to the governor and to the Department of State. . ." (emphasis added).

Only a simple calculation is needed to determine the incumbent's remaining term of office would overlap or be concurrent with the term of office sought in the mayoral election. Thus, pursuant to the above statutory language, the incumbent must resign his current position on the council to seek the mayor's office. Where the language of the statute is so plain and unambiguous as to fix the legislative intent and leave no room for construction, admitting of but one meaning, courts may not depart from the plain language employed by the legislature. State ex rel. Florida Jai Alai, Inc. vs. State Racing Commission, 112 So. 2d 825 (Fla. 1959).

Having determined that the incumbent councilman must resign to run for the mayor's office because of concurrent terms, we turn to the next question as to when such resignation must occur.

Section 99.012(2), F.S., establishes the procedure for resignations under the resign-to-run law. This section 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." (emphasis added).

Based on the above statutory language, the incumbent must resign no less than ten (10) days prior to the first day of qualifying for the office of mayor as established in the town ordinance or county charter. However, it has been determined that an incumbent of a public office may either resign ten days prior to the qualification date and continue to hold office until, roughly, the end of his concurrent term or incumbent may resign instanter and totally and thus, qualify as a non-office holder. See McClung v.. McCauley, 238 So.2d 667 (4th DCA 1970).

Your questions are answered accordingly.

SUMMARY

An incumbent councilman who has 13 months remaining on his current term of office and who is desirous of running for the office of mayor, which overlaps or runs concurrently with his term as councilman, must resign to run for the mayor's office as provided in Section 99.012(3), Florida Statutes. Further, the councilman must resign his office to run for the mayor's office not less than 10 days prior to the first day of qualifying for the office he intends to seek as established in the town or county charter unless he resigns instanter and totally in which event he may qualify as a non-office holder.