

**DE 82-9--June 4, 1982**

**RESIGN-TO-RUN s.99.012 and 99.032**

*To: Mr. William (Bill) Martin, 250 Country Club Parkway, Lehigh Acres, Florida 33936*

*Prepared by: Division of Elections*

You have requested an opinion on substantially the following question: I

1. Is a member of the Lee County Public Hospital Board, a Lee County special district board, that is non-partisan, unpaid, with members being elected county-wide for four year terms, required to resign to run for the position of county commissioner?
2. If question one is affirmative, please advise:
  - a. When and to whom must the resignation be submitted?
  - b. What is the latest date the resignation can be made effective?
3. May a person file for an office in a district in which he does not reside, with only the promise to move to the said district by the election date?

Based on the discussion below question 1 is answered in the affirmative.

The Lee County Hospital Board was created by Special Act Chapter 63-1552, is of Florida, to establish "a public hospital and a nursing home in Lee County." Membership on the board consisted of two members from each of the five (5) county commissioner districts. To establish staggered terms on the board, members in odd-numbered districts - one, three and five were schedule to run for election in even-numbered years, while even numbered districts - two and four would run for election in odd numbered years. Members' terms are for four years.

Chapter 81-414, Laws of Florida, a special act relating to Lee County, requires a written regulation with respect to elections qualifying of candidates, and vacancies of various Lee County boards including the Lee County Hospital Board. S. (1)(a), 81-414, Laws of Florida, provides:

“(a) All special district elections shall be on the first Tuesday after the first Monday in November of odd-numbered years; provided with respect to those persons elected prior to the effective date of this act in an even numbered year, they shall remain in office until the next off number election year following the expiration of their term.” (Emphasis supplied)

You have advised that your term would normally expire in November 1982;

however, because of the automatic extension of your term by the above statute, the expiration of your term will be November 1983.

Section 99.012(2), Florida Statutes (1981), Provides:

"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 earlier." (Emphasis supplied)

The above statutory provision does not specifically name district offices; however, it has been held in an analogous case, *Ballard v. Cowart*, 238 So. 2d. 484(2 DCA Fla 1980), that a duly appointed member of the Hospital District Board of Hardee County, whose term of office had not expired and who had not tendered resignation from that office, was the holder of an elective or appointive office within the meaning of s. 99.012(2), F.S. The court stated that no one holding an elective or appointive office shall qualify for another public office without tendering his resignation; thus, the board member was not qualified to become a candidate for county commissioner.

See, DE 80-7, dated May 4, 1980, in which this Division issued an opinion adopting the ruling in district office cases. Therefore, if any part of the hospital board member's term runs concurrently with the term of the county commission seat sought, such member must comply with s. 99.012(2), F.S., and resign his office to run for the commission race.

Therefore, your first question is answered in the affirmative.

Regarding your second question, s. 99.012(2), above, requires that a present office holder must tender his or her resignation "not less than 10 days prior to the first day of qualifying for the office sought." This section further provides three dates on which the resignation may become effective; (1) the date upon which the candidate office holder would assume the new office, if elected; (2) the expiration date of the term of office which he or she presently holds; or (3) the general election day at which his successor is elected, whichever occurs earliest. In view of the extension of time given your team of office by Chapter 81-414, Laws of Florida, the latest date that your resignation can become effective is the date upon which you would assume office, if elected to the position to which you seek to qualify. Your question is answered accordingly.

Should you decide to run for another elective office, Ch. 81-414(3), Laws of Florida, specifically provide:

"Vacancies on boards shall be filled by the Governor for the remainder of the term; copies of all resignations or vacancies and appointments to be sent to the supervisor of election's (Emphasis supplied)

The Governor having been given the statutory authority to fill vacancies created on the boards enumerated in the above special act should also be the person to whom a resignation should be submitted with a copy to the Supervisor of Elections in Lee County. Your question is answered accordingly.

In responding to your third question I have assumed the office to which you are referring is the county commissioners office. Section 99.032, F.S., provides:

"A candidate for the office of county commissioner shall at the time he qualifies, be a resident of the district from which he qualifies." (Emphasis supplied)

Clearly the above statute establishes a district residency requirement for a county commission candidate. The statute expressly requires a candidate to be a resident at the time of qualifying. See DE 80-27.

The starting point for interpreting a statute is the language of the statute itself; absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive. *Albernaz v.*

*United States*, 450 US 333, 67 L Ed 2d 275, 101 S Ct 1137(1981). Accordingly, your third question must be answered in the negative.

As requested, I am enclosing copies of the statutes and opinions cited herein.

#### SUMMARY

An elected member of the Lee County Hospital Board must comply with the Resign-to-Run Law, s. 99.012(2), F.S. (1981), before qualifying for another elective office, if the term of the present office is concurrent with or overlaps the office sought. The latest effective date of a resignation tendered by an elected member of the Lee County Hospital Board, whose term has been extended by Ch. 81-414, Laws of Florida, is the date such member would assume office, if elected. Resignation of membership on the Lee County Hospital Board should be submitted to the Governor with a copy to the Lee County Supervisor of Elections. A candidate for county commission must reside in the district at the time of qualifying for office.