

**DE 82-14--June 25, 1982**

**RESIGN-TO-RUN LAW  
S. 99.012, F.S. (1981)**

*To: Ms. Elizabeth A. Hayward, Graduate Assistant, College of Arts and Sciences, Center for State and Local Government, The University of West Florida, Pensacola, Florida 32504*

*Prepared By: Division of Elections*

This responds to your letter in which you request an opinion on the following question:

Would it be necessary for a city councilman to resign from his present office to run for state representative?

You indicated in your letter that the councilman's term has expired but he has been retained in office by a federal court order. This order postpones elections until a voting rights suit that is now pending has been decided.

After carefully considering this matter, I am of the view the councilman must comply with the resign- to-run law, s. 99.012(2), F.S. (1981), which 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 earliest . . . ." (Emphasis supplied)

The court order extending his terms on the municipal council continues his powers, duties and responsibilities as a public official. The councilman is subject to the jurisdiction of the court until the order is either rescinded by the entering judge or overruled by a higher court. Thus, the length of his term will be determined in the federal court system.

When acting as a commissioner, the councilman's acts are official although he may be in a holdover capacity. He maintains the authority to act on behalf of the city and exercises all other rights and privileges the same as any incumbent officeholder. Thus, if the councilman was an incumbent officeholder and his term overlapped a term of office in which he was seeking to qualify, he would be required to resign. Thus, I am of the opinion the councilman must resign pursuant to s. 99.012, F.S., although he is a holdover

officeholder by judicial fiat.

I am aware that under the circumstances mentioned in your letter, the councilman may have some concern as to the date his resignation should become final. It is my suggestion that his resignation become final on the date upon which he would assume office, if elected to the office he seeks to qualify. The resignation should be submitted to the local qualifying officer and to the Federal Court Judge.

The interpretation in this opinion is based on the Florida Election Code Chapters 97-106, F.S. The councilman should contact the City Attorney regarding any municipal ordinances regarding this matter.