

**DE 82-20-July 23, 1982**

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

To: Mr. Donald J. Lunny, City Attorney, City of Plantation, 400 Northwest 73 Avenue, Plantation, Florida

Prepared by: Division of Elections

This is in response to your request for an advisory opinion on substantially the following questions:

1. Does a vacancy in the Office of Councilman in the City of Plantation occur as of the date the resignation is submitted or as of the date the resignation becomes effective?
2. Assuming the vacancy exists as of the date the resignation is submitted, what procedure is appropriate for the filling of that vacancy?

We have been advised that a current member of the City of Plantation's Council has resigned his seat to seek a state legislative post pursuant to the Resign-to-Run Law, s. 99.012, F.S. The normal expiration date of the city council term is March 11, 1983, the date of the city's general election. He is desirous of making his resignation effective as of the date he would assume legislative office, if elected, on November 2, 1982. The councilman has tendered his resignation not less than 10 days prior to the first day of qualifying or prior to July 6, 1982, and thus has complied with the Resign-to-Run Law.

Your memorandums of law have been reviewed in rendering this opinion.

The purposes of the Resign-to-Run Law, found in the preamble to ch. 80-80, Laws of Florida (now s. 99.012, F.S.), are twofold: (1) To prevent the inequity of an elected or appointive official using "the prestige and power of that office in seeking election to a higher or different office", (2) To eliminate the "unnecessary cost of special elections occasioned by elected or appointed officials who, while holding one office, seek and obtain another elective officer." See also, Holley v. Adams 288 So 2d. 401 (Fla. 1970).

Under the Resign-to-Run Law, the public officer has no power to choose an effective resignation date. The effective date of a resignation takes place by operation of law pursuant to section 99.012(2), F.S.

Section 99.012(2), F.S., provides in pertinent part:

"With regard to elective offices, said resignation shall create a vacancy in said

office thereby permitting persons to qualify as candidates for nomination and election to that office in the same manner as if the term of such public officer were otherwise scheduled to expire; or, in regard to elective municipal or home rule charter county offices, 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 does not apply to political party offices. (Emphasis added)

In re Advisory Opinion to Governor, 239 So 2d. 247 (Fla. 1970) supports the proposition that a vacancy, for the purpose of electing or appointing a successor to an incumbent public officer, occurs at the moment the resignation is submitted or tendered.

"Under the quoted statute (The Resign-to-Run Law) a successor to Judge Dekle will take office simultaneously with the effectiveness of his resignation. . .  
"Vacancy" in the sense used in this statute means the same as the ending of a term. When the term ends the office becomes "vacant" to the extent that it must be filled by election, or if no one seeks the office by election then by executive appointment. Here, the statute ends the tenure of the incumbent holder of the office but it also provides for the election of a successor, who succeeds to the office at the precise moment that the resignation of the incumbent takes effect. . ." (Emphasis supplied)

In the present case, the resignation of a city councilman has created a vacancy which may be filled for the unexpired term of the resigned officer in such manner as provided in the municipal charter. Under section 99.012(2), F.S., the city councilman's resignation could be effective on the date his term expires, the date he assumes legislative office or date his successor assumes office, whichever event occurs sooner. The councilman could also resign effective immediately, McClung v. McCauley. 238 So 2d. 667 (Fla. 4th D.C.A. 1970)

The City of Plantation's charter provides in pertinent part:

"Whenever the Mayor or any councilman shall cease to be a Mayor or Councilman for any reason, his successor to fill the unexpired term shall be elected by and at a special municipal election to be called by the Mayor, the President of the Council, or the President pro term, within forty-five (45) days of the date of the vacancy, unless said vacancy occurs within less than six (6) months prior to the next general municipal election, in which case a majority of the council may appoint a person to fill out the unexpired term, with the Mayor voting in case of a tie, in the event that it is vacated, and the filing date for candidates in such special election called by the Mayor, or the President of the Council, or the President pro tem, shall close at 12:00 non on the 29th day preceding the date set for said special election. (Emphasis supplied)

Applying the above charter language, the City of Plantation must hold a special election in order to fill the vacancy of the resigned councilman. The municipal charter provides

that the successor to fill out the unexpired term shall be elected by and at a special election to be called by the Mayor. . .within forty-five (45) days of the date of the vacancy. Thus a special election could occur prior to the date the councilman would assume legislative office and before the date his council term would expire. If the special election is held and the vacancy is filled, the councilman's effective date of resignation would be the date his successor takes office.

However, the resigned officeholder can maintain his current position until a successor is elected and takes office. Section 99.012(3), F.S.

While a special election is undesirable, it is unavoidable here; it is the manner provided under the municipal charter for filling a vacancy.

### SUMMARY

The councilman's tender of resignation before qualifying has the effect of creating a vacancy which can be filled as provided in section 99.012(2), F.S. (1981). The public officer's effective date of resignation would be the date his successor takes office in the manner provided by municipal charter.