

DE 88-25 - June 6, 1988

**Resign-to-Run Law
Section 99.012(2), F.S.**

To: Honorable Nick Cassandra, Mayor, City of Boynton Beach, 2554 Southwest Tenth Court, Boynton Beach, Florida 33435

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion under the Resign-to-Run Law. You are Mayor of the City of Boynton Beach and are planning to run this year for the county commission for District 4 in Palm Beach County when the present county commissioner resigns to run for Congress. Under Section 106.23(2), Florida Statutes, the Division has authority to issue this opinion to you.

The Resign-to-Run Law requires a state, county or municipal officeholder to resign from the office he presently holds at least ten days prior to the first day of qualifying when running for another office and the term of that office, or any part of it, is concurrent with the term of office he presently holds. Section 99.012(2), Fla. Stat. Such resignations must be submitted this year by July 8, 1988 as qualifying for state, multi-county, county, district and judicial offices is from noon, July 18 to noon, July 22.

In addition, the Resign-to-Run Law also provides that an individual qualifying for federal office must resign no later than when he qualifies for federal office. Failure to submit a resignation when qualifying for federal office will result in an automatic resignation from office. Qualifying for federal candidates this year is noon, July 11 through noon, July 15. Therefore, an officeholder running for federal office has until noon, July 15 to qualify and submit his resignation while an officeholder running for another office must submit his resignation by July 8.

You asked the following question:

May a resignation under the Resign-to-Run Law be submitted contingent upon a vacancy actually occurring in an office?

The question is answered in the negative as there are no provisions in the Resign-to-Run Law for contingent resignations. Section 99.012(3), Florida Statutes, provides:

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 his office pursuant to the provisions of this section and shall execute an instrument in writing...irrevocably resigning from the office he currently occupies. (Emphasis added.)

When a resignation is submitted pursuant to the Resign-to-Run Law, it must be irrevocable and

Section 99.012(2), Florida Statutes, provides that there is an immediate vacancy in that office to be filled "in the same manner as if the term of such public officer were otherwise scheduled to expire..." In addition, the Florida Supreme Court has interpreted the present Florida Constitution as providing that a vacancy in office occurs upon resignation. Spector v. Glisson, 305 So.2d 777, 779 (Fla. 1975).

While the resignation creates an immediate vacancy in office, the effective date of such resignation may be at a future date not later than the date the resigner would take office if elected to the office he seeks, or not later than the date his successor would take office, whichever occurs earlier. Section 99.012(2), Fla. Stat.

Resigning from office with a future effective date is not the only means that an officeholder has open to him when seeking election to another office. The Fourth District Court of Appeal in 1970 interpreted the Resign-to-Run Law as providing that an officer could resign from office with an immediate effective date and then qualify for office as a non-officeholder. McClung v. McCauly, 238 So.2d 667 (4th DCA 1970).

SUMMARY

Any resignation submitted pursuant to the Resign-to-Run Law must be irrevocable and the fact that the office for which you seek to qualify may not be vacated by the incumbent does not alter this requirement. As an alternative to submitting a resignation with a future effective date, an officeholder may submit a resignation with an immediate effective date and then qualify for office as a non-officeholder.