

RESCINDED

DE 95-03 - May 5, 1995

Resign-to-Run Law §§98.015(8), 99.012, F.S.; DE 84-6, DE 85-02 AND DE 90-12

TO: The Honorable Betty Carter, Supervisor of Elections, Orange County, 119 West Kaley Street, Orlando, Florida 32806-3967

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding Florida's resign-to-run law, section 99.012, Florida Statutes. You are the Orange County Supervisor of Elections and, pursuant to section 106.23(2), Florida Statutes, the division has authority to render this opinion to you.

You ask whether there is any alternative to a compulsory leave of absence under section 99.012, Florida Statutes, for a subordinate officer who is seeking election to an office held by the person who appoints, employs, promotes, or otherwise supervises him (hereafter referred to as supervisor), when the supervisor does not qualify for reelection.

The answer to your question is yes.

Subsection (5) of section 99.012, Florida Statutes, requires a subordinate officer to resign if he is seeking an office held by his supervisor and his supervisor has qualified to run for another term. However, if the incumbent supervisor fails to qualify for reelection, subsection (5) provides that the subordinate officer "must take a leave of absence without pay during the period in which he is a candidate for office."

Thus, a literal reading requires a subordinate officer to take an unpaid leave of absence if he is running for his supervisor's office and his supervisor is not running for reelection.

However, this leads to an incongruous result. On the one hand, a subordinate officer, who is campaigning against a supervisor who is seeking reelection, can submit his resignation with a future effective date and continue his employment during the campaign. On the other hand, the subordinate, who is campaigning for his supervisor's office when the supervisor is not seeking reelection, cannot continue his employment during the campaign and cannot even collect accrued vacation pay during his compelled absence. See Op. Div. Elect. Fla. 85-02 (April 8, 1985). We do not believe the legislature intended such an illogical result. See Johnson v. Presbyterian Home of Synod, Inc., 239 So. 2d 256 (Fla. 1970) (one need not give a literal interpretation to statutory language which leads to an unreasonable or ridiculous conclusion).

The Division addressed the leave of absence issue in Op. div. Elect. Fla. 90-12 (March 29, 1990) where we held that a subordinate could choose between a leave of absence or an irrevocable resignation pursuant to section 99.012(3), Florida Statutes. Subsequently, the District Court of Appeal

for the Second District reached the same conclusion in Gonzalez v. Vogel, 616 So. 2d 473 (Fla. 2d DCA 1993) further reasoning that:

If an officer can receive state pay while running for office by submitting a resignation that is effective on a future date, there is nothing to suggest that the legislature intended to remove this option from subordinate officers.

Id. at 476.

Therefore, a deputy supervisor or any other subordinate officer may choose between submitting an irrevocable letter of resignation or taking a leave of absence without pay when running for his supervisor's job if the incumbent supervisor has not qualified for reelection to his present office. As a result, there is no reason for your office to lose the services of a key employee during an election season.

SUMMARY

As an alternative to a leave of absence, a subordinate officer, who seeks election to an office that is occupied by an officer who has not qualified for reelection to such office and which office has supervisory authority over that subordinate, can submit his or her resignation in order to run for such office. Such resignation can have a future effective date, as long as it comports with the requirements of section 99.012(3), Florida Statutes.