

DE 99-01 - March 9, 1999

Resign-to-Run
§99.012(2), (3)(d), (5), Fla. Stat.; Chapter 70-80, Laws of Florida

TO: The Honorable Neil Perry, President, Florida Sheriff's Association, Post Office Box 12519, Tallahassee, Florida 32317-2519

Prepared by: Division of Elections

This letter is in response to your request for an advisory opinion, dated January 21, 1999. You wrote as President of the Florida Sheriff's Association (FSA), and under section 106.23(2), Florida Statutes, the Division of Elections has authority to issue this advisory opinion to you. You ask the following question:

When a deputy sheriff resigns under Florida's resign-to-run law, what is the date that the resignation is effective and the deputy must leave office?

In a subsequent phone conversation, Maury Kolchakian, the FSA's General Counsel, explained that the above question was asked in the context of a deputy sheriff running for the office of sheriff against the incumbent. The incumbent sheriff serves in a supervisory role to the deputy sheriff.

Section 99.012(5), Florida Statutes, provides an exemption to the resign-to-run law for a subordinate officer, deputy sheriff, or police officer, except that such an officer *must* resign if seeking to qualify for a public office which is currently held by "an officer who has authority to appoint, employ, promote or otherwise supervise that person and who has qualified as a candidate for reelection to that office." Under the facts presented, the deputy sheriff must resign from his position, but the more difficult question is the one you have asked -- when must the resignation be effective?

Generally, when an officer submits a resignation under the resign-to-run law, the resignation must be effective no later than the earlier of the following dates:

1. The date *the officer* would take office, if elected; or
2. The date *the officer's* successor is required to take office.

§99.012(3)(d), Fla. Stat. (Supp. 1998)

The above provisions appear to apply only to officers and not subordinate *officers* such as deputy sheriffs or police officers. This is a logical conclusion given that there is no "successor" who is required to take office when a deputy sheriff resigns. In fact, the deputy does not have to be replaced at all if the sheriff so chooses.

"Florida's resign-to-run law serves two chief purposes: To prevent an officeholder from using the

power and prestige of one office to seek another and to spare the taxpayer the expense of having to finance a special election when an incumbent officeholder is elected to another office and is, therefore, compelled to resign from the one he or she currently holds." *Op. Att'y Gen. 79-81* (1979); *citing*, Preamble to Chapter 70-80, Laws of Florida. *See also, Holley v. Adams*, 238 So. 2d 401, 408, (Fla. 1970); *Op. Div. Elect. DE 80-02* (Dec. Stmt. January 15, 1980).

"It accomplishes these purposes by requiring *any person* who holds an elective or appointive *office* and who seeks to be elected to another *public office*, the term of which overlaps or runs concurrently with the term of the office which he currently holds, to submit an irrevocable letter of prospective resignation prior to qualifying for election, which resignation shall be effective regardless of whether the candidate is elected to such office." *Id.*, *citing*, §99.012(2) and (3), Fla. Stat.

These purposes are not accomplished by the delayed resignation of a deputy sheriff for two reasons. First, it is less likely that a deputy sheriff could use the power and prestige of the position to assist him in seeking a public office. Second, no vacancy in office results when a deputy sheriff resigns and runs for public office. Deputy sheriffs serve no fixed term of office. Thus, there is no requirement that a special election be called.

Furthermore, if a deputy sheriff is permitted to resign with a prospective resignation date and remain in his current position, a potentially disruptive and uncomfortable environment in the sheriff's office may occur. The resign-to-run law was not intended to permit two candidates to run for the same office when one of the candidates is in a supervisory role to the other, with authority to discipline, demote or dismiss the subordinate officer, under a prospective resignation.

For the foregoing reasons, subordinate officers, deputy sheriffs and police officers, must resign, *effective upon qualifying*, if they intend to run for a public office which is currently held by an officer who has authority to appoint, employ, promote or otherwise supervise that person, and who has qualified as a candidate for reelection to that office. Such an interpretation would make the exemption consistent with the alternative requirement in section 99.012(5), Florida Statutes, that upon qualifying, such personnel must take a leave of absence without pay during the period in which they are candidates for any other office.

Division opinions DE 84-15, 88-15 and 88-22 are hereby rescinded to the extent that they permit the prospective resignation of subordinate officers, deputy sheriffs and police officers under section 99.012(5), Florida Statutes. Until section 99.012(5), Florida Statutes, is judicially or legislatively clarified, this is the official opinion of the Division of Elections.

SUMMARY

Subordinate officers, deputy sheriffs and police officers, must resign, *effective upon qualifying*, if they intend to run for a public office which is currently held by an officer who has authority to appoint, employ, promote or otherwise supervise that person, and who has qualified as a candidate for reelection to that office.