

February 2, 2006

The Honorable Pam Carpenter
Alachua County Supervisor of Elections
P.O. Box 1496
Gainesville, Florida 32602-0250

RE: DE 06-01
Resign to Run; Sheriff Running for
State Senate: § 99.012, Florida
Statutes

Dear Ms. Carpenter:

This is in response to your request for an advisory opinion regarding a potential vacancy in the office of Sheriff of Alachua County and related resign to run questions. You are the Supervisor of Elections for Alachua County and as such are the filing officer for candidates for the office of Sheriff of Alachua County. Pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You have advised that the incumbent Sheriff of Alachua County, Steve Oelrich, has announced his candidacy for election to a Florida Senate seat in 2006 and has filed papers with the Division of Elections. You also advise that as of the time of your request you have not received a letter of resignation from Sheriff Oelrich. A check of the Division of Election's records shows that Sheriff Oelrich is an active candidate for State Senator, District 14. Sheriff Oelrich is currently serving a four year term of office which ends on January 6, 2009. Pursuant to Article III, Section 15, of the Constitution of the State of Florida, the four year term of office of State Senator, District 14, would commence on November 7, 2006. Finally, you advise that your county charter does not speak to this matter, but refers to state law.

Given these facts, you essentially ask what procedure would be used to fill the vacancy in the office of Sheriff of Alachua County should Sheriff Oelrich submit his resignation in conjunction with qualifying to run for the office of State Senator, District 14.

Section 99.012(3), Florida Statutes, commonly referred to as Florida's Resign to Run Law, states that:

(3)(a) No officer may qualify as a candidate for another public office, whether state, district, county, or municipal, if the terms or any part thereof run concurrently with each other, without resigning from the office he or she presently holds.

(b) The resignation is irrevocable.

(c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.

(d) 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.

(e)1. An elected district, county, or municipal officer must submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer must submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(f)1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.

2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(g) Any officer who submits his or her resignation, effective immediately or effective on a date prior to the date of his or her qualifying for office, may then qualify for office as a nonofficeholder, and the provisions of this subsection do not apply.

[Emphasis added.]

As Sheriff Oelrich's current term of office would overlap with the term of office of State Senator, District 14, section 99.012(3)(a), Florida Statutes, would require Sheriff Oelrich to submit his resignation from the office of Sheriff in order to qualify to run for the office of State Senator, District 14. Such resignation must be submitted at least 10 days prior to the first day of qualifying for the office of State Senator, District 14. The qualifying period for that office begins on July 17, 2006. See section 99.061(2), Florida Statutes.

Pursuant to section 99.012(3)(f)1., Florida Statutes, the submission of that resignation would create a vacancy in office to be filled by election. Persons may then qualify with your office as candidates for nomination and election to the office of Sheriff of Alachua County as if the Sheriff's term were otherwise scheduled to expire. The winner of that election would serve the remainder of Sheriff Oelrich's current term of office which expires on January 6, 2009.

It is important to note that the terms of the two offices in question do create a unique situation which could result in a gap in time between the required effective date of the Sheriff's resignation from his current office and the date that his successor would take office to serve the remainder of his term. Under state law the Sheriff's successor would take office on the first Tuesday after the first Monday in January following his or her election. i.e. January 2, 2007. See section 100.041(4), Florida Statutes. However, state senators take office upon election, i.e. on the date of the General Election, which in this scenario would be on November 7, 2006. Pursuant to section 99.012(3)(d), Florida Statutes, Sheriff Oelrich's resignation would be required to be effective no later than November 7, 2006. Thus a vacancy in the office of Sheriff of Alachua County would be created from November 7, 2006 to January 2, 2007. That brief vacancy could be filled by appointment by the Governor pursuant to Article IV, Section 1(f), of the Constitution of the State of Florida.

SUMMARY

As Sheriff Oelrich's current term of office would overlap with the term of office of State Senator, District 14, section 99.012(3)(a), Florida Statutes, would require Sheriff Oelrich to submit his resignation from the office of Sheriff in order to qualify to run for the office of State Senator, District 14. Pursuant to section 99.012(3)(f)1., Florida Statutes, the submission of that resignation would create a vacancy in office to be filled by election. Persons may then qualify with the Supervisor of Elections' Office as candidates for nomination and election to the office of Sheriff of Alachua County as if the Sheriff's term were otherwise scheduled to expire. The winner of that election would serve the remainder of Sheriff Oelrich's current term of office which expires on January 6, 2009.

Sincerely,

Dawn K. Roberts
Director, Division of Elections

Prepared by:
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