

December 5, 2007

The Honorable Michael A. Adkinson, Jr.
City Marshal
DeFuniak Springs Police
355 US Highway 90 E.
DeFuniak Springs, Florida 32433

RE: DE 07-08
Resign to Run – City Marshal (Chief of
Police) running for Sheriff
§§ 99.012(3) and (4), Florida Statutes

Dear Chief Adkinson:

This letter responds to your request for an advisory opinion regarding your desire to run for county sheriff. Because you have a question about compliance with Florida's election laws with respect to the applicability of Florida's "resign-to-run" law to your situation, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2007).

You are currently the elected City Marshal (recognized as the being the Chief of Police) for DeFuniak Springs, Florida. You are a sworn police officer and act in that capacity. Your term of office expires in April 2011. You desire to run for county sheriff in November 2008, and if elected, you would take office in January 2009. The county sheriff does not currently supervise you in any manner. You intend to pre-qualify as a candidate for sheriff in January 2008.

You essentially ask the following question:

Are you required to resign or take a leave of absence from your elected office of City Marshal in order to qualify and run for sheriff?

The short answer is "No."

Section 99.012(3)(a), Florida Statutes (2007), commonly referred to as the "resign-to-run" law, states the general prohibition:

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.

So, ordinarily, a municipal officer must resign his or her present office in order to qualify for another office if the term of that office will overlap with the term of the current office. However, section 99.012(4), Florida Statutes (2007), indicates:

A person who is a subordinate officer, deputy sheriff, or police officer must resign effective upon qualifying pursuant to this chapter if the person is seeking to qualify for a public office that 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.

The Division of Elections interpreted prior versions of section 99.012(4) as an exemption from the “resign-to-run” law for three categories of personnel: subordinate officers, deputy sheriffs, and police officers. *Division of Elections Opinion 84-26* (July 10, 1984), *Division of Elections Opinion 87-17* (October 19, 1987), *Division of Elections Opinion 87-18* (October 19, 1987), and *Division of Elections Opinion 88-20* (April 29, 1988). These opinions concluded that a chief of police is exempt for the resignation requirement of the “resign-to-run” law because of the exemption for police officers and due to the fact that a sheriff does not have authority to appoint, employ, promote, or supervise the police chief. The Division later rescinded these opinions to the extent that prior law required subordinate officers to take an unpaid leave of absence if they did not submit a letter of resignation when running against someone who had the authority to appoint, employ, promote, or otherwise supervise them. *Division of Elections Opinion 00-08* (August 1, 2000). The remaining portions of these opinions remain operative.

The legislative bill analysis for the 2000 amendment to the “resign-to-run” law that removed the leave of absence language from the law also recognized that the current wording of the statute contains an exemption for subordinate officers, deputy sheriffs, and police officers. The bill analysis stated:

Section 99.013(5), F.S. (1999) [section 99.012(4), Florida Statutes (2007)], 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 effective upon qualifying 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.”¹

¹Final Analysis, House of Representatives as revised by the Committee on Election Reform, HB 295 (July 19, 2000) at 2. HB 295 became 2000 Fla. Laws. Ch. 2000-274, § 1. This enactment removed the requirement in § 99.012(5)(b), Florida Statutes (1999), for a subordinate officer, deputy sheriff, or police officer to take a leave of absence without pay during the period of his or her candidacy when otherwise not required to resign to run for office.

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Based upon the legislative history of this statutory provision and its prior interpretations by the Division of Elections, the Division opines that section 99.012(4), Florida Statutes (2007), continues as an exemption to the ‘resign-to-run’ law for subordinate officers, deputy sheriffs, and police officers. A City Marshal, equivalent to a chief of police, is a police officer; therefore, unless the City Marshal seeks to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise the City Marshal and who has qualified as a candidate for reelection to that office, the exemption in section 99.012(4), Florida Statutes (2007), is applicable.

For the foregoing reasons, Florida’s Election Code does not require you to resign to run for county sheriff or to take a leave of absence from your City Marshal office during your candidacy for sheriff. However, you need to ensure that your municipality does not have its own laws or personnel policies that would restrict your ability to run for office while a municipal officer.

SUMMARY

A City Marshal, equivalent to a Chief of Police, is a police officer within the exemption contained in the “resign-to-run” law for police officers. Under the resign-to-law law, a City Marshal need not resign to run for county sheriff unless the incumbent sheriff has qualified as a candidate for reelection and the sheriff has authority to appoint, employ, promote, or otherwise supervise the City Marshal.

Sincerely,

Sarah Jane Bradshaw
Interim Director, Division of Elections

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