



INFORMATION ONLY

FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

May 27, 2008

Ms. Angela M. Apperson
PO Box 1539
Flagler Beach, Florida 32126

RE: DE 08-06
Resign to Run – City Clerk
§§ 99.012(1), (3) and (4), Florida Statutes

Dear Ms. Apperson:

This letter responds to your request for an advisory opinion regarding your desire to run for Supervisor of Elections for Flagler County. 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 City Clerk for the City of Flagler Beach. The City of Flagler Beach Charter authorizes the City Manager to hire and terminate all city officers and employees unless otherwise specified in the charter. You are hired by the City Manager and your employment is at will. The municipal charter provides that the City Commission establishes all city departments; however, the city manager shall direct and supervise all city departments. The office of the city clerk constitutes a department of the city and, as the head of the department, you are, by the terms of the charter, subject to the direction and supervision of the city manager. Some of your major job responsibilities include attending the meetings of the City Commission, overseeing the preparation and maintenance of its agendas and minutes, supervising all city elections, overseeing the accuracy and integrity of municipal records, and codifying and recording laws and legal documents adopted by the City Commission.

You ask essentially the following question:

Does Florida's resign-to-run law require you to resign your position as City Clerk to qualify and run for Supervisor of Elections?

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 regarding appointed or elected “officers:”

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, an 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. [Emphasis supplied.]

Section 99.012(1)(a), Florida Statutes (2007), in relevant part states: “With respect to a municipality, the term “officer” means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter.” Section 99.012(1)(b), Florida Statutes (2007), defines “subordinate officer” with respect to a municipality as “a person who has been delegated the authority to exercise the sovereign power by an officer.” The Division of Elections has interpreted prior versions of section 99.012(4), Florida Statutes, as an exemption from the “resign-to-run” law for three categories of personnel: subordinate officers, deputy sheriffs, and police officers.¹ The legislative bill analysis for a 2000 amendment to the “resign-to-run” 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.”²

Based upon the legislative history of this statutory provision and 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. Because you serve at the pleasure of the city manager, may be dismissed

¹ See, e.g., *Division of Elections Opinion 08-04* (April 16, 2008) and *Division of Elections Opinion 07-08* (December 5, 2007).

² Final Analysis, House of Representatives as revised by the Committee on Election Reform, HB 295 (July 19, 2000) at 2.

Ms. Angela M. Apperson
May 27, 2008
Page 3 of 3

without cause, and are under the city manager's direction and supervision, you are a subordinate officer; therefore, the exemption in section 99.012(4), Florida Statutes (2007), is applicable. You would be required to resign, effective upon qualifying, only if you sought "to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise [you] and who has qualified as a candidate for reelection." Because the supervisor of elections does not have that authority over you as City Clerk, you are not required to resign to run for the county's Supervisor of Elections.

For the foregoing reasons, Florida's Election Code does not require you to resign from your city clerk position before qualifying and running for Flagler County Supervisor of Elections.

SUMMARY

Under Florida's resign-to-law law, an appointed city clerk, who is a subordinate officer, need not resign to qualify and run for the office of Supervisor of Elections.

Sincerely,

A handwritten signature in black ink, appearing to be "D. Palmer", with a long horizontal line extending to the right.

Donald L. Palmer
Director, Division of Elections

Prepared by:
Gary J. Holland
Assistant General Counsel