



## FLORIDA DEPARTMENT *of* STATE

**CHARLIE CRIST**  
Governor

**KURT S.  
BROWNING**  
Secretary of State

February 10, 2010

Mr. Mark E. Wilson  
(Address redacted per  
§ 119.071(4)(d)2, Florida Statutes)

RE: DE 10-01  
Resign to Run – Deputy Sheriff running for  
Sheriff of different county  
§§ 99.012(3) and (4), Florida Statutes

Dear Mr. Wilson:

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 "resign-to-run" law as applied to your situation, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2009).

You are currently a deputy sheriff in St. Johns County, Florida. You desire to run for county sheriff in November 2012 in Clay County, Florida. The Clay County sheriff does not currently supervise you in any manner.

You essentially ask the following question:

Are you required to resign under the "resign-to-run" law as a St. Johns County Deputy Sheriff to run for Clay County Sheriff even if you have to run against the incumbent Clay County Sheriff?

The short answer is "No."

Section 99.012(3)(a), Florida Statutes (2009), commonly referred to as the "resign-to-run" law, states the general prohibition:

No officer may qualify as a candidate for another state, district, county, or municipal public office 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 (2009), 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.

Based upon the legislative history and prior interpretations of this statutory provision, the Division of Elections views section 99.012(4), Florida Statutes (2009), as an exemption to the "resign-to-run" law for subordinate officers, deputy sheriffs, and police officers. *See, e.g., Division of Elections Opinion 07-08* (December 5, 2007) and opinions cited therein. Therefore, unless a deputy sheriff 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 deputy sheriff and who has qualified as a candidate for reelection to that office, the exemption in section 99.012(4), Florida Statutes (2009), is applicable.

For the foregoing reasons, Florida's Election Code does not require you to resign from your position as a deputy sheriff in St. Johns County to run for Sheriff in Clay County, even if you are running against the incumbent Clay County Sheriff. However, you should ensure that your sheriff's office does not have regulations or personnel policies that would restrict your ability to run for office while serving as a deputy sheriff. Also, you need to be aware of the federal Hatch Act (5 USC §§ 1501-1508) which restricts the political activity of individuals principally employed by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency.<sup>1</sup>

#### SUMMARY

Under Florida's resign-to-run law, a deputy sheriff in one county does not need to resign to run for sheriff in another county.

Sincerely,



Donald L. Palmer  
Director, Division of Elections

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<sup>1</sup> The Division of Elections has no authority to render opinions regarding the applicability of the Hatch Act. Information about the Hatch Act and its applicability to state and local employees may be found at <http://www.osc.gov/hatchact.htm>.