



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KURT S. BROWNING**  
Secretary of State

October 24, 2011

The Honorable Chris H. Chambliss  
Supervisor of Elections, Clay County  
P.O. Box 337  
Green Cove Springs, Florida 32043

RE: DE 11-04 Resign-to-Run – School Board  
Member running for School Superintendent;  
Candidate Petition Process – §§ 99.012(3) &  
105.035, Florida Statutes

Dear Supervisor Chambliss:

This letter responds to your request for an advisory opinion. As the Clay County Supervisor of Elections, you desire answers to questions about the resign-to-run law as it relates to a school board member and the candidate petition process as it concerns potential candidates for the vacant school board member's seat. The answers will enable your office to provide accurate advice to the school board member and potential candidates. Specifically, the background for your questions is that a current Clay County school board member whose term does not expire until November 2014 is now a candidate for the November 2012 school superintendent election. You inquire:

1. Does the school board member have to file a letter of resignation pursuant to section 99.012(3), Florida Statutes (2011)? If so, and if the school board member makes his resignation effective at a time after the election or on the date of taking office as school superintendent, how is the vacant school board office filled?
2. If candidates for 2014 for this school board seat collect signatures on candidate petitions pursuant to section 105.035, Florida Statutes (2011), can the signatures be used to qualify for the seat if the seat is open for election in 2012? If so, what steps must the candidates and this office take for that to occur?

With regard to the first question, section 99.012(3), Florida Statutes (2011) (the "resign-to-run" law), provides, "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." By its plain terms, this law applies to the

school board member in this case.<sup>1</sup> The Supreme Court of Florida has expressed the following purpose and intent of the resign-to-run law:

The Legislature, in its wisdom, considered it inequitable for an elected official or appointive official holding office to use the prestige and power of that office in seeking election to a higher or different office. Furthermore, the Legislature agreed that by providing for prospective resignations the people of the State of Florida would not be compelled to bear the unnecessary cost of special elections occasioned by elected or appointed officials who, while holding one office, seek and obtain another elective office.<sup>2</sup>

To comply with the resign-to-run law, the school board member must submit a resignation at least 10 days before the first day of qualifying for school superintendent with the effective date of the resignation being no later than the earlier of two dates: the date he would take office as school superintendent or the date his successor is required to take office.<sup>3</sup> In this case, the two dates are the same – the second Tuesday after the 2012 general election.<sup>4</sup> For the November 6, 2012 general election, this means the effective date of the school board member's resignation under the resign-to-run law cannot be later than November 20, 2012. While this office recognizes that section 1001.38, Florida Statutes (2011), provides that all vacancies on a district school board are to be filled by the Governor by appointment, the resign-to-run law provides: "With regard to an elective office, the resignation creates a vacancy to be filled by election" which then allows persons to qualify for the school board seat "as if the public officer's term were otherwise scheduled to expire."<sup>5</sup> A well-recognized rule of statutory construction is that a specific statute controls over a general statute. When a vacancy on a school board occurs as a result of a resignation submitted in compliance with the resign-to-run law, the resign-to-run law is the more specific law and it trumps the Governor's normal appointment authority for school board members.<sup>6</sup>

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<sup>1</sup> See *Division of Elections Opinion* 76-04 (July 13, 1976).

<sup>2</sup> *Holley v. Adams*, 238 So.2d 401, 408 (Fla. 1970).

<sup>3</sup> If the school board member does not resign by the 10<sup>th</sup> day before qualifying, he could resign effective immediately or on a date prior to qualifying and would then qualify as a nonofficeholder. See §99.012(3)(g), Fla. Stat. (2011) and *Division of Elections Opinion* 80-35 (October 21, 1980).

<sup>4</sup> §100.041(3)(a), Fla. Stat. (2011).

<sup>5</sup> §99.012(3)(f)1., Fla. Stat. (2011).

<sup>6</sup> See, e.g., *In re Advisory Opinion to the Governor*, 276 So. 2d 25, 30 (Fla. 1973) ("Of course, resignations under Fla. Stat. § 99.012, F.S.A., (Resign to Run Law) or under similar circumstances do not create a vacancy which . . . empower the Governor to make direct appointments.").

With regard to your second question, the school board member's seat is not officially open for election until the member submits his resignation, to you,<sup>7</sup> which then alerts you, as the officer before whom school board members qualify, that his seat is available for candidates to submit qualifying papers during the 2012 general election qualifying period. So, if persons had already declared as candidates for the particular seat for 2014 and the seat becomes open for qualifying in 2012 due to the submission of a resignation under the resign-to-run law, any candidate who previously filed papers with you for 2014 and who desires to run for the seat in 2012 should provide you a signed, written document reflecting that all the candidate's filings for 2014 should be converted to 2012 filings. If candidates for the seat in 2014 know that the school board member is currently a candidate for school superintendent and are aware that he must submit a resignation to qualify for that office, the persons may be well-advised to anticipate the resignation and begin the candidate petition process as if they were running for the office in 2012 even though their paperwork on file with your office would show them candidates for the 2014 election.

The bottom-line is this: For any school board candidate to undergo the petition process in lieu of paying the qualifying fee per section 105.035, Florida Statutes (2011), a candidate for the seat in 2012 (to include those who change their candidacy from the 2014 election to the 2012 election) must comply with the statutory requirement to have candidate petitions submitted by noon on the 28<sup>th</sup> day before the first day of qualifying and you, as the Supervisor of Elections, would have to certify the requisite number of valid signatures no later than the 7<sup>th</sup> day before the first day of qualifying.<sup>8</sup> Thereafter, if the school board member submits a resignation letter under the resign-to-run law, the candidates can inform you by a signed, written document that you are to switch their candidacy to the 2012 general election and you will have already verified signatures on their candidate petitions like you would have done for any other candidate in 2012 who underwent the petition process. If the 2014 candidates or other candidates for the school board member's seat did not submit their petitions before the 2012 petition deadline or you did not verify the requisite number on or before the 7<sup>th</sup> day before the first day of qualifying, then those candidates do not have the option of undergoing the petition process in lieu of paying the qualifying fee.

#### SUMMARY

The resign-to-run law applies to a school board member who seeks to qualify for election as school superintendent whose term of office runs concurrently with the school board member's current term of office. The resignation creates a vacancy to be filled by election as if the school board member's term had otherwise expired.

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<sup>7</sup> The school board member submits the original resignation letter to the person before whom he qualified for the current office he holds with copies to the Governor and the Department of State. §99.012(3)(e)1., Fla. Stat. (2011).

<sup>8</sup> §105.035(4), Fla. Stat. (2011).

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When a seat becomes open for qualifying and election due to a resignation submitted under the resign-to-run law, any candidate who had previously filed as a candidate for the particular seat when its term of office was ordinarily due to expire may provide the qualifying officer a signed, written document indicating a change in the candidacy to the earlier election generated by the resignation. To avoid paying the qualifying fee, such a candidate must submit candidate petitions to the supervisor of elections by noon on the 28<sup>th</sup> day before the first day of qualifying and the supervisor of elections must certify the requisite number of valid signatures no later than the 7<sup>th</sup> day before the first day of qualifying. This statutory requirement means that potential candidates for the seat may be well-advised to anticipate the incumbent's resignation under the resign-to-run law and submit petitions for verification before the incumbent actually submits the resignation.

Sincerely,



Dr. Gisela Salas  
Director, Division of Elections