



FYI

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

May 2, 2017

Ms. Rebecca Van Deutekom
City Clerk, City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

Re: DE 17-01 Resign-to-Run – Vacancy – §
99.012(3)(f), Florida Statutes

Dear Ms. Van Deutekom:

This letter responds to your request, as City Clerk and through counsel, for an advisory opinion on the proper manner of filling a vacancy under section 99.012, Florida Statutes. Because you are a local officer with election-related duties, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.¹

FACTS

Your request for an advisory opinion states that a current Cape Coral councilmember plans to run for the elective office of mayor this November, 2017. The councilmember's current term does not expire until November 2019. This councilmember, in an attempt to comply with Florida's so-called "resign-to-run" law, will submit an irrevocable letter of resignation on or before June 23, 2017, with the effective date of the resignation to be November 20, 2017 (the date she would take office if elected). You ask in what manner the vacant seat can be filled under section 99.012(3)(f), Florida Statutes, when the councilmember resigns.

¹ The Division has authority to interpret provisions of the Florida Election Code, but has no authority to interpret local provisions such as a city ordinance or a city charter. See § 106.23(2), Fla. Stat. Therefore, this opinion limits itself to interpreting the Florida Election Code.

ANALYSIS

Florida's resign-to-run law requires officeholders to resign before seeking other offices in certain situations. *See* § 99.012, Fla. Stat. That law also provides for the filling of a vacancy created by a resignation under the law, depending on the nature of the office to be filled, as follows:

(3)(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.

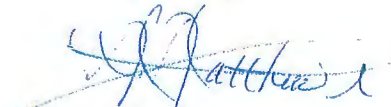
See § 99.012(3)(f), Fla. Stat. (emphasis supplied).

Although subsection (3)(f)(1.) provides that the vacated elective office will *generally* be filled by election, it is the opinion of the Division that subsection (3)(f)(2.) controls in this instance. Subsection (3)(f)(2.) indicates that if the vacated office is an elective *municipal* office, then the municipal charter is allowed to specify how the vacancy is filled. *See* § 99.012(3)(f)(2.), Fla. Stat.; *cf. Div. of Elections Op. 82-20* (July 23, 1982). Therefore, if the Cape Coral municipal charter provides a mechanism for filling the vacancy arising because of a resignation submitted pursuant to section 99.012, Florida Statutes, that mechanism should be followed to fill the vacancy. *See* § 99.012(3)(f)(2.), Florida Statutes.

SUMMARY

When an elective municipal officer resigns to run under section 99.012, Florida Statutes, and the municipal charter provides a mechanism for filling the resulting vacancy, the charter's mechanism for filling the vacancy should be followed.

Respectfully,



Maria I. Matthews, Esq.
Director, Division of Elections