

RESIGN TO RUN INFORMATION

99.012 Restrictions on individuals qualifying for public office.—

(1) As used in this section:

(a) “Officer” means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state. 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.

(b) “Subordinate officer” means a person who has been delegated the authority to exercise the sovereign power of the state by an officer. With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer.

(2) No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other.

(3)(a) 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.

(b) The resignation is irrevocable.

(c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.

(d) The resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or
2. The date the officer’s successor is required to take office.

(e)1. An elected district, county, or municipal officer must submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer must submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(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.

(g) Any officer who submits his or her resignation, effective immediately or effective on a date prior to the date of his or her qualifying for office, may then qualify for office as a nonofficeholder, and the provisions of this subsection do not apply.

(4) 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.

(5) If an order of a court that has become final determines that a person did not comply with this section, the person shall not be qualified as a candidate for election and his or her name may not appear on the ballot.

(6) This section does not apply to:

(a) Political party offices.

(b) Persons serving without salary as members of an appointive board or authority.

(7) Nothing contained in subsection (3) relates to persons holding any federal office or seeking the office of President or Vice President.

History.—s. 1, ch. 63-269; § 2, ch. 65-378; s. 1, ch. 70-80; s. 10, ch. 71-373; s. 1, ch. 74-76; s. 3, ch. 75-196; s. 1, ch. 79-391; s. 47, ch. 81-259; s. 1, ch. 83-15; s. 28, ch. 84-302; s. 31, ch. 91-107; s. 534, ch. 95-147; s. 1, ch. 99-146; s. 1, ch. 2000-274; s. 14, ch. 2007-30; s. 14, ch. 2008-4; s. 9, ch. 2008-95; s. 12, ch. 2011-40.

QUESTIONS AND ANSWERS FROM DEPARTMENT OF STATE'S WEBSITE

1. WHERE IS THE "RESIGN TO RUN" LAW LOCATED?

Section 99.012, Florida Statutes

2. WHAT DOES THE 'RESIGN TO RUN' LAW STATE?

The "resign-to-run law" essentially prohibits an elected or appointed "officer" from qualifying as a candidate for another state, district, county or municipal public office if the terms or any part of the terms overlap with each other if the person did not resign from the office the person presently holds. (Section 99.012(3), Florida Statutes.)

3. ARE THERE ANY EXCEPTIONS TO THE "RESIGN TO RUN" LAW?

Yes. The "resign-to-run" law does not apply to 1) political party offices, or 2) persons serving without salary on an appointed board or authority. (Section 99.012(6), Florida Statutes.) See the response to Question 11, below, concerning exemptions to the "resign-to-run" law. Also, portions of the "resign-to-run" law do not apply to federal officers, persons seeking the office of President or Vice President, or candidates for federal office. (See the responses to Questions 15, 16, and 17 below.)

4. WHO IS AN "OFFICER" FOR PURPOSES OF THE "RESIGN TO RUN" LAW?

An "officer" is a person, whether elected or appointed, who has the authority to exercise the sovereign powers of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, an "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), Florida Statutes.)

Florida case law further explains that an "officer" is one who exercises some portion of the sovereign power, either in making, executing or administering the laws and who derives his or her position from a duly and legally authorized election or appointment, whose duties are continuous in nature and defined by law, not contract.

Examples of "officers" include, but are not limited to: mayors, city and county commissioners, state legislators, supervisors of elections, sheriffs, property appraisers, judges, school board members, superintendents of school, state attorneys and public defenders, municipal fire chiefs, medical examiners, and elected hospital board and airport authority members.

5. IF AN OFFICER MUST RESIGN UNDER THE "RESIGN TO RUN" LAW, WHEN MUST THE OFFICER RESIGN AND WHEN MUST THE RESIGNATION TAKE EFFECT?

The resignation must be submitted in writing at least 10 days prior to the first day of qualifying for the office the person intends to seek. (Section 99.012(3)(c), Florida Statutes.) (The qualifying dates for elections to particular offices can be obtained from the county supervisor of elections office.)

The resignation must take effect no later than the earlier of the following dates:

- a. The date the officer would take office, if elected; or
- b. The date the officer's successor is required to take office.

(Section 99.012(3)(d), Florida Statutes.)

6. I AM A SCHOOL BOARD MEMBER AND I WILL NOT SEEK RE-ELECTION AT THE NEXT GENERAL ELECTION; INSTEAD, I WISH TO QUALIFY TO RUN FOR STATE REPRESENTATIVE. DO I HAVE TO SUBMIT A RESIGNATION UNDER THE “RESIGN TO RUN” LAW?

Yes. Section 100.041, Florida Statutes, reflects that the term of office of a state representative begins upon election for a term of two years and the term of office for a school board member begins on the second Tuesday following the general election for a term of four years. Therefore, your term as a school board member, if elected as a state representative, will not expire until two weeks after you take office as a state representative. This two week overlap requires you to submit a resignation under the resign-to-run law at least 10 days prior to qualifying as a candidate as a state representative.

7. WHAT CAN AN OFFICER DO IF HE OR SHE MISSED THE DEADLINE FOR SUBMITTING THE RESIGNATION 10 DAYS PRIOR TO THE BEGINNING OF THE QUALIFYING PERIOD?

If the officer still wishes to run for office, the officer may submit his or her resignation to take effect immediately or to take effect on a date prior to qualifying for office. In this situation, the officer qualifies as a non-officeholder and the “resign-to-run” law does not apply. (Section 99.012(3)(g), Florida Statutes.)

8. TO WHOM MUST THE RESIGNATION BE SUBMITTED?

For *elected* district, county, or municipal officers, the resignation must be submitted to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

For *appointed* district, county, or municipal officers, the resignation must be submitted to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

All other officers must submit their resignations to the Governor with a copy to the Department of State. (Section 99.012(3)(e), Florida Statutes.)

9. CAN THE OFFICER LATER REVOKE THE RESIGNATION?

No, once submitted, the resignation is irrevocable. (Section 99.012(3)(b), Florida Statutes.)

10. WHAT HAPPENS TO AN ELECTED OFFICER’S TERM OF OFFICE IF HE OR SHE SUBMITS A RESIGNATION UNDER THE “RESIGN TO RUN” LAW?

Except as noted in the next paragraph, when an elected official resigns, it creates a vacancy in office to be filled by election. The election is held to fill the office for the remaining unexpired term. So, if an officer had one year left in his or her four-year term of office on the effective date of his or her resignation, persons would qualify as a candidate for the office and, if elected, would serve the one year remaining in the former officer’s term.

If the officer resigning under the “resign-to-run” law occupies an elective charter county office or elective municipal office, the vacancy created by the resignation may be filled for that portion of the remaining unexpired term in the manner specified by the county or municipal charter, as applicable. (Section 99.012(3)(f), Florida Statutes.)

11. DOES THE “RESIGN TO RUN” LAW APPLY TO SUBORDINATE OFFICERS, DEPUTY SHERIFFS, OR POLICE OFFICERS?

Generally no, but it will apply in a limited situation. A subordinate officer, deputy sheriff, or police officer is exempt from the resign-to-run law unless the person is seeking to qualify 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.” If the subordinate officer, deputy sheriff, or police officer must resign, the resignation must be effective upon qualifying for the office, not the later times specified above for an “officer.”

So, a deputy sheriff wishing to run for sheriff against an incumbent sheriff would have to resign, but if the incumbent sheriff is not seeking reelection, the deputy sheriff would not have to resign. Also, if a deputy sheriff wishes to run for a non-sheriff office (for example, state representative or city council), he or she would not have to resign under the “resign-to-run” law.

If a subordinate officer, deputy sheriff, or police officer must resign under this provision, he or she may not take an unpaid leave of absence instead of resigning. (The Legislature removed the alternative approach of taking an unpaid leave of absence from the statute in 2000.)

Subordinate officers would include, among others: assistant public defenders, assistant state attorneys, and deputy supervisors of elections. (Section 99.012(4), Florida Statutes; see also, for example, Division of Elections advisory opinions DE 08-04, DE 07-08, and 99-01, which can be found at http://election.dos.state.fl.us/opinions/TOC_Opinions.shtml.)

12. DOES A CITY’S CHIEF OF POLICE HAVE TO RESIGN IN ORDER TO RUN FOR ANOTHER PUBLIC OFFICE?

It depends. The exemption mentioned in the answer to Question 11 applies to a “police officer.” A “chief of police” is a police officer; therefore, the chief of police need only resign to run for public office if the chief is seeking to qualify 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.” For example, a city’s chief of police would not have to resign to run for county sheriff unless the sheriff has the authority to appoint, employ, promote or otherwise supervise the chief of police and the incumbent sheriff has also qualified as a candidate for reelection. In the typical county-city relationship, the sheriff does not have the authority to appoint, employ, promote or otherwise supervise a city’s chief of police. However, for example, if a city mayor has the authority to hire and fire the chief of police, the chief of police could not run for city mayor without resigning as chief of police if the incumbent mayor is seeking reelection. (Section 99.012(4), Florida Statutes.)

13. WHAT HAPPENS IF AN OFFICER DOES NOT COMPLY WITH THE “RESIGN TO RUN” LAW?

If an order of a court that has become final determines that a person did not comply with the resign-to-run law, the person may not be qualified as a candidate for an election or appear on the ballot. (Section 99.012(5), Florida Statutes.) Note, however, that the filing officer performs only a ministerial function in reviewing qualifying papers and cannot determine whether the contents of the qualifying papers are accurate. (Section 99.061(7)(c), Florida Statutes.) One of the qualifying papers is the candidate oath in which the candidate states that he or she has resigned from any office from which the candidate is required to resign; therefore, the filing officer may not look beyond the oath. As stated above, it will take a court order to remove the person’s name from the ballot.

14. MAY A PERSON QUALIFY TO RUN FOR MORE THAN ONE OFFICE?

No. Section 99.012(2), Florida Statutes, prohibits persons from qualifying for more than one federal, state, district, county, or municipal office if the terms or any part thereof run concurrently with each other. For example: a) a person may not qualify in Florida to run for more than more than one U.S. House of Representatives seat at a time; or b) a person may not qualify for both a state office and a county office if the terms or any part of the two offices overlap.

15. DOES THE "RESIGN TO RUN" LAW APPLY TO FEDERAL OFFICERS?

No, the "resign-to-run" portion of section 99.012, Florida Statutes, only applies to state, district, county and municipal officers. However, as stated in the answer to Question 14, section 99.012(2), Florida Statutes, prohibits persons from qualifying for more than one federal, state, district, county, or municipal office if the terms or any part thereof run concurrently with each other. Thus, a federal officer would not have to resign prior to qualifying for a state, district, county, or municipal office. For example, a U.S. Senator from Florida with two years left on his or her Senate term could qualify to run for Governor of Florida without resigning because the "resign-to-run" law does not apply to federal officers; however, the senator could not qualify for re-election to the U.S. Senate from Florida and also qualify for Governor of Florida because the terms of office would overlap.

16. DOES THE "RESIGN TO RUN" LAW REQUIRE A STATE, DISTRICT, COUNTY, OR MUNICIPAL OFFICER TO RESIGN BEFORE RUNNING FOR FEDERAL OFFICE?

No. The "resign-to-run" law prohibits an officer from qualifying as a candidate for another state, district, county or municipal public office if the terms or any part overlap with each other unless the officer submits a resignation from the office the person presently holds. Therefore, the "resign-to-run" law would not preclude a sitting state, district, county, or municipal officer from qualifying as a candidate for federal office without resigning from the office the person presently holds as long as the officer is not also seeking to qualify for re-election to his or her present office.

17. DOES THE "RESIGN TO RUN" LAW APPLY TO PERSONS SEEKING THE OFFICE OF PRESIDENT OR VICE PRESIDENT OF THE UNITED STATES?

No. Subsection (7) of section 99.012 specifically states that nothing in subsection (3) of the "resign-to-run law" relates to persons seeking the office of President or Vice President. This conclusion could also be reached based upon applying the analysis in the response above to Question 16. However, the exception contained in subsection (7) has no bearing on the prohibition in subsection (2) of section 99.012 against qualifying for more than one office if the terms or any part thereof run concurrently with each other. (See response to question 14, above.) Therefore, someone who has qualified for a state, district, county, or municipal office could not also qualify as a candidate for President or Vice-President if any portion of the two terms of office would overlap.

18. IF A CANDIDATE DOES NOT HAVE TO RESIGN FROM ONE OFFICE TO RUN FOR ANOTHER OFFICE, MAY HE OR SHE, IF ELECTED, CONTINUE TO HOLD BOTH OFFICES?

Even if the person could physically perform both jobs simultaneously, holding both offices may violate the constitutional prohibition of dual office holding. Article II, section 5(a), of the Florida Constitution, provides in part:

"No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office,

and any officer may be a member of a constitution revision commission, constitutional convention, or statutory body having only advisory powers.”

This constitutional provision prohibits a person from simultaneously holding more than one office under the government of the state, counties and municipalities. The prohibition applies to both elected and appointed offices. It is not necessary that the two offices be within the same governmental unit. Thus, for example, a municipal officer is precluded from holding not only another municipal office but also a state or county office.

Although the Constitution does not define the terms "office" or "officer" for purposes of the dual office holding prohibition, the Florida Supreme Court in *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919), stated that it is the nature of the powers and duties of a particular position which determines whether it is an "office" or an "employment."

The Department of State has no jurisdiction to interpret the dual office holding provisions of the Constitution. Questions regarding dual office holding should be directed to the Florida's Office of the Attorney General, which has jurisdiction over the matter. You may find a dual office holding informational pamphlet at the Attorney General's website at: [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6S3PP7/\\$file/dual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6S3PP7/$file/dual.pdf)

19. WHAT'S THE DIFFERENCE IN THE TREATMENT OF DISTRICT OFFICERS UNDER THE RESIGN-TO-RUN LAW AND THE DUAL OFFICEHOLDING CONTITUTIONAL PROVISION?

The Attorney General has opined that district offices are not within the purview of the dual office holding provisions of the Constitution. However, district offices, by express statutory provision, are subject to the provisions of the "resign-to-run" law. For example, an elected state or county officer may be appointed also to a district office. However, if the state or county officer later seeks reelection to the state or county office while occupying the district office, he or she would have to submit a resignation under the "resign-to-run" law from the district office before qualifying and running for reelection if the terms of office overlap, unless the district office consists of being a member on an appointed board or authority and the county or state officer receives no salary for being on the board or authority.

20. HOW DOES THE "RESIGN TO RUN" LAW RELATE TO THE "HATCH ACT"?

The state resign-to-run law is entirely separate from the federal "Hatch Act." The federal Hatch Act (5 U.S.C. §§ 1501- 1508) applies to executive branch state and local employees who are principally employed in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency.

The Hatch Act prohibits a state, county, or municipal employee from being a candidate for public office in a partisan race *if the employee's salary is completely funded with federal dollars*. It is only when the covered employee's entire salary is paid from federal funds that the employee would have to resign *under the Hatch Act* before becoming a candidate for partisan office; however, an employee's conduct is also subject to the laws of the state and the regulations of the employing agency, so the employee should check with his or her supervisor, personnel office, or the agency's general counsel to determine what state or local law or agency rules or policies may apply regarding the employee's political activities. (A partisan election means one in which any candidate will be listed on the ballot as a candidate for a political party, for example, the Republican or Democratic Party.)

Governors, Lieutenant Governors, mayors, elected heads of executive departments, and individuals holding elective office are specifically exempt from the Hatch Act prohibition against being a candidate for public office. So, the Hatch Act prohibits state, county and municipal employees seeking public office in a partisan election, not an elected officer seeking re-election or election to another office.

Questions about the Hatch Act may be directed to:

Hatch Act Unit

U.S. Office of Special Counsel

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

Tel: (800) 85-HATCH or (800) 854-2824

(202) 254-3650

Website: <http://www.osc.gov/hatchact.htm>

Requests for Hatch Act advisory opinions may be made by e-mail to: hatchact@osc.gov

21. WHO CAN I CONTACT ABOUT QUESTIONS CONCERNING FLORIDA'S "RESIGN TO RUN" LAW?

Contact the Assistant Director, Division of Elections:

Florida Department of State

R.A. Gray Building, Room 316

500 S. Bronough Street

Tallahassee, Florida 32399-0250

Telephone: (850) 245-6200; or email: DivElections@dos.myflorida.com