

Resign to run law, effective date of resignation

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Subject:

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RESIGN-TO-RUN LAW—EFFECTIVE DATE OF RESIGNATION

To: John F. Vasquez, City Clerk, Riviera Beach

Prepared by: Patricia R. Gleason, Assistant Attorney General

QUESTION:

What is the effective date of resignation of a city councilman whose term ends in April 1977, and whose successor will be elected in April 1977, the date of the city's general election, who, on June 23, 1976, resigned to run for the office of county commissioner?

SUMMARY:

The resignation of an elective municipal officer who resigned pursuant to s. 99.012, F. S., to run for the office of county commissioner became effective and hence operated to create a vacancy in the municipal office on the Tuesday 2 weeks following the day of the general election held in 1976 (November 16, 1976), on which date the resigned municipal officer would have assumed the office of county commissioner had he been elected. The resigned municipal officer may continue to serve until the vacancy for the unexpired term of his office is filled in accordance with procedures provided in the municipal charter.

Section 99.012(2), F. S., provides in pertinent part that:

"No individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning from such office not less than 10 days prior to the first day of qualifying for the office he intends to seek. *Said resignation shall be effective not later than the date upon which he would assume office, if elected to the office to which he seeks to qualify, the expiration date of the term of the office which he presently holds, or the general election day at which his successor is elected, whichever occurs earliest. . . .*" (Emphasis supplied.)

Applying the foregoing statutory provision to your inquiry, the councilman's present term of office ends in April 1977, and his successor will be elected in April 1977, on the date of the city's general election. Furthermore, s. 100.041(2), F. S., provides that the term of office of a county commissioner shall begin on the Tuesday 2 weeks following the day of the general election. In 1976, the general election was held on November 2; thus, had the councilman won election to

the office of county commissioner, he would have assumed office on November 16, 1976. Clearly, November 16, 1976, is the earliest occurrence of those events specified in s. 99.012(2), F. S.; hence, the councilman's resignation became effective on that date. The vacancy in the elective municipal office may be filled for the unexpired term of the resigned councilman in the manner provided by the municipal charter, but such officer may continue to serve until the vacancy for such unexpired term is filled. See s. 99.012(2) and (3), F. S.