



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 7, 2016

The Honorable Dr. Sherri Albritton
City Commissioner, Wauchula
126 South 7th Avenue
Wauchula, Florida 33873

Re: DE 16-05 Resign-to-Run –
Effective Date – § 99.012, Florida
Statutes

Dear Commissioner Albritton:

You currently serve on the Wauchula city commission, and you seek to run for Hardee County school superintendent. Through counsel, you have requested an advisory opinion as to your required effective date of resignation under Florida's resign-to-run law. Because you are a candidate proposing to take actions relating to Florida election laws, the Division of Elections has authority to issue you an advisory opinion. *See* § 106.23(2), Fla. Stat.¹

FACTS

As city commissioner, you seek to run for county school superintendent. You note the following in your request: (1) Your city commission term expires in November of 2018; (2) If elected as superintendent, you will be required to take office on November 22, 2016, pursuant to section 100.041(3)(a), Florida Statutes; and (3) Your successor will be required to take office 30 days after your resignation, pursuant to the Wauchula city charter. You state that you "[understand] that [you] will have to resign from the city commission to run for the office of school superintendent." The sole issue raised in your letter is that you "are seeking confirmation that [you] can designate an effective resignation date of November 22, 2016."

ANALYSIS

¹ Please note that the Division does not have the authority to interpret the federal Hatch Act or other matters outside the Florida Election Code. *See* § 106.23(2), Fla. Stat.

Florida's "resign-to-run" law prescribes how an officer must submit a resignation in order to run for a new office, including designating the effective date of the resignation, as follows:

(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.*

§ 99.012(3)(a – d), Fla. Stat. (emphasis supplied).

Here, you propose to make your resignation effective November 22, 2016. You indicate that the Wauchula city charter specifies that a vacancy arises upon the effective date of a commissioner's resignation, with the commission to fill the vacancy afterward. Assuming your interpretation of the city charter is correct,² the effective date of resignation of November 22, 2016, will comply with section 99.012(3), because your resignation will be "effective no later than the earlier of" the date you would take office if elected (November 22, 2016), or the date your successor would be required to take office (which presumably would be some point on or after November 22, 2016, regardless of when the vacancy is filled). See § 99.012(3)(d), Fla. Stat. Therefore, there appears to be nothing in the Election Code that would prohibit making your resignation effective November 22, 2016.

SUMMARY

Florida's "resign-to-run" statute—section 99.012(3), Florida Statutes—requires that a resignation be effective the earlier of either (1) the date the officer would take office if elected, or (2) the date the officer's successor is required to take office. Based on the facts you present, there appears to be nothing in the Florida Election Code that would prohibit you from making your resignation effective November 22, 2016—the date you would take office if elected.

Respectfully,



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

² The Division generally does not have authority to interpret local provisions. See § 106.23(2), Fla. Stat.