



FYI

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

May 9, 2018

Officer Joseph J. Mercogliano
Plantation Police Department
451 NW 70th Terrace
Plantation, Florida 33317

Re: DE 18-07 Resign-to-Run – Police
Officer – § 99.012(4), Florida
Statutes

Dear Officer Mercogliano:

This letter responds to the request from your attorney¹ for an advisory opinion as to whether you must resign your current position as a police officer to run for either the city's mayor or city council. Because you are a person engaged in political activity proposing to take action relating to Florida's election laws, the Division of Elections is authorized to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2017).

FACTS

Your request for an advisory opinion reflects that you currently are a police officer for the City of Plantation, Florida. You essentially ask whether you must resign your position as a police officer to qualify to run for either mayor or as a member of the city council for Plantation. In your request, you provide several provisions of Plantation City's Charter describing the duties and responsibilities of the Mayor and City Council. Portions of the quoted charter provisions include that the Mayor "shall have general supervision over all town affairs and officers, except councilmen" and the City Council "shall have the power to designate or create such offices, departments, or divisions as may be necessary for the administration of the affairs of the city; to provide the duties and powers of the officers of such office, department, or division; [and] provide

¹ Where a principal is represented by an attorney, the Division will address the opinion to the principal, not to the attorney. See Fla. Admin. Code R. 1S-2.010(2)(b).

for the *appointment* and fix the salary or compensation of *such officers* or employees.” [Emphasis supplied.]

ANALYSIS

First, please note that the Division has no authority to interpret city charters or ordinances. Second, Florida’s “resign-to-run” law requires certain officers to resign before qualifying for another office, as follows:

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.²

Third, even if a person is not an “officer,” he or she may still be required to resign if he or she is a subordinate officer, deputy sheriff, or police officer who is *seeking* an office held by a person with authority over him or her, as follows:

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.³

Fourth, *Division of Elections Opinion 07-08* (Dec. 5, 2007) explained that the above-cited section creates an exemption from the resign-to-run law for a police officer who is not running against someone who has the authority to appoint, employ, promote, or otherwise supervise the police officer.

Based upon the above exemption, as long as the mayor or city councilmembers do not have the authority to “appoint, employ, promote, or otherwise supervise” you as a police officer, you would not need to resign as a police officer to qualify and run for the office of mayor or city council, respectively.⁴ Even if they have authority to “appoint, employ, promote, or otherwise supervise” you as a police officer, per section 99.012(4), Florida Statutes (2017), you could qualify for mayor or city council unless an incumbent in the office you seek, *i.e.*, the current mayor or a current member of the city council, qualifies as a candidate to run against you. However, as previously indicated, the Division of Elections has no authority to interpret the City Charter; therefore, you should take any available steps necessary to obtain an interpretation of the City Charter regarding the authority of the mayor and city councilmembers over you as a police officer

² § 99.012(1)(a) & (3)(a), Fla. Stat. (2017). [Emphasis supplied.]

³ § 99.012(4), Fla. Stat. (2017). [Emphasis supplied.]

⁴ See, e.g., *Division of Elections Opinion 17-03* (June 29, 2017).

Officer Joseph J. Mercogliano

May 9, 2018

Page 3 of 3

before qualifying for either mayor or city council. If you must resign under section 99.012(4), the resignation must be effective no later than when you qualify for the office.

Finally, you inquire if you qualify for and are elected to city council or mayor, whether you may also continue to serve as a city police officer. While this is a question beyond the authority of the Division of Elections to address, we can direct you to section 112.313(10)(a), Florida Statutes (2017), part of the statutory "Code of Ethics for Public Officers and Employees,"⁵ which provides:

No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council, commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.

The Florida Commission on Ethics has authority to provide advisory opinions about this statute to any public officer, public employee, or candidate for public office.⁶

SUMMARY

A police officer is not required to resign under section 99.012(4), Florida Statutes (2017), if the police officer is seeking an office that is not held by an officer who has authority to appoint, employ, promote, or otherwise supervise the police officer. Also, even if the incumbent (the officer who currently holds the office that the police officer is seeking) has authority to appoint, employ, promote, or otherwise supervise him or her, the police officer may qualify for the office unless the incumbent qualifies as a candidate for re-election to the office.

Respectfully,



Maria I. Matthews, Esq.

Director, Division of Elections

cc: Grant J. Smith, Esq.

⁵ Part III, Ch. 112, Fla. Stat. (2017).

⁶ § 112.322(3), Fla. Stat. (2017).