

## **“Resign-To-Run” FAQs**

### ***What is the “resign-to-run” law?***

The “resign-to-run” law is contained in section [99.012](#), Florida Statutes. 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, and if the person did not resign from the office that the person presently holds. (Section [99.012\(3\)](#), Florida Statutes.)

### ***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)

### ***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 members.

### ***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 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)

***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.)

***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)

***Can the officer later revoke the resignation?***

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

***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)

***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.

***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.

***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 that 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.

***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 the Department of State's website at [http://election.dos.state.fl.us/opinions/TOC\\_Opinions.shtml](http://election.dos.state.fl.us/opinions/TOC_Opinions.shtml).)

***Who can I contact about questions concerning Florida’s “resign-to-run” law?***

Contact the Office of General Counsel:

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