



Resign-to-Run Law

DE Reference Guide 0016 (Updated 01/2018)

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RESIGN-TO-RUN LAW – GENERAL OVERVIEW

- **Governing law:** An elected or appointed “officer” may not qualify as a candidate for another state, district, county or municipal public office if the terms or any part of the terms would overlap with each other if the person were to be elected or appointed and did not resign from the office the person presently holds. (s. [99.012\(3\)](#), F.S.)
- **Who is an “officer”?** An “officer” is any elected or appointed person who has the authority to exercise the sovereign powers pertaining to an office recognized under the State Constitution or state laws. 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. (s. 99.012(1), F.S.)¹ “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.
- **Exceptions to the resign-to-run law:**
 - Political party offices; or
 - Persons serving without salary on an appointed board or authority.
 - Candidates for federal office;
 - Persons seeking the office of President or Vice President. (ss. [99.012\(3\)\(a\)](#), (6), and (7), F.S.)
- **How to submit a resignation:**
 - In writing at least 10 days prior to the first day of qualifying for the office the officer seeks. (s. [99.012\(3\)\(c\)](#), F.S.)
 - Submitted to:
 - *For elected district, county, or municipal officers:*
 - To the officer before whom he or she qualified for the office he or she holds,
 - Copy to the Governor and the Department of State.
 - *For appointed district, county, or municipal officers:*
 - To the officer or authority which appointed him or her to the office he or she holds
 - Copy to the Governor and the Department of State.
 - *For all other officers:*
 - To the Governor
 - Copy to the Department of State. (s. [99.012\(3\)\(e\)](#), F.S.)

Address for Governor’s office	Address for Department of State
The Honorable Rick Scott, Governor The Capitol 400 S. Monroe St. Tallahassee, FL 32399-0001 Email: Rick.Scott@myflorida.com Fax: (850) 922-9002	Kristi Willis, Chief, Bureau of Election Records Department of State R.A. Gray Building, Room 316, 500 S. Bronough Street Tallahassee, Florida 32399-0250 Email: kristi.willis@dos.myflorida.com Fax: 850-245-6259 or -6290

¹ Florida case law further explains that an “officer” is someone who exercises sovereign power, in part or wholly, 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. See *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919). And see *State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

- **Effective date of the resignation:** The resignation must take effect no later than the earlier of the following dates:
 - The date the officer would take office, if elected; or
 - The date the officer’s successor is required to take office. (s. [99.012\(3\)\(d\)](#), F.S.)
- **Resignation is irrevocable.** Once submitted, the resignation is irrevocable (s. [99.012\(3\)\(b\)](#), F.S.)

FREQUENTLY ASKED QUESTIONS – RESIGN-TO-RUN LAW:

- **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](#), F.S., 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.
- **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. (s. [99.012\(3\)\(g\)](#), F.S.)
- **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. (s. [99.012\(3\)\(f\)](#), Florida Statutes.)
- **Does the "resign-to-run" law apply to subordinate officers, deputy sheriffs, or police officers?**
 - Generally no, but the law 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. (s. 99.012(4), F.S; see also, for example, Division of Elections advisory opinions DE 08-04, DE 07-08, and 99-01, which can be found at the [Advisory Opinions webpage](#).)
- **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 the question immediately above 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 re-election. (s. [99.012](#)(4), F.S.)
- **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. (s. 99.012(5), F.S.) 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. (s. 99.061(7)(c), F. S.) 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.
- **What’s the difference in the treatment of “district” officers under the resign-to-run law and the dual office-holding constitutional 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.
- **How does the “resign-to-run” law relate to the federal “Hatch Act?”**
 - The state resign-to-run law is entirely separate from the federal “Hatch Act.” (5 U.S.C. §§ 1501- 1508).
 - The federal Hatch Act 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 Act prohibits a state, county, or municipal employee from being a candidate for public office in a partisan election *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. See 5 U.S.C. § 1502 (Hatch Act Modernization Act of 2012 (eff. 1.27.2013)).

- 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.
 - A partisan election means one in which any candidate will be listed on the ballot as a candidate for a political party.
- Additionally, 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.
 - **For questions or requests for advisory opinions about the Hatch Act** and how it may affect an employee who seeks to run for office, the employee should contact:

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;
Email: hatchact@osc.gov
website: osc.gov/Pages/HatchAct.aspx

- **Who can I contact about questions concerning Florida's "Resign-to-Run" law?**

Office of General Counsel
Florida Department of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399-0250
Telephone: (850) 245-6536
Email: DOS.GeneralCounsel@DOS.MyFlorida.com