



FYI

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 28, 2017

Mr. Carl Zogby
5555 LeJeune Road
Hialeah, Florida 33013

Re: DE 17-03 Resign-to-Run – Police Officer
– § 99.012, Florida Statutes

Dear Mr. Zogby:

This letter responds to your request for an advisory opinion as to whether you must resign any of your current positions to run for Hialeah city council. Because you are a person engaged in political activity proposing to take action relating to the Florida election laws, the Division of Elections is authorized to issue you an opinion pursuant to section 106.23(2), Florida Statutes.

FACTS

According to your request, you serve in three different positions for the city of Hialeah: executive assistant to the chief of police, public information officer for the police department, and police sergeant. As executive assistant to the chief of police, you state that you “perform the clerical duties for the office of the Chief, that is, the workflow of the staff in the Chief’s office.” As public information officer, you state that you “respond to the press and public [with] regard to matters of public interest for the police department.” You indicate that as sergeant you do the “first line supervisory police work in field and office” and report to a superior officer; and you emphasize that the city mayor is your superior and that the city council “has no direct authority to appoint, promote, employ, discipline, or otherwise supervise” you. You essentially ask whether you must resign any of your positions pursuant to section 99.012, Florida Statutes, to run for a city council seat; and, if so, what should be the effective date of the resignation.

ANALYSIS

Florida’s “resign-to-run” law requires certain “officers” to resign before qualifying for other offices, as follows:

Division of Elections

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With respect to a municipality, the term “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.

...

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.

§ 99.012(1)(a), (3)(a), Fla. Stat. (emphasis supplied). Moreover, 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” or police officer who is seeking an office held by a supervisor, 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.

§ 99.012(4), Fla. Stat. (emphasis supplied). With respect to a municipality, a “subordinate officer” is a person who has been delegated the authority to exercise municipal power by an officer. § 99.012(1)(b), Fla. Stat.

The question here is whether any of the three positions you currently hold subjects you to Florida’s resign-to-run law.¹

Issue 1: Whether your position as executive assistant subjects you to the resign-to-run law.

According to the facts you provide, the duties of the executive assistant position are mainly concerned with workflow and the day-to-day operation of the chief’s office. On these facts, there is no indication that this position involves an exercise of municipal power under the municipal charter or a delegation of authority to exercise such municipal power, such that you would be an “officer” or “subordinate officer” under the resign-to-run law. *Cf.* § 99.012, Fla. Stat.; *Div. of Elections Op.* 86-18 (Oct. 13, 1986) (indicating that an appointed administrative aide is an employee, not an “officer,” for purposes of the resign-to-run law). Therefore, it is the Division’s opinion that the resign-to-run law does not require you to resign as executive assistant to the chief of police to run for city council.

¹ This opinion is limited to addressing whether any of your current positions subject you to Florida’s resign-to-run law based on the facts you provide. The Division does not opine as to hypothetical scenarios or interpret provisions outside the Election Code that could also affect you.

Issue 2: Whether your position as public information officer subjects you to the resign-to-run law.

You indicate that as public information officer you interact with the press and public on behalf of the department. On these facts, there is no indication that this position involves an exercise of municipal power under the municipal charter or a delegation of authority to exercise such municipal power, such that you would be an “officer” or “subordinate officer” under the resign-to-run law. *Cf.* § 99.012, Fla. Stat. Therefore, it is the Division’s opinion that the resign-to-run law does not require you to resign as public information officer to run for city council.

Issue 3: Whether your position as police sergeant subjects you to the resign-to-run law.

The resign-to-run law contains a special provision requiring any “police officer” to resign upon qualifying if he or she seeks 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.” § 99.012(4), Fla. Stat. You specifically assert in your request that the city council “has no direct authority to appoint, promote, employ, discipline or otherwise supervise” you.² As long as the city councilmembers do not have the authority to “appoint, employ, promote, or otherwise supervise” you as police sergeant, you do not need to resign as police sergeant to run for city council. *Cf. Div. of Elections Op. 07-08* (Dec. 5, 2007) (explaining that section 99.012(4) 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).³

² The Division lacks authority to interpret city charter or ordinance provisions. However, the Division notes that the Hialeah city charter provides as follows:

Except for the purpose of inquiries and investigations made in good faith, the city council or councilmembers shall deal with city officers and employees, who are subject to the direction and supervision of the mayor, solely through the mayor. Neither the city council nor councilmembers shall give orders to any such officer or employee, either publicly or privately. It is the express intent of this charter that recommendations for improvement of municipal governmental operations by individual councilmembers be made solely to and through the mayor.

Art. III, § 3.02(b), City Charter of Hialeah, Fla.

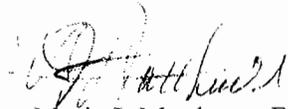
³ Because it is the Division’s opinion that you do not need to resign under section 99.012, there is no need to address your question of the proper effective date for a resignation.

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SUMMARY

A person who is not an “officer” is not required to resign under section 99.012(3), Florida Statutes, before qualifying for an office. A police officer is not required to resign under section 99.012(4), Florida Statutes, 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.

Respectfully,

A handwritten signature in black ink, appearing to read "Maria I. Matthews". The signature is written in a cursive style with a large initial "M".

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