



# Resign-to-Run Law

*DE Reference Guide 0016 (Updated 08/17/2023)*

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## RESIGN-TO-RUN LAW – GENERAL OVERVIEW

### • Governing law<sup>1</sup>

- An “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 and did not resign from the office the person presently holds.
- An officer who qualifies for federal public office must resign from his or her presently-held office if the terms, or any part, thereof, would overlap with each other. (See below “What is “qualify” and “Exceptions to the resign-to-run law”)

### • 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.)<sup>2</sup> “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.

### • What is “qualify”?<sup>3</sup>

“Qualify” means to fulfill the requirements set forth in s. 99.061(7)(a) or s. 105.031(5)(a). Candidates for President and Vice President are not required to fulfill such requirements and therefore do not “qualify” for purposes of the resign-to-run law.

### • Exceptions to the resign-to-run law<sup>4</sup>

- Political party offices.
- Persons serving without salary on an appointed board or authority.
- Persons holding federal office.
- An elected officer running for federal office if the term of office presently held is scheduled to expire and be filled by election in the same primary and general election period as the federal office the officer is seeking.
- Persons running for President and Vice President of the United States

### • Resignation process<sup>5</sup>

- In writing at least 10 days prior to the first day of qualifying for the office the officer seeks.
  - For elected district, county, or municipal officers, submit:
    - To the officer before whom he or she qualified for the office he or she holds,

<sup>1</sup> s. 99.012, F.S. (2023)

<sup>2</sup> See also *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)(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.)

<sup>3</sup> s. 99.012(1), F.S.

<sup>4</sup> ss. 99.012(7), F.S.

<sup>5</sup> ss. 99.012(3) - (5), F.S.

- Copy to the Governor and the Department of State.
- *For appointed district, county, or municipal officers, submit:*
  - 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, submit:*
  - To the Governor
  - Copy to the Department of State.<sup>6</sup>

Contact Information	
Address for Governor's office	Address for Department of State
Governor Ron DeSantis The Capitol 400 S. Monroe St. Tallahassee, FL 32399-0001 Email: Ron.DeSantis@eog.myflorida.com Fax: (850) 921-0733	Donna Brown Chief, Bureau of Election Records Department of State R.A. Gray Building, Room 316, 500 S. Bronough Street Tallahassee, Florida 32399-0250 Email: <a href="mailto:ElecRecords@dos.myflorida.com">ElecRecords@dos.myflorida.com</a> Fax: 850-245-6259 or -6260

- **What is the effective date of the resignation?**<sup>7</sup>

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.

- **Is the resignation irrevocable?**<sup>8</sup>

Yes. Once submitted, the resignation is irrevocable.

- **What is an automatic resignation?**<sup>9</sup>

An automatic irrevocable resignation occurs when an officer who qualifies for **federal** public office fails to submit a resignation pursuant to the resign-to-run law. The automatic resignation from the office he or she presently holds is effective immediately. The Department of State is then required to send a notice of the automatic resignation to the Governor. In the case of a district, county or municipal officer, a copy also is sent to the officer before the person qualified if officer held an elective office or the office or authority who appointed the officer.

#### FREQUENTLY ASKED QUESTIONS – RESIGN-TO-RUN LAW:

- **If someone is a school board member and will not seek re-election at the next general election but intends to qualify to run for state representative, will the person have to submit a resignation under the resign-to-run law?**

- Yes. Section [100.041](#), F.S., reflects that the two-year term of office for a state representative begins upon election and the four-year term of office for a school board member begins on the second Tuesday following the general election. Therefore, if elected as a state representative, the term as a school board member, would not expire until two weeks after taking office as a state representative. This two-week overlap requires

<sup>6</sup> ss. [99.012](#)(3)(e) and (4)(e), F.S.

<sup>7</sup> s. [99.012](#)(3)(d) and (4)(d), F.S.

<sup>8</sup> s. [99.012](#)(3)(b) and (4)(b), F.S.

<sup>9</sup> s. [99.012](#)(4)(f), F.S.

the school board member 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 for a state, county, district, or municipal office?**
  - If the officer still wishes to run for office, the officer may submit a 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.) Note: If the officer is a candidate for **federal** office, the failure to satisfy the 10-day deadline operates as an automatic, immediate and irrevocable resignation from office. (s. [99.012\(4\)\(f\)1.](#), F.S.)
  
- **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.
  - Subordinate officers would include, among others: assistant public defenders, assistant state attorneys, and deputy supervisors of elections. (s. [99.012\(4\)](#), F.S; visit the Division of Elections’ [Advisory Opinions webpage for relevant resign to run](#) opinions DE 08-04, 07-08, 99-01, 17-02, 17-03, 17-04, 18-07, 18-08 )
  
- **Does a city’s Chief of Police have to resign 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\(5\)](#), F.S.)
  
- **What happens if an officer does not comply with the resign-to-run law?**
  - A filing officer performs a ministerial duty in reviewing qualifying documents such that if a candidate files an oath stating that he or she has resigned from office, the filing office cannot look beyond the contents of the oath to determine if it is accurate. (s. [99.061\(7\)\(c\)](#), F. S.)
  - It takes a court order to determine if a person did not comply with the resign-to-run law, and to deem the person not qualified as a candidate or be removed from the ballot. (s. [99.012\(6\)](#), F.S.)

- Notwithstanding the above, an officer who qualifies for **federal** public office who fails to submit a resignation pursuant to the resign-to-run law will result in an automatic irrevocable resignation, effective immediately, from the office he or she presently holds. (s. 99.012(4)(f)1. F.S.) The Department of State is required to notify the Governor and the appropriate qualifying officer or appointing authority of the automatic resignation. (s. 99.012(4)(f)2., F.S.)

- **How are district officers treated under the resign-to-run law versus 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 can 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 executive department heads, and elected officers 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 party candidate.
- An employee’s conduct is also subject to state and local laws and the regulations of the employing agency. An employee should consult with his or her supervisor, personnel office, or the agency’s general counsel.

- **Who to contact for questions or requests for advisory opinions on Hatch Act or Resign-to-Run law:**

<b>HATCH Act</b>	<b>Resign-to Run Law</b>
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; (800) 854-2824;(202) 804-7002; Email: <a href="mailto:hatchact@osc.gov">hatchact@osc.gov</a> Website: <a href="https://osc.gov/Services/Pages/HatchAct-Federal.aspx">https://osc.gov/Services/Pages/HatchAct-Federal.aspx</a>	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: <a href="mailto:DOS.GeneralCounsel@DOS.MyFlorida.com">DOS.GeneralCounsel@DOS.MyFlorida.com</a>