



FYI

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

July 20, 2017

Mr. Thomas Good
9521 Southwest 6th Street
Pembroke Pines, Florida 33025

Re: DE 17-04 Resign-to-Run – Special
District Commissioner – § 99.012, Florida
Statutes

Dear Commissioner Good:

This letter responds to your request for an advisory opinion as to whether you must resign your position as South Broward Drainage Commissioner in order to run for city commission. 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 currently serve as a commissioner for the South Broward Drainage District (“SBDD”). The SBDD is an independent special district which operates under special acts passed by the Florida Legislature. *See* Ch. 98-524, Laws of Fla. (codifying, reenacting, amending, and repealing previous 1967 charter), Ch. 2004-459, Laws of Fla. (amending 1998 special act), Ch. 2007-308, Laws of Fla. (same), Ch. 2011-264, Laws of Fla. (same). You were elected to the SBDD board in 2016, and your term will end in November of 2020. You seek to run for the Pembroke Pines City Commission, and you indicate that if you win the election, your term as city commissioner will begin on April 4, 2018.

You ask (1) whether you are an “officer” under section 99.012, Florida Statutes (which, if the case, would require you to resign before qualifying for a city commission seat); (2) whether, if you do have to resign, how your resignation must be carried out as a practical matter; and (3)

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whether Florida law prohibits you from serving as both SBDD commissioner and city commissioner at the same time.¹

ANALYSIS

Issue 1: Whether you are an “officer” under section 99.012, requiring you to resign.

Florida’s “resign-to-run” law requires “officers” to resign before qualifying for other offices if the terms of their offices will run concurrently, as follows:

“Officer” means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state.

...

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).

Turning to your question, a review of the powers vested in the commissioners on the SBDD reveals that the elected position of SBDD commissioner is likely an “officer” for purposes of section 99.012(1)(a). SBDD commissioners, through their membership on the board, have a broad range of authority to do many things, including to contract and be contracted with; to sue and be sued in the name of the district; to establish and operate a system of waterways; to regulate and set forth the drainage and water management requirements and conditions for land within the district; to regulate materials coming into contact with waterways; to construct and improve certain roadways; and to assess and impose taxes. *See* Ch. 2011-264, § 13, at 80-83, Laws of Fla.

Certainly the authority of SBDD commissioners in the aforementioned matters—not the least of which is the authority to assess and impose taxes²—demonstrates authority to “exercise the sovereign power of the state pertaining to an office recognized under the . . . laws of the state.” *See* § 99.012(1)(a), Fla. Stat. Therefore, it is the opinion of the Division that as a commissioner on the SBDD, you are an “officer” for purposes of Florida’s resign-to-run law.³ Since you seek to

¹ Your five questions have been condensed and reordered for the sake of clarity and brevity. This opinion is limited to addressing your questions as they relate to the Florida Election Code. The Division cannot interpret provisions outside the Election Code that could also affect you.

² *Cf. City of Miami v. Kayfetz*, 30 So. 2d 521, 524 (Fla. 1947) (“[T]he power to tax is the power to destroy”); *M’Culloch v. State*, 17 U.S. 316, 431 (1819) (same).

³ Prior opinions of the Division are consistent with this view. *See, e.g., Div. of Elections Op.* 89-13 (Dec. 15, 1989) (resign-to-run law applied to “district officers”); *Div. of Elections Op.*

run for another office whose term would run concurrently to your current SBDD term, you would have to resign as SBDD commissioner in order to run for city commission. See § 99.012(3), Fla. Stat.

Issue 2: When and to whom you must submit your resignation.

Assuming you were to resign, your next question relates to when you should submit your resignation, what should be the effective date of your resignation, and to whom you should submit your resignation. Section 99.012(3) provides the answers to these questions, as follows:

(c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office [that the officer] intends to seek.

(d) The resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or
2. The date the officer's successor is required to take office.

(e)1. An elected *district*, county, or municipal officer must submit his or her resignation 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.

§ 99.012(3), Fla. Stat. (emphasis supplied).

Based on this statute, it is the opinion of the Division that since you are a special district officer, you must submit your resignation to the officer before whom you qualified for the office of SBDD commissioner, with a copy of your resignation to the Governor and the Department of State. See § 99.012(3)(e)(1.), Fla. Stat. Your resignation must be *submitted* "at least 10 days prior to the first day of qualifying" for the office of city commissioner. § 99.012(3)(c), Fla. Stat. Your resignation must be *effective* no later than the *earlier* of (1) the date you would take office as city commissioner, if elected, or (2) the date your successor as SBDD commissioner is required to take office. See § 99.012(3)(d), Fla. Stat.

88-28 (July 15, 1988) (resign-to-run law applied to "special district offices"); *Div. of Elections Op.* 82-09 (June 4, 1982) (Lee County Public Hospital Board member was subject to the resign-to-run law). Moreover, in *Division of Elections Opinion* 04-06 (June 2, 2004), the Division was asked whether a community development district (CDD) board member was an "officer" for purposes of the resign-to-run law. The CDD board member had the ability to "sue and be sued," "to contract for the services of consultants," and "to adopt administrative rules," among other powers. *Id.* The Division concluded that the delegation of duties to the CDD constituted "a delegation of governmental sovereign power" and that each CDD board member was therefore an "officer" for purposes of the resign-to-run law. See *id.*

Issue 3: Whether you are legally permitted to hold both offices at the same time.

Your final question is whether you would be legally permitted to serve as both SBDD commissioner and city commissioner for Pembroke Pines at the same time. This is a different legal question from whether you must resign as SBDD commissioner in order to run for city commission. However, as a practical matter, since the Division has already opined that you must resign as SBDD commissioner before running for city commission, there is no need to address the question of whether you might be allowed to hold both offices at the same time.⁴

SUMMARY

A commissioner for the South Broward Drainage District (an independent special district) is an “officer” for purposes of Florida’s resign-to-run law. The resignation for such office must be submitted to the person before whom the officer qualified at least ten days prior to the first day of qualifying for the office sought, with an effective date no later than the earlier of the date the officer would take office if elected or the date the officer’s successor is required to take office.

Respectfully,



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

⁴ In any event, the Division would lack authority to answer this question because the prohibition against dual office holding is found in the Florida Constitution, not the Florida Election Code. *See* Art. II, § 5(a), Fla. Const. (prohibition against dual office holding); *cf.* § 106.23(2), Fla. Stat. (indicating that the Division has authority to issue advisory opinions only with respect to the Florida Election Code). The Election Code does contain a provision that prohibits *qualifying* for more than one office at a time. *See* § 99.012(2), Fla. Stat. But the prohibition on *holding* more than one office at a time is found in the Florida Constitution. *See* Art. II, § 5(a), Fla. Const.