



To: Billy Urquia, City Clerk

From: Naomi Levi Garcia, Assistant City Attorney/ Intergovernmental Affairs Manager

Approved: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding City Code Section 2-52(e), Resign-to-Run Requirement

Date: May 18, 2021

Billy, I have reviewed the city's resign-to-run requirement in Chapter 2, Article III, Section 2-52(e) of the Coral Gables Municipal Code ("City Code") and determined that it should be deleted because it is not legally enforceable. On June 13, 2003, the City Commission adopted Ordinance No. 2003-20, amending Article III, Section 2-46 of the City Code to enact new provisions for the creation of city boards and the appointment, qualifications, and resignation of board members. The ordinance had an effective date of September 1, 2003. Within these provisions, which were subsequently renumbered, Section 2-52(e) prohibits a member of any city board from becoming a candidate for elective political office during his or her term. It further states that should any member of a city board qualify as a candidate for elective political office, such qualification shall be deemed an automatic resignation from the board as of the date of qualification. Ch. 2, Art. III, §2-52(e), Coral Gables Code of Ord., Fla. (2006). In 2013, CAO 2013-032, interpreted Section 2-52(e) as narrowly applying to individuals who seek an elective political office within the city i.e. Mayor or Commissioner. However, requiring an unpaid board member to resign from office upon seeking candidacy for an elective political office, internal or otherwise, is contrary to Florida Law, therefore Section 2-52(e) is unenforceable and should be struck from the City Code.

§ 99.012, Fla. Stat.

Section 99.012, Florida Statutes, known as Florida's Resign-to-Run law, sets forth restrictions on individuals qualifying for public office. The Resign-to-Run Law prohibits an individual from qualifying as a candidate for more than one public office, if any part of the terms run concurrently. § 99.012(2), Fla. Stat. (2020). It also prohibits an officer from qualifying as a candidate for another public office if the terms or any part of the terms run concurrently without resigning from the office he or she presently holds. § 99.012(3)(a), Fla. Stat. (2020). These restrictions, however, do not apply to unpaid members of appointive boards. §99.012(7)(b), Fla. Stat. (2020). Traditionally, the city's appointive board members are uncompensated and therefore fall within the exception outlined in Section 99.012(7)(b). The city's requirement that a board member seeking candidacy

for elective office resign from his or her board appointment does not flow from State statute, which has no such requirement for unpaid board members.

City of Hialeah v. Martinez

While in some instances, municipal law may be more restrictive than State statute provided local governments are not expressly or impliedly preempted from acting, case law in this area makes clear that a municipality may not have a more restrictive resign-to-run ordinance than the State's Resign-to-Run law. In *Hialeah v. Martinez*, the Third District Court of Appeal held that a provision of the City Charter which required resignation whether or not the term of the office holder runs concurrently with the term of office for which one seeks to qualify, conflicts with the provision of the statute which requires resignation only when there is an overlap of terms. *City of Hialeah v. Martinez*, 402 So. 2d 602, 604 (Fla. 3d Dist. App. 1981). As such, a city council member did not need to resign his post prior to seeking candidacy for Mayor as the terms did not run concurrently. In arriving at this holding, the Court concluded that Hialeah's charter provision placed a greater restriction on (the plaintiff's) right to run for office and was thus in conflict with general law and must give way. The Court further stated, "the city's charter cannot make unlawful what the Legislature has made lawful." *Martinez*, 402 So. 2d at 605. The charter provision at issue in *Hialeah v. Martinez* is analogous to City Code Section 2-52(e), which requires resignation of an appointive board member regardless of whether the board member is compensated and regardless of whether the term of the position held and the term of the position sought run concurrently. It would in effect disallow something that the Legislature has allowed, applying the same logic as the holding in *Hialeah v. Martinez*, the City must nullify the resignation requirement due to its unenforceability.

Attorney General Opinion 82-91

Attorney General Opinion 82-91 though not controlling is also illustrative. The Opinion was issued in response to a municipality seeking to adopt an ordinance requiring members of local appointive boards who serve without salary to resign their positions in order to seek elected political office. Op. Att'y Gen. Fla. 82-91 (1982). The opinion concluded that a municipality is not authorized to adopt an ordinance which prohibits conduct which is permitted by state law and may not therefore adopt an ordinance requiring members of local appointive boards who serve without salary to resign their positions in order to seek elected political. Op. Att'y Gen. Fla. 82-91 (1982)(citing to *Hialeah v. Martinez*). The ordinance addressed by AGO 82-91 is similar if not identical to the city's resign-to-run requirement and no doubt a similar analysis would apply if the city's requirement were to be challenged.

Conclusion

Due to Section 99.012, Florida Statutes, case law, and an Attorney General Opinion that is directly on point, this Office deems it appropriate to delete Section 2-52(e) from the City Code. Pursuant to the authority provided in Section 2.252(9) of the City Code, the City Attorney can direct the City clerk to strike Section 2-52(e) in its entirety. This opinion shall not otherwise affect the City's ability to enforce Section 99.012, Florida Statutes. This opinion is issued pursuant to Section 2-252(e)(1), (8), and (9) of the City Code. Please feel free to contact me should you have any questions.

To: Billy Urquia, City Clerk

From: Naomi Levi Garcia, Assistant City Attorney/ Intergovernmental Affairs Manager

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Date: 5/18/21

Summary

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