

# JAMES SATCHER • SUPERVISOR OF ELECTIONS • MANATEE COUNTY

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June 11, 2024

Regarding Manatee County School District, Seat 5 Vacancy

To whom it may concern,

On May 30, 2024, this office received a letter of resignation from Richard W. Tatem, a member of the Manatee County School Board elected for a term ending in November of 2026. The effective date provided by Mr. Tatem is November 5, 2024. The attached memo was prepared by outside counsel in response to my request for guidance on this vacancy. I submitted to outside counsel the input provided to me by the public and interested parties.

The current Resign-to-Run Law deems an office to be vacant upon the effective date of the resignation, and because the remainder of the term of Mr. Tatem's school-board office is therefore less than twenty-eight months, the Florida Constitution provides for the vacancy to be filled via appointment by the Governor subsequent to November 5th for the remainder of the term. This office has no leeway to disregard the Resign-to-Run Law as amended in 2021 and to place the school-board office on the 2024 election ballot.

Please see the attached memo for a full analysis of this issue.

A handwritten signature in blue ink, appearing to read "James Satcher".

James Satcher  
Supervisor of Elections

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June 11, 2024

Regarding Manatee County School District, Seat 5 Vacancy

On May 30, 2024, this office received a letter of resignation from Richard W. Tatem, a member of the Manatee County School Board. Mr. Tatem submitted his irrevocable resignation under the Resign-to-Run Law, § 99.012, Fla. Stat. (2023), because, according to the letter, Mr. Tatem intends to seek election to the Florida House of Representatives. The term of Mr. Tatem's current office is scheduled to end in November 2026, while the term of the office that Mr. Tatem intends to seek begins on November 5, 2024. Mr. Tatem's resignation takes effect on November 5, 2024.

Upon review, this office has concluded that the vacancy created by Mr. Tatem's resignation must be filled by appointment for the remainder of the school-board term—*i.e.*, through November 2026—and that, under current Florida law, this office has no discretion to place the school-board office on the 2024 election ballot.

Article IV, section 1(f) of the Florida Constitution provides as follows:

When not otherwise provided for in this constitution, the governor shall fill by appointment any vacancy in state or county office . . . for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.

Simply stated, if the “remainder of the term” is “less than twenty-eight months,” then the Governor “shall fill” the vacancy “for the remainder of the term.” If not, then the Governor “shall fill” the vacancy only “until the first Tuesday after the first Monday following the next general election.”

The question here is whether the “remainder of the term” of the office that Mr. Tatem currently holds should be calculated from the date that Mr. Tatem submitted his letter of resignation (May 30, 2024) or the date that Mr. Tatem's resignation takes effect (November 5, 2024). If the “remainder of the term” begins on May 30, 2024, then the “remainder of the term” is more than twenty-eight months and must be filled by appointment “for the remainder of the term.” If the “remainder of the term” begins on November 5, 2024, then the “remainder of the term” is less than twenty-eight months and must be filled by appointment only “until the first Tuesday after the first Monday following the next general election.”

The Resign-to-Run Law provides that, when an officer submits an irrevocable resignation in compliance with that statute, the “office is deemed vacant *upon the effective date of the resignation* submitted by the official in his or her letter of resignation.” § 99.012(3)(f), Fla. Stat. (emphasis added). Under the plain language of the Resign-to-Run Law, therefore, Mr. Tatem's current office is deemed vacant on November 5, 2024—the effective date of his irrevocable resignation. As a result, the “remainder of the term” is less than twenty-eight months and must be filled by appointment for the “remainder of the term”—*i.e.*, through November 2026.



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This office is aware of the Florida Supreme Court’s conclusion in *Advisory Opinion to re Sheriff and Judicial Vacancies Due to Resignations*, 928 So. 2d 1218, 1222 (Fla. 2006), that “the ‘remainder of the term’ should be calculated from the date the resignation is tendered.” But the Resign-to-Run Law was amended years after the Court’s decision in *Advisory Opinion* in 2006.

In 2006, the Resign-to-Run Law stated that “the resignation creates a vacancy in office to be filled by election.” § 99.012(3)(f)1., Fla. Stat. (2005), *quoted in Advisory Op. to Governor re Sheriff & Jud. Vacancies Due to Resignations*, 928 So. 2d at 1222. In 2021, the Florida Legislature amended this provision to state (as noted above) that the “office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.” Ch. 2021-11, § 11, Laws of Fla. (codified at § 99.012(3)(f), Fla. Stat.). The amendment took effect on May 6, 2021. *See* Ch. 2021-11, § 33, Laws of Fla. The law in effect now is different from the law that was in effect when *Advisory Opinion* was decided eighteen years ago.

The Florida Supreme Court has held that public officials must presume that legislation affecting their duties is valid and constitutional until a court determines otherwise. *Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 798 (Fla. 2008). The 2021 amendments to the Resign-to-Run Law have not been reviewed and declared invalid by any court. Those amendments are therefore entitled to a presumption of validity.

Because the current Resign-to-Run Law deems an office to be vacant upon the effective date of the resignation, and because the remainder of the term of Mr. Tatem’s school-board office is therefore less than twenty-eight months, the Florida Constitution provides for the vacancy to be filled by appointment through the remainder of the term—*i.e.*, through November 2026. This office has no leeway to disregard the Resign-to-Run Law as amended in 2021 and to place the school-board office on the 2024 election ballot in opposition to a presumptively valid state statute.