



Alachua County Attorney's Office

Sylvia E. Torres, County Attorney

MEMORANDUM

TO: Commissioner Marihelen Wheeler, Board of County Commissioners Chair

FROM: Sylvia Torres, County Attorney 

DATE: May 16, 2022

Re: Alachua County Board of County Commissioners Vacancy

This morning, Commissioner Alford tendered her resignation from her office as a county commissioner to Governor DeSantis, effective at 10am. Board members have asked me questions about how this resignation will impact the Board of County Commissioners and where we go from here. The Florida Constitution and Statutes anticipate this situation (when a county official resigns) and guide what happens next. The Constitution and Statutes define when there is a vacancy and how that vacancy gets filled.

Article 10, Section 3 of the Florida Constitution lists various scenarios where a “vacancy in office” occurs; the relevant one here being the “resignation of the incumbent.” The statutes add an additional requirement for a vacancy to occur due to resignation. Section 114.01(1), Florida Statutes, states that a vacancy in office occurs... “Upon the resignation of the officer and acceptance thereof by the Governor.” Sec. 114.01(1)(d), Fla. Stat. The Board of County Commissioners will, therefore, have a vacancy when the Governor accepts Commissioner Alford’s resignation.

When a vacancy occurs on the Board of County Commissioners, both the Constitution and the Statutes direct the governor to fill the vacancy by appointment. *See* Fla. Const. Art. IV, Sec. 1(f) and Sec. 114.04, Fla. Stat. The term of the governor’s appointed official depends on when the vacancy occurs during the term of the resigning incumbent. If the remaining term of the resigning incumbent is 28 months or more, the governor’s appointed official will serve until the Tuesday after the first Monday after the next general election. Fla. Const. Art. IV, Sec. 1(f) and Sec. 114.04, Fla. Stat. If the term is less than 28 months, the governor’s appointed official will serve the remaining term of the resigning incumbent. *Id.* In this case, Commissioner Alford has tendered her resignation with approximately 30 months remaining in her term (ending November 19, 2024). Therefore, the governor’s appointed official should serve from appointment until November 15, 2022 (the Tuesday after the Monday after the next general election).

Section 100.111, Florida Statutes, states that if 28 months or longer remain in the term of a vacating incumbent, a person shall be elected at the next general election to fill the unexpired portion of the incumbent’s term. Subsection (b) and (c) of this statutory section explain what happens if the

vacancy occurs before or after (respectively) the time for qualifying for other offices has expired. If the vacancy occurs before qualifying closes, candidates seeking to be on the ballot to fill the vacated office must qualify by the end of the qualifying period. If the vacancy occurs after qualifying has closed, the Secretary of State shall set a new deadline for qualifying for the vacated office. If time does not permit the office to be included on the primary ballot, the governor may call for a special primary election. This statutory section also grants the Department of State broad authority... "In the event of unforeseeable circumstances not contemplated in these general election laws" to conduct orderly elections. In this situation, the vacancy will likely occur before the qualifying period closes, and candidates seeking the office must qualify by the end of the qualifying period.

In the meantime, the Board has four incumbent members and can continue to act. Three members will continue to be needed to make quorum.

Please let me know if you have any additional questions.

SET: emg

Cc: Members of the Board of County Commissioners
Michele Lieberman, County Manager
Kim Barton, Supervisor of Elections
Latoya Gainey, Executive Manager