

September 28, 2009

OPINION 09-0121

4 ASSESSORS

La. R.S. 18:402

La. R.S. 18:583

La. R.S. 18:602

La. R.S. 18:654

The Honorable James A. Laurent
Assessor
Parish of Pointe Coupee
211 East Main Street
Suite 4-Courthouse Building
New Roads, LA 70760-3661

If the unexpired term exceeds one year, then the governing authority shall issue a proclamation calling for a special election to fill the vacancy within ten days of a letter of retirement being received by the Secretary of State and the retirement becoming irrevocable. The election to fill the vacancy may be held prior to the effective date of retirement; however, the successor may not take office until after the effective date of retirement.

Dear Mr. Laurent:

You advise this office that you intend to publicly announce, in June of 2009, your retirement as Assessor of Pointe Coupee Parish, effective December 31, 2009. You have requested of this Office an Opinion regarding whether the governing authority of the Parish of Pointe Coupee may call a special election prior to your retirement date to give the Assessor-elect time in the office for orientation.

Since you plan to publicly announce your retirement in June 2009 and make it effective December 31, 2009, this creates an "anticipated vacancy" which is governed by La. R.S. 18:583.

Specifically, La. R.S. 18:583(C) states in pertinent part:

When an elected official has properly tendered a notice of retirement or resignation which specifies a prospective effective date, an anticipated vacancy shall be deemed to have occurred on the date the notice of retirement or resignation becomes irrevocable.

According to La. R.S. 18:654, the notice of retirement is not effective until it is received by the Secretary of State, at which time the retirement becomes irrevocable, and the vacancy is created.

Therefore, if you announce your retirement and forward a properly executed notice of your retirement of the Secretary of State, the retirement would become irrevocable when the notice of anticipated vacancy is received by the Secretary of State's Office. At that point a vacancy will occur.

La. R.S. 18:602 (E)(2)(a) states that the local governing authority shall issue a proclamation ordering a special election to fill the vacancy, within ten days after the vacancy occurs, if the unexpired term exceeds one year. The statute further states that the governor shall issue the proclamation calling for the special election should the local governing authority fails to issue the proclamation within the days after the vacancy occurs.

You were re-elected in 2007, without opposition, for another four-year term. If you forward a properly executed notice of retirement to the Secretary of State in June 2009, as you mention above, then you will have more than one year remaining on your term, and a special election to fill this vacancy must be conducted in accordance with La. R.S. 18:402(E).

La. R.S. 18:402(E) Special elections to fill newly created office or vacancy in office, states in pertinent part:

Special elections to fill newly created office or vacancy in office. An election to fill a newly created office or vacancy in an existing office, except the office of state legislator or representative in congress, shall be held on the dates fixed by the appropriate authority in the proclamation ordering a special election as follows:

(1) A special primary election shall be held on the first of the following days that is not less than eleven weeks after the date on which the proclamation calling the special primary election was issued:

(c) The third Saturday in October, when the special general election is held on the fourth Saturday after the third Saturday in October of 1985 and every fourth year thereafter.

The Secretary of State has prepared the 2009 election calendar in accordance with La. R.S. 18:402(E)(1)(c) which has designated the Qualifying for the Primary Election as August 12-14, 2009, the Primary Election date as being October 17, 2009, and the General Election date as being November 14, 2009.

Please note that the deadline for the governing authority to schedule this election with the Secretary of State is July 31, 2009. This means your resignation letter must be sent and received by the Secretary of State well in advance of this deadline in order to give the governing authority or the governor time to issue the proclamation calling for the special election.

Your successor will be elected no later than November 14, 2009, but must take the oath of office within thirty (30) days from receiving the commission from the Secretary of State. However, while your successor could possibly take the oath before your retirement date of December 31, 2009, he could not assume the office until January 1, 2010.

Therefore, it is the opinion of this office that if your notice of anticipated vacancy is sent to, and received by, the Secretary of State with more than one year remaining in your term, the governing authority, or the governor, shall issue a proclamation calling for a special election to fill the anticipated vacancy in the office Tax Assessor for the Parish of Pointe Coupee within ten (10) days of your letter of retirement being received by the Secretary of State at which time your retirement becomes irrevocable. The election may be held prior to your effective retirement date of December 31, 2009, if the notice is received by the Secretary of State in time to meet its 2009 election deadline; however, your successor may not assume the office until after your effective retirement date or no sooner than January 1, 2010.

We trust this answers your questions to your satisfaction. Please do not hesitate to contact this office should you have any further concerns regarding these issues.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By: _____
WILLIAM P. BRYAN, III
Assistant Attorney General

JDC/WPB, III/sfj

SYLLABUS

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DATE RECEIVED:

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William P. Bryan, III
Assistant Attorney General