

**DE 80-22 - July 29, 1980**

**Resign-to-Run Law  
Volunteer Fire Chief  
Section 99.012, Florida Statutes**

*To: Mr. Norman K. Staley, Chief, Volunteer Fire Department, Cross City, Florida*

*Prepared by: Division of Elections*

This is in response to your request for a formal advisory opinion pursuant to Section 106.23, F.S.

In your letter you ask whether a fire chief of a volunteer fire department need resign to run for a seat on the Cross City City Commission.

The Resign to Run Law, Section 99.012, F.S. (1979), applies to elected or appointive officials who seek other public elected office. The test to determine whether an individual is an officer is set forth in State ex. Rel. Clyatt v. Hocker, 22 So. 721 (Fla 1887) and State b. Sheats, 83 So. 508 (Fla. 1919): Essentially, the term officer implies some authority to exercise some portion of the sovereign power, either in making executing, or administering the law.

The fire chief of the Cross City Volunteer Fire Department cannot be said to exercise sovereign power. The chief receives no salary: his is reimbursed only to maintain and repair the firefighting equipment. The chief does not make, execute or administer the law; he only puts out fires with other volunteer firefighters.

The Resign to Run Law also provides that any individual who is a subordinate personnel need not resign to run... "unless such individual is seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote, or otherwise supervise that subordinate. However, any subordinate personnel shall take a leave of absence without pay from his employment during the period in which he is seeking election to public office.

A subordinate employee has been defined to be an appointed officer who otherwise would be required to resign from his current office when seeking to be elected to another. An appointed officer is one who is subject to the control and supervision of another and does not act independently pursuant to his own power.

A volunteer fire chief is not an officer, therefore, a volunteer fire chief need not resign-to-run for the office of City Commission and need not take a leave of absence without pay.