

**DE 83-09 - May 6, 1983**

**RESIGN TO RUN LAW  
s. 99.012, FLORIDA STATUTES**

*To: Mr. Ray Yeager, Hendry County Probation Officer, Room #507, Courts Building,  
Post Office Box 38, LaBelle, Florida 33935*

*Prepared by: Division of Elections*

Pursuant to your request, this is an Elections Opinion under Section 106.23(2), F.S.I on essentially the following question:

Must a County Probation Officer who is not a sworn law enforcement officer and who is a salaried employee of the Hendry County Board of Commissioners resign his position or take a leave of absence in order to run for the office of Sheriff?

You relate that a probation officer in Hendry County is an employee of the Board of County Commissioners, not the Sheriff; a probation officer is not a sworn law enforcement officer under Florida law, and has no power to carry a firearm or make arrests.

The office of Sheriff is a constitutional office created by Article VIII, Section 1 (d), Florida Constitution of 1968.

The Resign to Run Law requires an elected and appointed officer (such as the sheriff) to resign irrevocably when seeking an elected office, the term of which runs concurrently with the terms of office he or she currently holds. Section 99.012(2). The resignation requirement also applies to a subordinate personnel, police officer or deputy sheriff when they seek elected office held by one with the authority to appoint, employ, promote or otherwise supervise them, and who has qualified as a candidate for the public office. Section 99.012(7), F.S.

Whether or not there is a resignation, a subordinate personnel, deputy sheriff or police officer shall take a leave of absence without pay from his position during the period in which he is seeking election to public office. Section 99.012(7), F.S.

The term subordinate personnel means subordinate officer. Op. Atty. Gen. 079-81 (September 11, 1979); Division of Elections Opinion DE 83-2 (January 1, 1983). An officer is one who exercises some position of the sovereign power of the state by making, executing or administering the law. See ex. rel. Claytt v. Hocker, 22 So. 721 (Fla. 1897); State v. Sheats, 83 So. 508, (Fla. 1919) and 9 Fla. Jur. 2d, Civil Servants, Public Officers and Employees. Clearly, police officers, deputy sheriffs, and highway patrolmen are subordinate officers who exercise a share of the sovereign power to make arrests, execute warrants and enforce all laws within their jurisdiction.

As to a probation officer, it is necessary to employ the following analysis to determine if he is a subordinate officer: (1) Does the probation officer work directly under a constitutional or state officer? (2) Does the probation officer exercise some portion of the sovereign power and authority of an officer? (3) Is the subordinate part of a career service employment system?

Unlike a deputy sheriff, a probation officer neither works directly under a constitutional or state officer, nor comes within the definition of law enforcement officer as defined by action 943.10(1), F.S. While it is unclear exactly what powers are exercised by a probation officer, it does not appear that such personnel have a statutory grant of authority which could in any way be characterized as a grant of sovereign power. cf., Chapter 943, F.S. A probation officer is not an elected or appointed officer under any constitutional, statutory or charter provision that I am aware of and there is no indication that the position exercises sovereign power as defined in the cases and Attorney General's opinion cited herein.

As to the career service status of the probation officer in Hendry County, there is insufficient information to make a determination. Career service status is indicative of public employment which can be distinguished from public office. Public office is created by some constitutional or statutory grant of authority, which involves some portion of the sovereign power which is continuous in nature. Public employment is not created by force of law and thus lacks these characteristics.

Based on the foregoing, I am unable to determine that a probation officer is an officer within the meaning of the Resign to Run Law.

Because the term subordinate personnel means an appointed officer who is in a position which is subject to the control and supervision of another person who is an officer, it follows then that a probation officer who is not a subordinate officer is not a subordinate personnel within the meaning of the Resign to Run Law. Accordingly, a probation officer need not resign or take a leave of absence pursuant to action 99.012, F.S.

However, this opinion has not considered the possible dual employment ramifications should the county probation officer become elected. The dual employment aspect should be governed by county charter or ordinance, and we suggest that the opinion of the county attorney be obtained on this subject.