

RESCINDED

DE 84-17 - June 15, 1984

RESIGN TO RUN LAW s. 7.4.012(2), F.S.

To: Mr. L. Alden Farris, 528 6th Street, Port St. Joe, Florida 32456

Prepared by: Division of Elections

Pursuant to your request, this is a formal elections opinion under s. 106.23(2), F.S., on essentially the following question:

“Is a City Auditor-clerk, who is appointed by the Board of City Commissioners in a position without a fixed term, required to resign to run or obtain leave without pay, in order to run for the office of Clerk of the Circuit Court?”

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

The Resign to Run Law applies to officers either elected or appointed. An officer is defined as one who exercises some portion of the sovereign power, either in making, executing or administering the laws and “whose duties are continuous in their nature, and defined by rules prescribed by government, and not by contract, consisting of the exercise of important public powers, trusts, or duties, as a part of the regular administration of the government, the place and the duties remaining, though the incumbent dies or is changed.” State ex rel. Clyatt v. Hocker, 39 Fla. 477, 22 So. 721 (1887). See also State ex rel. Holloway v. Sheats, 83 So. 508 (Fla. 1919).

According to the information and the job description that you provided us, it is my opinion that you are an officer within the meaning of the Resign-to-Run Law. However, you are exempt from the resign to run requirements of a. 99.012(2), F.S., because of s. 99.012(7), F.S. That section provides that a subordinate personnel is not required to resign to run unless that person 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 personnel. However, that subordinate personnel is required to take a leave of absence from employment during the period in which he is seeking election to public office.

A subordinate personnel is an officer in a position subordinate to that of another, or one in a position that is subject to the control and supervision of another person who is his supervisor. AGO 079-81. The City Auditor-clerk works under the direction and is

responsible to the City Commission, and does not act independently of its power. He is hired by and works at the pleasure of the City Commission. You are, therefore, considered a subordinate personnel, and accordingly must take a leave of absence pursuant to s. 99.012(7), F.S.

However, as stated in DE 80-25 a subordinate personnel who is an unopposed candidate not actively campaigning for office, may resume his duties as long as he remains an unopposed candidate. If, and when, a write-in candidate is certified for the office of Clerk of the Circuit Court, you would again have to take a leave of absence without pay.

SUMMARY

The City Auditor-Clerk of the City of Port St. Joe is subordinate personnel within the meaning of the Resign to Run Law and must take a leave of absence without pay during the period in which he is seeking election to public office. However, if such subordinate personnel is an unopposed candidate and not actively campaigning, he may resume his duties as long as he remains an unopposed candidate.