

RESCINDED

DE 85-02 - April 8, 1985

RESIGN TO RUN LAW s. 99.012(7), F.S.

To: Mr. Neal D. Bowen, City Attorney, City of Daytona Beach, 150 Magnolia Avenue, Daytona Beach, Florida 32015

Prepared by: Division of Elections

Pursuant to your request, this is a formal elections opinion pursuant to Section 106.23(2), Florida Statutes, on the following question:

Pursuant to Section 99.012, Florida Statutes, may a police officer of the City of South Daytona who intends on running for a seat on the Volusia County School Board and who takes a leave of absence without pay during his campaign pursuant to Section 99.012(7), Florida Statutes, continue to receive sums of money from the City during his aforesaid leave of absence without pay, said monies derived from the officer's compensatory time and unused vacation time accumulated prior to his leave of absence?

A police officer of the City of South Daytona who is seeking election to the Volusia County School Board must take a leave of absence without pay pursuant to Section 99.012(7), Florida Statutes. Such leave of absence must begin no later than the date the police officer qualifies for election.

The Division of Elections has consistently opined that vacation time generally is defined in Florida law governing state employees as earned annual leave with pay - a form of leave of absence with pay. Rule 22A-8.10, Florida Administrative Code; Chapter 110, Florida Statutes. In the absence of legislative or judicial clarification the term leave of absence must be read strictly. DE 80-12 (May 21, 1980). It is my opinion that money derived from an officer's compensatory time falls within the same classification as unused vacation time.

Therefore, I do not believe that a police officer can take any form of paid leave, whether compensatory time or unused vacation time, during the period in which he is required to take a leave of absence without pay. See, DE 84-8 (February 9, 1984); 83-12 (July 27, 1983); 80-12 (May 21, 1980).

SUMMARY

A police officer who has taken a leave of absence without pay while seeking election to public office may not use compensatory time or unused vacation time during the required leave of absence.