

**DE 85-04 - April 23, 1985**

**RESIGN TO RUN LAW  
s. 99.012, F.S.**

*To: Mr. Edward Wall, Public Defender's Office, Post Office Box 1059, Starke, Florida 32091*

*Prepared by: Division of Elections*

This is a formal elections opinion pursuant to Section 106.23(2), Florida Statutes, on essentially the following question:

Must an investigator for the Public Defender's Office for the Eighth Judicial Circuit resign to run or take a leave of absence to run for the Chief of Police of Stake?

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. Section 99.012(2), Florida Statutes. The resignation requirement also applies to subordinate personnel, deputy sheriffs or police officers who seek 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. Section 99.012(7), Florida Statutes.

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 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. 621 (1887). See also State ex. rel. Holloway v. Sheats, 82 So. 508 (Fla. 1919).

An investigator with the Public Defender's Office is hired by the Public Defender. The duties of the investigator include defense investigations of crimes, locating witnesses, interviewing defendants and victims, and visiting crime scenes. Based on the information you have provided this office, it does not appear that you exercise any portion of the sovereign power, and, therefore, you are not an officer within the meaning of the Resign to Run Law.

The Resign to Run Law, as mentioned above, also applies to subordinate personnel. A subordinate personnel, however, must be an officer who otherwise would be required by the Resign to Run Law to resign from his current office when seeking election to another. DE 83-12, AGO 079-81. The law does not apply to an employee. An employee does not exercise in one's own right any sovereign power or a prescribed

independent authority of a governmental nature. State ex. rel. Holloway v. Sheats, supra. Since you are not an officer, you are not a subordinate personnel within the meaning of the Resign to Run Law but instead are an employee. The Resign to Run Law does not apply to employees and you are not required to resign or take a leave of absence to run for the Chief of Police of Starke.

However, you should note that this opinion is for purposes of the Resign to Run Law only. It does not take into account any other regulation that may require you to resign or take a leave of absence.

#### SUMMARY

An investigator for the Public Defender's Office for the Eighth Judicial Circuit is not an officer within the meaning of the Resign to Run Law and need not resign or take a leave of absence in order to run for Chief of Police of Starke.