

DE 86-18 - October 13, 1986

**RESIGN-TO-RUN; MAYOR'S AIDE;
SECTION 99.012, F.S.**

To: Mr. James R. Jarboe. 1602 1st Street, Neptune Beach Florida 32233

Prepared by: Division of Elections

This is in response to your request for an advisory opinion pursuant to Section 106.23(2), Florida Statutes, on the applicability of Florida's resign-to-run law, Section 99.012, Florida Statutes, to your particular circumstances. You advise that you are serving as an appointed administrative aide to the Mayor of the City of Jacksonville pursuant to the city charter and are considering running for a City of Jacksonville Council seat.

The resign-to-run law does not apply to your situation; therefore, you are not required to resign your position or take a leave of absence in order to run for the intended office.

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 99.01(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 only to elected and appointed officers. 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. Clatt vs. Hocker, 39 Fla. 477, 22 So. 721 (1887). See also State ex. rel. Holloway vs. Sheats, 83 So. 508 (Fla. 1919).

As mentioned above, the law also applies to subordinate personnel. The Division of Elections previously has determined that such a subordinate 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-86-01, 85-08, 83-12, 83-02; AGO 79-81. The resign-to-run 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. DE 86-01, 85-08; State ex. rel. Holloway vs. Sheats, supra.

I find no language in the applicable provision of the city charter that indicates that an appointed administrative aide is anything more than an at will employee; that is, an employee who serves at the pleasure of the employing authority. Since I am compelled to

determine that an appointed administrative aide is not an officer, he is not considered a subordinate personnel within the meaning of the resign-to-run law, but instead is considered to be an employee. In that the resign-to-run law does not apply to employees, an administrative aide appointed by the mayor and serving at the mayor's pleasure is not required to resign or take a leave of absence to run for a City of Jacksonville Council seat.

However, please note that this opinion is for the purpose of the resign-to-run law only and does not take into account any provision of law governing the City of Jacksonville which may require a resignation or leave of absence under the circumstances set out in your correspondence.

SUMMARY

An appointive administrative aide of the Mayor of the City of Jacksonville is not an officer or subordinate personnel within the meaning of the resign-to-run law and need not resign or take a leave of absence under that law in order to run for a city of Jacksonville Council seat.