

DE 88-18 - April 28, 1988

**Resign-to-Run Law
Section 99.012(2), (7), F.S.**

To: Ms. Charlotte Durno, Post Office Box 756, Moore Haven, Florida 33471

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the Resign-to-Run Law. You are a chief deputy property appraiser and are going to qualify as a candidate for county commission on July 18, 1988. The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

Your specific questions are as follows:

1. Whether you may accept contributions or make expenditures if you should designate a campaign treasurer and open a campaign depository before July 18, 1988?
2. Whether you must resign July 18 or take a leave of absence without pay?
3. If it is necessary for you to take a leave of absence without pay, may the leave of absence begin at the end of your accumulated compensatory or unused vacation time?

In reference to your first question, whether you may accept contributions or make expenditures should you designate a campaign treasurer and open a campaign depository before July 18, 1988, Section 106.021(1)(a), Florida Statutes, provides that when a person has appointed a campaign treasurer and designated a primary campaign account, that person may accept contributions and make expenditures. Therefore, once this has been done, you may begin accepting contributions and making expenditures.

In reference to your second question, whether you must resign July 18 or take a leave of absence without pay, the Resign-to-Run Law requires an elected or appointed officer to irrevocably resign when seeking an elected office which runs concurrently with the term of office he presently holds. Section 99.012(2), Florida Statutes.

Section 99.012(7), Florida Statutes, provides an exemption from the Resign-to-Run Law for three categories of persons: an officer who is a subordinate personnel, a deputy sheriff or police officer. Each of these three need not resign unless 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 person and has qualified for reelection to that office.

A chief deputy property appraiser is an officer and subordinate personnel within the meaning of the Resign-to-Run Law. Op. Div. Elect. Fla. 88-16.

Therefore, the exemption from the Resign-to-Run Law contained in Section 99.012(7), Florida Statutes, for an officer who is also a subordinate personnel and who is not running against an individual who has the authority to appoint, employ, promote or otherwise supervise that person, provides that you need not resign, but must take a leave of absence when seeking election to public office. When that leave of absence must begin has been addressed by the Division in two opinions this year. We opined that simply announcing your candidacy, or designating a campaign treasurer and a campaign account, does not trigger the leave of absence provisions of Section 99.012(7), Florida Statutes. Op. Div. Elect. Fla. 88-04, 88-03. However, the Division has not addressed whether accepting contributions and making expenditures will trigger the leave of absence provisions of Section 99.012(7), Florida Statutes.

In recent opinions, we have addressed the First District Court of Appeal's decision in Humphries v. Dept. of Highway Safety and Motor Vehicles, which held that the leave of absence provision is triggered when a person is "seeking election" which is manifested by such activities as hiring a campaign manager and preparing and distributing leaflets, cards and other election paraphernalia. 400 So.2d 1311 (Fla. 1st DCA 1981); Op. Div. Elect. Fla. 88-15, 88-04, 88-03. As we pointed out in a previous opinion, to arrive at this level of activity, a candidate must have declared his candidacy, designated his campaign treasurer and campaign depository, and raised sufficient funds to pay for any expenses incurred such as paying the campaign manager or paying for the campaign materials. Sections 106.021(1)(a), 106.11(3), Fla. Stat.; Op. Div. Elect. 88-04.

Therefore, limited acceptance of contributions and expenditures of funds is permissible as long as the individual is not actively "seeking election." The court in the Humphries' case focused on such key indicators of seeking election as hiring a campaign manager and preparing and distributing campaign material. These key indicators signal, in fact, to the general public that you are a candidate and are actively seeking election to a particular office. If contributions and expenditures are in preparation for a candidate's seeking election, such contributions and expenditures will not trigger the leave of absence provision. If, however, such contributions and expenditures are made by the candidate in seeking election, they will trigger the leave of absence provisions.

In reference to your third question, if you must take a leave of absence, may you use compensatory time or unused vacation time during the leave of absence. The Division has previously answered this question in the negative. Op. Div. Elect. 85-02, 80-12.

SUMMARY

A person may accept contributions and make expenditures if he has designated a campaign treasurer and opened a campaign depository. An officer who is also a subordinate personnel and who is not running against a person, who has the authority to appoint, employ, promote or otherwise supervise that person must take a leave of absence at least by the time he qualifies for office; however, when such person is actively seeking election, the leave of absence provision is triggered. Accepting limited contributions and making limited expenditures will not trigger the leave of absence provisions of the Resign-to-Run Law if the individual is not actively seeking election. When taking a leave of absence

without pay while seeking election to public office, a person may not use compensatory time or unused vacation time during the required leave of absence.