

DE 00-05 - May 2, 2000

**Resign-to-Run
§ 99.012, Fla. Stat.**

To: The Honorable Ion Sancho, Leon County Supervisor of Elections, 301 South Monroe Street, Tallahassee, Florida 32301

Prepared by: Division of Elections

This is in response to your letter of April 7, 2000, wherein you request an opinion on the resign-to-run law, section 99.012, Florida Statutes. You are the Supervisor of Elections for Leon County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an advisory opinion to you. Specifically, you ask if a subordinate officer in one county must resign upon qualifying for public office in another county?

The resign-to-run law applies to elected or appointed officers and certain subordinate personnel. An officer is defined as one who exercises some portion of the sovereign power, whether in making, executing or administering the law. *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); *Op. Att'y Gen. Fla. 80-01* (1980). Section 99.012(1)(b), Florida Statutes, defines "subordinate officer" as "a person who has been delegated the authority to exercise the sovereign power of the state by an officer. With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer." Subordinate officers are required to resign to run for another office in certain circumstances. Section 99.012(5)(a), Florida Statutes, provides:

A person who is a *subordinate officer*, deputy sheriff, or police officer must resign effective upon qualifying pursuant to this chapter if the person is seeking to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

(Emphasis added.)

As you can see, the above section makes no exception for persons running for an office in another county. I will assume that the subordinate officer will not be running against the officer's current supervisor for the new position for purposes of this opinion. That being the case, the subordinate officer *would not* be required to resign to run for office in another county. However, this scenario falls squarely within the provisions of section 99.012(5)(b), Florida Statutes. That section reads:

(b) Upon qualifying pursuant to this chapter, a subordinate officer, deputy sheriff, or police officer who is seeking public office and who is not required to resign under paragraph (a) must take a leave of absence without pay during the period in which he or she is a candidate for office.

In DE 95-03, the Division opined that a subordinate officer who is not required to resign has the option of taking an unpaid leave of absence or an irrevocable resignation that is effective at a later date. See *Gonzalez v. Vogel*, 616 So.2d 473 (Fla. 2d DCA 1993); Op. Div. Elect. 90-12 (March 29, 1990). This would allow a subordinate officer to continue to receive a salary while in his current position and in many cases, not result in the loss of a crucial employee's services during an election.

Thus, it is the opinion of the Division, that the subordinate officer must either take a leave of absence or submit an irrevocable letter of resignation. If the person loses the election in November 2000, there is nothing to prevent the current supervisor from rehiring the person.

SUMMARY

A subordinate officer who intends to run for office in another county must either take a leave of absence during the period of candidacy or submit an irrevocable letter of resignation. The resignation must be submitted at least 10 days prior to qualifying in order to receive the benefit of a prospective resignation date.