

DE 80-13 - June 16, 1980

Resign-To-Run City Clerk Of Lake Butler

To: Miss Jackie Johns, 235 N.E. 5th Avenue, Lake Butler, Florida 32054

Prepared by: Division of Elections

This is in response to your request for an opinion from this office pursuant to Section 106.23, F.S.

In your request, you posed essentially the following question: Must a person who is the City Clerk of the City of Lake Butler, Florida resign her position in order to seek election to the office of Supervisor of Elections of Union County.

In summary, you need not resign your position in order to seek election to the office of Supervisor of Elections of Union County. However, you must take a leave of absence without pay from your position during the period in which you are seeking election to the office of Supervisor of Elections. This leave of absence must begin no later than when you qualify as a candidate, i.e., when you file your qualifying papers with and pay the necessary qualifying fee to the Supervisor of Elections of Union County. The qualifying period runs from noon, July 8, 1980 to noon, July 22, 1980.

I have included a copy of the Resign-to-Run Law, Section 99.012, F.S., for your reference.

A candidate for public office must resign to run if the following statutory requirements are met: First, the appointed official must be an "officer" as distinguished from an "employee", for the Resign-to-Run Law applies only to "officers." See Division of Elections Official Opinion DE 80-5. Secondly, the term of office which the appointed official holds must run concurrently or overlap with the term of office which an appointed official seeks. Section 99.012(2), F.S. Third, the appointed official must not be a holder of a federal office. Section 99.012(4), F.S. Fourth, the appointed official must not be serving as a member of an appointive board or authority without salary. Section 99.012(5), F.S. Finally, the appointed official must not be exempted by Section 99.012(7), F.S., from the resignation requirements of Section 99.012(2), F.S.

While you have satisfied some of the Resign-to-Run requirements, it is the Division's opinion that you, as City Clerk, are exempted by Section 99.012(7), F.S., from the resignation requirements of Section 99.012(2), F.S.

It is our opinion that the City Clerk is an exempt subordinate personnel who is subject to the control and supervision of another. Attorney General Opinion 079-81. As Article VI, Section 56 of the Charter of the City of Lake Butler, Florida, shows the rights, powers, duties and functions of the City Clerk are under the direction and supervision of the City Council. Moreover, the City Clerk serves at pleasure of the City Council and may be dismissed without cause. Article III, Section 17 of the Charter of the City of Lake Butler, Florida.

Because the City Clerk is a subordinate personnel, she need not resign-to-run unless running for a public office that is currently held by an individual who has the authority to appoint, employ, promote, or otherwise supervise the City Clerk, and if that person has qualified as a candidate for reelection to that public office. Section 99.012(7). F.S. Because the Supervisor of Elections of Union County does not have the authority to appoint, employ, promote, or otherwise supervise the City Clerk of Lake Butler, the City Clerk need not resign-to-run for the office of Supervisor of Elections of Union County.

However, as the last sentence of Section 99.012(7), F.S., makes clear, the City Clerk, as a subordinate personnel, must take a leave of absence without pay from her employment during the period in which she is seeking election. This leave of absence must begin no later than when the City Clerk officially qualifies as a candidate for election to the office of the Supervisor of Elections. That is, the leave of absence must begin no later than when the candidate pays her qualifying fees with and files her qualifying papers with the Supervisor of Elections of Union County. The qualifying period runs from noon, July 8, 1980 to noon July 22, 1980.