

DE 80-36 - October 23, 1980

**Resign-To-Run Law
Section 99.012, F.S.**

To: Mr. Cliff Mason, 4285 Camden Road, Tallahassee, Florida 32303

Prepared by: Division of Elections

This is in response to your request for an advisory opinion pursuant to Section 106.23, Florida Statutes (1979), on the following questions:

1. Is an employee who exercises duties comparable to that of a deputy supervisor of elections, an officer who must resign to run for the office of supervisor of elections?
2. If not, is such an employee a "subordinate personnel" who must resign or take a leave of absence under Section 99.012(7), Florida Statutes (1979)?

The supervisor of elections is an elected constitutional officer (Article VIII, Section 1 (d), Florida Constitution of 1968). The supervisor, whose tenure and compensation are fixed by law, exercises sovereign power in performing the duties of a county elections officer (State ex. rel. Holloway v. Sheats, 83 So. 508 (Fla. 1919)). Appointed or elected officers who are seeking other public office must resign to run (Op. Atty. Gen. 079-81 (September 11, 1979)). Therefore, the question is whether a deputy supervisor or one who is exercising similar authority is an officer within the meaning of the resign-to-run law.

Under general law, deputy supervisors are appointed by the supervisor of elections and have the same powers as the supervisor. Section 98.271(1) and (2), Florida Statutes, (1979) states:

"(1) Each supervisor shall select and appoint, subject to removal by him, as many deputy supervisors as may be necessary, whose compensation shall be paid by the board of county commissioners and who shall have the same powers and whose acts shall be as effective as the acts of the supervisor. Each deputy supervisor of elections shall, before entering office, make an oath in writing that he will faithfully perform the duties of his office, which oath shall be acknowledged by the supervisor and filed with the clerk of the circuit court."

"(2) The supervisor may appoint as many deputy supervisors as he deems necessary for the purpose of registering voters and accepting changes in registration, and may limit the authority of such deputies to such duties."

While the above cited statute gives the deputy supervisor all the powers and duties of the supervisor of elections, under the direction of the supervisor, the statute implies that the supervisor can limit the duties of the deputies and that all actions of the deputies are subject to the over-all supervision and control of the supervisor of elections. It is my opinion that a deputy supervisor performs the duties of

the supervisor of elections without himself being vested with any of the sovereign power of the state. This opinion is supported by Op. Atty. Gen. 071-263 (August 31, 1971). There, one issue was whether an assistant state attorney was an officer within the meaning of the Florida Constitution. Under general law (Section 27.181(3)) an assistant state attorney performs most of the duties of the states attorney. Nonetheless, the attorney general found that the assistant was not an officer because he did not share in the essential prerequisite of office that is a tenure and compensation fixed by law and a commission under the Florida Constitution. On this point, I find a deputy supervisor to be comparable to that of an assistant states attorney. Accordingly, I opine that the deputy supervisor of elections are not officers and need not resign-to-run under the provision governing appointed or elected officers.

Although not an officer, the deputy supervisor of elections is a "subordinate personnel" who is subject to the control and supervision of the supervisor of elections (Section 99.012(7), F.S. (1979)). A subordinate personnel need not resign-to-run unless that individual is "...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 subordinate personnel, ... and who has qualified as a candidate for re-election to that public office" (Section 99.012(7), Florida Statutes (1979)).

Even if a subordinate person need not resign-to-run, he must take a leave of absence without pay from employment during the period in which he is seeking election to that office. Section 99.012(7), Florida Statutes, further states in pertinent part:

"Any such personnel, deputy sheriff, police officer, or other such individual shall take a leave of absence without pay from his employment during the period in which he is seeking election to public office."

The leave of absence provision under the resign-to-run law precluded the exercise of any duties of employment by the subordinate person. The law contemplates a complete separation from employment during the period that the subordinate person is seeking public office.

SUMMARY

An employee who is exercising authority similar to a deputy supervisor of elections is not an officer within the meaning of the resign-to-run law. Such an employee need not resign-to-run unless he is seeking to qualify for public office which is currently held by an individual who has authority to appoint or supervise him and who is qualified as a candidate for re-election to the public office. However, an employee who exercises the authority comparable to a deputy supervisor is a "subordinate personnel" under the resign-to-run law and must take a leave of absence during the period in which he is seeking election to public office. A leave of absence precludes any exercise of the duties of employment during the period that the subordinate person seeks public office.