

DE 90-12 - March 29, 1990

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

To: Mr. James M. Barton, II, Mr. Cass Castillo, Assistant State Attorneys, Office of the State Attorney, County Courthouse Annex, Fifth Floor, 800 East Kennedy Boulevard, Tampa, Florida 33602

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the Resign-to- Run Law, Section 99.012, Florida Statutes. The Division of Elections has authority pursuant to Section 106.23(2), Florida Statutes, to issue advisory opinions to several categories of persons, including candidates.

Your specific question is:

May an assistant state attorney who has filed for election as a county court judge resign to run pursuant to F.S. 99.012(2) in lieu of taking a leave of absence pursuant to F.S. 99.012(7)?

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), Fla. Stat. The Division has previously determined that an assistant state attorney is an officer within the meaning of the Resign-to- Run Law. Op. Div. Elect. Fla. 88-04, 80-37.

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 a police officer. Each of these 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 who has qualified for reelection to that office. As an alternative to resigning, these three categories of persons may, if not running against a person who is their current supervisor, "take a leave of absence without pay from his employment during the period in which he is seeking election to public office." See Section 99.012(7), Fla. Stat.

Both of you are considering running for county judge. No person against whom you will be running is your current supervisor. Therefore, under the Resign-to-Run Law, neither of you is mandated to resign your position as an assistant state attorney to run for the office of county judge. Your question is whether you may resign your positions as assistant state attorneys pursuant to Section 99.012(2), Florida Statutes, in lieu of taking leaves of absences pursuant to Section 99.012(7), Florida Statutes.

As you correctly state in your letter to the Division of Elections, the Division has not directly addressed the question of whether an officer who is a subordinate personnel has the choice of submitting an irrevocable letter of resignation pursuant to Section 99.012(2), Florida Statutes, or taking a leave of absence without pay from his employment during the period he is seeking election,

pursuant to Section 99.012(7), Florida Statutes.

It is our opinion that an officer who is a subordinate personnel may choose between submitting an irrevocable letter of resignation pursuant to Section 99.012(2), Florida Statutes, or taking a leave of absence without pay from his employment during the period he is seeking election pursuant to Section 99.012(7), Florida Statutes.

If the officer who is a subordinate personnel chooses to submit an irrevocable letter of resignation, such resignation must be submitted prior to his "seeking election to public office" so that it is clear that he is choosing the option available to him under Section 99.012(2), Florida Statutes, rather than Section 99.012(7), Florida Statutes. In addition, the resignation must be effective not later than the date he would assume office, if elected.

If the officer who is a subordinate personnel chooses to take a leave of absence without pay pursuant to Section 99.012(7), Florida Statutes, such leave must begin prior to his seeking election to public office.

SUMMARY

An officer who is a subordinate personnel may choose between submitting an irrevocable letter of resignation pursuant to Section 99.012(2), Florida Statutes, or taking a leave of absence without pay from his employment during the period he is seeking election pursuant to Section 99.012(7), Florida Statutes.