

DE 80-38 - November 4, 1980

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

*To: Mr. Edward A. Peruta, Candidate for City Council, 1656 — 28th Avenue, Vero Beach, Florida
32960 Prepared by: Division of Elections*

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This is in response to your request for an advisory opinion pursuant to Section 106.23(2), Florida Statutes (1979). As a candidate for city council, you have standing to request such an advisory opinion. Your question can be restated as follows:

Is the Finance Officer of the Clerk of the Circuit Court of Indian River County, who is seeking a seat on the Vero Beach City Council, an officer within the meaning of the resign-to-run law and must such officer resign to run or take a leave of absence?

Section 99.012(2) and (3), Florida Statutes (1979), the resign-to-run law, applies to elected or appointed officers. The law prohibits an officer from qualifying for other public office if any part of the term he seeks runs concurrently with the term of office he holds. Therefore, the first consideration here is whether the Finance Officer in the office of the circuit court clerk is an officer within the meaning of the resign-to-run law.

The test to determine whether an individual is an officer is set forth in Op. Atty. Gen. 80-1 (January 7, 1980); State ex. Rel. Clyatt v. Hocker, 22 So. 721 (Fla. 1897) and State v. Sheats, 83 So 508 (Fla. 1919). These cases define an officer as one who is delegated a portion of the sovereign power, who derives his position from a duly and legally authorized election or appointment and whose duties are continuous in nature and defined by law not contract. Public office entails an exercise of some portion of the sovereign power in making, executing, interpreting or administering the law.

The clerk of the circuit court acts as ex officio clerk of the board of county commissioners. In this capacity, the clerk is "auditor, recorder and custodian of all county funds", Article V, Section 16, Florida Constitution of 1968. These duties are further defined by Section 28.12, Florida Statutes (1979):

The clerk of the circuit court shall be clerk and accountant of the board of county commissioners. He shall keep the minutes and accounts and perform such other duties as provided by law. He shall have custody of the seal and affix the same to any paper or instrument as required by law.

Clearly, the clerk of the circuit court is a constitutional officer who exercises a share of sovereign power in the area of court administration and county financial administration. The clerk has the

authority to appoint deputy clerks who "shall have and exercise each and every power of whatsoever nature and kind as the clerk himself may exercise . . .", Section 28.06, Florida Statutes (1979).

While not a deputy clerk, the Finance Officer, is chief assistant to the clerk of the circuit court in carrying out the duties over county finances. The job description for the Finance Officer states in pertinent part:

[Finance Officer] Plans, directs and evaluates authorized activities and employee performance within the Clerk's Finance Department. Provides advice and assistance to the Clerk, County Commissioners and Division and department leads on all aspects of financial and business administration affecting their manners for responsibilities.

According to the job description, which may or may not be the actual duties of the position, the Finance Officer assists in managing the day-to-day operation of the finance division, but does not have the status of deputy clerk. Only deputy clerks share in the exercise of sovereign power vested in the clerk of the circuit court. Section 28.12, Florida Statutes (1979). Accordingly, the Finance Officer whose duties are not defined by law and who is not delegated sovereign power by law is not an officer for purposes of the resign-to-run law.

The second consideration is whether the Finance Officer is a subordinate personnel under Section 99.012(7), Florida Statutes (1979), which states:

For the purposes of this section, no individual who is a subordinate personnel, deputy sheriff, or police officer need resign pursuant to subsection (2) or subsection (3) unless such 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, deputy sheriff, or police officer and who has qualified as a candidate for reelection to that public office. However, 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.

A subordinate personnel need not resign to run unless he is seeking to qualify for a public office which is currently held by an individual who has the authority to appoint or otherwise supervise a subordinate and who has qualified as a candidate for reelection to that public office.

While there has been no judicial construction of the term "subordinate personnel", it is generally construed to mean one who is subject to the control and supervision of another and who does not act entirely pursuant to his own power. An examination of the job description submitted for Finance Officer reveals that this employee is such a subordinate personnel who carries out his official duties under the overall supervision and control of the clerk of the circuit court.

Therefore, the Finance Officer is a subordinate personnel who need not resign to run unless he is running against an individual who has the authority to appoint or supervise him and who has qualified for reelection to that office. If the Finance Officer is not running against such person he must still take

a leave of absence without pay for the period in which he is seeking election to public office.