

DE 87-07 - July 23, 1987

Resign-to-Run Law
Section 99.012(2), (3) and (7), Florida Statutes

To: Honorable Penny Halyburton, Supervisor of Elections, St. Johns County, Room 337, St. Johns County Courthouse, St. Augustine, Florida 32084

Prepared by: Division of Elections

This is in reference to the Resign-to-Run Law, Section 99.012, Florida Statutes. You have asked the following question:

Is it necessary for an investigator for a State Attorney who is also an elected city commissioner to resign or take a leave of absence from either of both jobs prior to opening a campaign account to run for sheriff?

The Resign-to-Run law requires an elected or appointed public officer to irrevocably resign when seeking an elected office, the term of which runs concurrently with the term of office he or she currently holds. Section 99.012(2), Florida Statutes. An officer is defined as one who exercises some portion of the sovereign power, either in making, executing or administering the laws and "whose duties are continuous in their nature, and defined by rules prescribed by government, and not by contract, consisting of the exercise of important powers, trusts, or duties, as a part of the regular administration of the government, the place and the duties remaining, though the incumbent dies or is changed." 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).

The position of city commissioner clearly falls within this definition. Therefore, if the city commissioner term of office, or any part of the term, runs concurrently with the term of office for sheriff, the person must resign his position as city commissioner not less than 10 days prior to the first day of qualifying for sheriff. He also has the option of resigning immediately, in which event he may qualify as a non-office holder. McClung v. McCauley, 238 So.2d 667 (Fla. 4th DCA 1970). See also Op. Div. Elect., 81-5 (Nov. 18, 1981). There are no provisions in the Resign-to-Run Law for taking a leave of absence from an elected position to run for another elected position nor is an officer required to resign when he opens a campaign account.

The resignation requirement also applies to subordinate personnel, deputy sheriffs or police officers who seek an elected office held by one with authority to appoint, employ, promote or otherwise supervise them and who has qualified as a candidate for reelection to that public office. Section 99.012 (7), Florida Statutes. An investigator for the State Attorney is hired by the State Attorney and is subordinate to the State Attorney; he is an employee, not an officer. Since the investigator is not seeking to qualify for a public office which is "held by an individual who has the authority to appoint, employ, promote, or otherwise supervise" that person, he need not resign or take a leave of

absence from his position as investigator for the State Attorney.

SUMMARY

An investigator for the State Attorney who is also an elected city commissioner must resign from the office of city commissioner at least 10 days prior to the first day of qualifying for sheriff or he may resign immediately and qualify for sheriff as a non-office holder. He does not have to resign or take a leave of absence from his position as investigator for the State Attorney to run for sheriff.