

April 19, 2004

Mr. Joseph L. Cook
PO Box 541116
Opa Locka, Florida 33154

Re: DE 04-04
Section 99.012, Florida Statutes
“Resign to Run”

Dear Mr. Cook:

This is in response to your request for an advisory opinion regarding the “Resign to Run” law. You are a candidate for the office of State House Representative for District 103 and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You ask the following question:

Must an investigator with the public defender’s office for Miami-Dade County, Florida resign to run for the office of state representative for House District 103?

The short answer to your question is no. You do not have to resign as investigator for the office of the Miami-Dade public defender in order to run for the office of state representative for House District 103.

Section 99.012, Florida Statutes, also known as the “Resign to Run” law, requires that an officer or subordinate officer whose current term runs fully or partly concurrent with the term of the office for which he or she wishes to become a candidate, resign the office presently held. A subordinate officer is defined as a person who has been delegated the authority to exercise the sovereign power of the state by an officer¹. As set forth in the Division of Elections’ Formal Opinions DE 85-04 and DE 87-07, the resign to run law does not apply to employees since they

¹ The term “officer” is also defined in section 99.012, Florida Statutes. “Officer” means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the State.

do not exercise in their own right any sovereign power². I am enclosing copies of those opinions for your review. Please note that due to statutory changes, subordinate officers, deputy sheriffs, and police officers are no longer required to take a leave of absence in order to run for office.

Based on your representations, it is my understanding that your duties as an investigator with the Public Defender's office include investigating crimes, transporting prisoners, locating witnesses, interviewing defendants and victims, and reporting back to the public defenders. You are therefore not an officer or subordinate officer within the meaning of the resign to run law, and are instead an employee. Because the resign to run law is not applicable to employees, you do not need to resign to run for the office of state representative for House District 103.

SUMMARY

An investigator for the public defender's office for Miami-Dade County is not an officer or subordinate officer within the meaning of the resign to run law and therefore does not need to resign in order to run for the office of state house representative.

Sincerely,

Edward C. Kast
Director, Division of Elections

Prepared by:
Marielba Torres
Assistant General Counsel

ECK/MTD/ccm

Enclosures

² In *State ex rel. Holloway v. Sheats*, 83 So. 508, the Supreme Court of Florida determined that "An employment does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes, perhaps, the most decisive difference between an employment and an office..."