

**DE 076-04 - July 13, 1976**

**CHAPTER 99.012, FLORIDA  
STATUTES — RESIGN TO  
RUN LAW**

*To: Honorable Earl Rich, Clerk of Circuit Court, Highlands County Courthouse, Sebring, Florida 33870 and Honorable William S. Tillett, Member, School Board of Broward County, 1320 Southwest Fourth Street, Fort Lauderdale, Florida 33312*

*Prepared by: Division of Elections*

You have requested of this office an opinion concerning the applicability of Section 99.012, Florida Statutes, the "Resign to Run Law", to members of district school boards.

The "resign to run law" applies to anyone and everyone who seeks to qualify for public office the term of which office, or any part thereof, runs concurrently with the term of office now occupied by the aspirant.

Members of district school boards, and any other elective or appointive office, do come within the contemplation of Section 99.012, and vacancies created by compliance with Section 99.012, Florida Statutes, would be filled as provided therein at election. *Ballard v. Cowart*, 238 So.2d 484 (2 Fla. Ap. 1970); *Orange County v. Gillespie*, 239 So.2d 132 (4 Fla. Ap. 1970).

Public employees, such as school principals or teachers, are not comprehended by Section 99.012, according to the very terms of that section which treats of aspirants to public office who already hold "elective or appointive office..."

There appears to be some disagreement respecting the applicability of Section 99.012 to such functionaries as police officers, deputy sheriffs, assistant state attorneys or assistant public defenders who seek to qualify for public office. It would appear that such aspirants would not have a term of office which might, in whole or in part, run concurrently with the term of office aspired to. In this respect such class of aspirants would appear to be more nearly like employees, although such class of employees appears clearly to participate in functions associated with the holding and execution of office.

In opinion of the Attorney General, 070-118 (1970), it was ruled that an assistant public defender is not an officer as contemplated by the "resign to run law" in as much as the law specifies neither tenure nor specific official duties of or for an assistant public defender. (It should be noted that since that opinion was rendered, the law now provides for the public defender to "appoint" rather than to "hire" assistant public defenders.)

In opinion of the Attorney General, 071-263 (1971), it was ruled that an assistant state attorney is not an officer within the contemplation of the prohibition of Article II, Section 5 of the Florida Constitution, on dual office holding.

In opinion of the Attorney General, 071-296 (1971), it was ruled that a part-time assistant state attorney is not an officer within the contemplation of the prohibition upon dual office holding imposed by Article II, Section 5 of the Constitution, there advising that part-time assistant state attorneys may hold office as city councilman.

However, by letter of July 3, 1972, the Attorney General in an unnumbered opinion (file #3853), opined that the "resign to run law" applies to a municipal police officer seeking to qualify for other public office. This ruling rested upon the Supreme Court Opinion in *Curry v. Hammond*, 16 So.2d 523 (Fla. 1944), treating of accrued earnings during suspension.

By unnumbered opinion of March 1, 1974, the Attorney General, relying upon previous numbered opinions, advised that the term "office" implies a delegation of a portion of the sovereign power to the person filling such a position. A municipal police officer, it was there ruled, would be in violation of the constitutional prohibition of dual office holding were he to seek to qualify for the office of municipal councilman without first complying with the provisions of Section 99.012, Florida Statutes.

Finally, by unnumbered opinion of July 23, 1975 (file #10351), it was ruled that a city patrolman "should comply with the resign-to-run law in view of judicial decisions holding that police officers are officers of the municipality they serve. See: *Curry v. Hammond*, 16 So.2d 523 (Fla. 1944); *Modsley v. City of North Lauderdale*, 300 So.2d 304 (4 D.C.A. Fla. 1974)..."

Although the applicability of the "resign to run law" to the class of assistant state attorneys, deputy sheriffs, police officers and the like is obviously not settled, this office would advise that such functionaries ought to comply with Section 99.012, Florida Statutes.

In the case of home rule or charter counties, the applicable home rule charter should be consulted.

Your inquiries are answered accordingly.