

**DE 077-35—December 6,1977**

**RESIGN-TO-RUN  
LAW SECTION  
99.012, F.S.**

*To: Hugh N. Smith, Esq., P.O. Box 2917, Clearwater, Fl 33517*

*Prepared by: Division of Elections*

Your have requested an opinion of this regard to, substantially, the following question:

Is the Resign-to-Run Law applicable to an individual serving in the capacity of city attorney for one municipality who intends to be a candidate for public office in another municipality?

The factual circumstances you have noted are that your law firm has been retained as city attorney for a municipality. Pursuant thereto yourself and another attorney in the firm perform the work required of this client. You have now decided to seek public office in another municipality in which you reside.

The Resign-to-Run Law reads in pertinent part:

"No individual may qualify as a candidate for public office v/ho holds another elective or appointive office, whether state, county, or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning from such office not less than 10 days prior to the first day of qualifying for the office he intends to seek.. ." Section 99.012(2), F.S.

In the preamble to the law as enacted, the Legislature indicated the purpose of the act was two — fold:

1) To prevent the inequity of a public officer from using the "prestige and power" of that office to further his candidacy for higher office; and 2) To avoid the confusion and cost of special elections to fill unexpired terms of office. Chapter 70-80, Laws of Florida.

In answering your question, it is necessary to determine if you are a public officer as contemplated by the law. It has been long established in this state that the term public office "embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law, and not by contract". State ex. rel. Holloway v. Sheats, 83 So. 508 (FLA. 1919). In a more recent statement, after surveying various court decisions and Attorney General opinions, a November 15, 1977 staff report of the Florida House of Representatives Election Committee concluded, "... the Resign-to-Run law applies only to those public officers who receive a salary and who exercise the sovereign powers of the State".

In your situation, a salary is not paid to you; rather through a contractual attorney-client relationship, your law firm is paid a fee by virtue of being retained as the city attorney. The

relationship is not of any set duration, but is subject to termination by either party. Your firm has assigned you and another attorney to handle the city's work, which can be reassigned at any time.

The Attorney — General has rendered opinions regarding the application of this law to certain county legal officers. One such opinion determined the law was inapplicable to a county attorney employed by the county commissioners under the authority of Section 125.01(1)(6), F.S., which authorizes the retaining of legal counsel. OP. Atty Gen. 072-176 (May 19, 1972). A similar conclusion was reached regarding an appointed county prosecuting attorney. Op. Atty. Gen. 071-347 (October 21, 1971). The law was determined to apply to a county solicitor who by reason of being elected to a set term, rather than being employed, was found to be a public officer. Op. Atty. Gen. 072-175 (May 19, 1972).

Your situation is analogous to those noted above where the law was found not to apply by virtue of this employment relationship. Your law firm has been retained in an employment relationship and you have been assigned by virtue of that employ to perform the job contracted for by the city.

Accordingly, I see no public office which would become vacant requiring any special election procedure as contemplated by the above — noted second purpose of the Resign-to-Run Law. Furthermore, as you intend to be a candidate in another municipality, I fail to see any need to apply the first purpose of the act which was to prevent officials using the power and prestige of their offices to be elected to higher office.

Based on the factual circumstances presented, your question is answered in the negative. It would be advisable that you review the provisions of the Code of Professional Responsibility regarding any legal ethics implications.

#### Summary

An individual serving as a city attorney by virtue of his law firm being so retained is not subject to the Resign-to-Run Law as a candidate for public office in another municipality.