

DE 80-14 - June 3, 1980

Resign-to-Run Law

To: Richard L. Wilson, II, 1056 Almeda Street, Jacksonville, Florida 32209

Prepared by: Division of Elections

This is in response to your request for a formal opinion from this office pursuant to Section 106.23, F.S.

In your letter, you asked whether a professor on continuing contract at Florida Junior College at Jacksonville is required to resign-to-run for a seat on the Duval County School Board.

I am of the opinion the professor need not resign-to-run for the seat on the Duval County School Board. This is because the Resign-to-Run Law applies only to officers, and not to employees. An examination of the well-settled definition of "officer" as set forth in State v. Sheats, 83 So. 508 (Fla. 1919), and of Section 240.335, Fl.S., which authorized the employment of community college professors, shows that community college professors are employees, not officers.

However, you should be aware that this ruling is for purposes of the Resign-to-Run Law only. This opinion does not consider the possible application of the fact situation you posed to other laws which may affect your ability to pursue the seat on the Duval county School Board. These other laws that should be considered are: (1) the common law rule prohibiting the holding of two incompatible offices; (2) Chapter 110, F.S., which restricts the ability of Florida civil service employees to seek public office; (3) rules promulgated by the State Board of Education which might prohibit community college professors from pursuing public office; and, (4) the Little Hatch Act, which might prohibit your running for a seat on the Duval County School Board. The possible application of these laws to your fact situations is further explained in Attorney General Opinion 077-31, which I have attached for your convenience. I have made no attempt to rule on the possible application of these laws to your fact situation because I am not statutorily authorized to do so. The authority of the Division of Elections to issue binding opinion is limited to questions concerning the Election Laws, Chapters 97-106, F.S. The above mentioned laws do not fall within those chapters.