

DE 82-10--June 11, 1982

RESIGN-TO-RUN s. 99.012, F.S.

To: Mr. Robert B. Johnson, 209 Cedar Street, Fernandina Beach, Florida 32034

Prepared by: Division of Elections

This is in response to your request for an opinion on substantially the following questions:

1. Does an Assistant Superintendent of Instruction for the Nassau County School System who is recommended by the Superintendent and appointed by the Board have to resign or take a leave of absence from his position prior to qualifying to seek election as a school board member under s. 99.012, F.S.?
2. If the answer above is negative, would it make any difference if the opponent of the Assistant Superintendent is a school board member seeking re-election?

Florida's Resign-to-Run law is said to serve two purposes: to prevent an officeholder from using the power and prestige of one office to seek another and to spare the taxpayer the expense of having to finance a special election when an incumbent officeholder is elected to another office and is, therefore, compelled to resign from one he or she currently holds. See the preamble to Ch. 70-80, Laws of Florida; AGO 079-81, dated September 11, 1979.

I am of the view the Resign-to-Run law, s. 99.012, F.S., would not require you as an Assistant Superintendent to resign your position to run for a seat on the school board. This is because the Resign-to-Run law applies only to officers and not employees. The facts given in your letter, indicate that you are a contractual employee although you are appointed by the Superintendent and approved by the School Board. Therefore, you would not have to resign or take a leave of absence to seek a seat on the school board.

Your first question is answered accordingly.

Regarding your second question, it is assumed that you have reference to s. 99.012(7), F.S. (1981), which refers to subordinate personnel taking a leave of absence without pay from his or her employment during the period in which such person is seeking election to public office which is currently held by an individual who has authority to appoint, employ, promote or otherwise supervise him. While the elective school board is your ultimate employer, the Superintendent is your immediate employer and is the person responsible for appointing and supervising you. Thus, you are a subordinate employee of the Superintendent but not of the school board. Therefore, I am of the opinion that you are not required by s. 99.012(7), F.S., to take a leave of absence to run against an incumbent member of the school board seeking re-election.

Please note that this ruling is for purposes of the Resign-to-Run law only. You should check the personnel rules of your local school district for any rules which may require resignation or taking a leave of absence. This office does not have authority to give opinions on such local rules.