

DE 83-02 January 10, 1983

RESIGN-TO-RUN, s. 99.012(2) F.S.

To: Mr. Glenn Bright, Director, Civil Defense and Emergency Medical Services, 17 South Vernon, #178, Kissimmee, Florida 32741

Prepared by: Division of Elections

Pursuant to your request, this is a Division of Elections Opinion under Section 106.23(2), F.S. on essentially the following question:

Must the county Director of Civil Defense and Emergency Medical Services resign or take a leave of absence in order to seek re-election to the city council of St. Cloud, Florida?

Mr. Bright presently serves on the city council of St. Cloud, Florida and is seeking re-election in March, 1983. Subsequent to his election, Mr. Bright was named Director of Civil Defense and Emergency Medical Services for Osceola County.

In seeking re-election to the city council, Mr. Bright must again qualify for office and he is faced with the question as to whether to resign or take a leave of absence from his county post.

In rendering opinions on the Resign to Run law, action 99.012, F.S., (1981), the Division places paramount importance on effectuating the major purposes of the law, which are: (1) to prevent an officeholder from using the power and prestige of one office to seek another; (2) 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 the one he or she currently holds. See Preamble, Chapter 70-80, Laws of Florida; Holley v. Adams, 228 So. 2d 401 Fla. (1970). These purposes are accomplished when an elected or appointed officeholder is required by law to resign when he seeks a public office, the term of which overlaps or runs concurrently with the term of office which he currently holds.

The Resign to Run Law was amended in 1979 to provide that a subordinate personnel, deputy sheriff or police officer need not resign unless he or she seeks office currently held by one with the authority to hire or fire them. However, such subordinate personnel, deputy sheriff or police officer must take a leave of absence from employment during the period in which he is seeking election. Section 99.012(7), F.S. (1981).

The Resign to Run Law applies only to officers, either elected or appointed. An officer has been defined to be one who exercises some portion of the sovereign power "...and whose duties are continuous in their nature, and defined by rules prescribed by government, and not by contract, consisting of the exercises of important public powers, trust, or duties, as a part of the regular administration of the government. State exrel.

Clyatt L. Hocker, 22 So. 721 (Fla. 1897); State Rev Sheats, 83 So. 508 (Fla. 1919).

The Resign to Run Law also applies to "subordinate personnel" who seek to qualify for an office held by someone who has the power to hire or promote them. The term subordinate personnel is not expressly defined in the Resign to Run Law or any other place in the Election Code; neither are there judicial decisions on the term. The Attorney General has rendered an opinion which states, "...a subordinate personnel must be an officer who would otherwise be required by the terms of the Resign to Run Law to resign from his current office when seeking to be elected to another." Opp Atty Gen 079-81 (September 11, 1979). Because only officers are subject to the law, those exempted, such as subordinate personnel, must be officers.

The question here is whether the county Director of Civil Defense and Emergency Medical Services is an officer or a subordinate personnel within the meaning of the law.

Although the request for an opinion gives very little information about the nature of the position, a director of Civil Defense and Emergency Medical Services is not an elected officer under any constitutional, statutory or charter provision that I am aware of; nor is there any other indication that the position exercises sovereign power as defined in the case decision cited herein. Although it is clear that Florida law requires every political subdivision to appoint a Civil Defense Director, the governing body of the political subdivision exclusively directs and controls the operation of the local civil defense office and the director is only a coordinator who acts in liaison with other civil defense organizations. Section 252.38, F.S. f1982).

Therefore, I am unable to determine that the Director of Civil Defense and Emergency Medical Services is an officer within the meaning of the Resign to Run Law.

Because the term subordinate personnel means an appointed officer who is in a position which is subject to the control and supervision of another person who is an officer, it follows then that a Director of Civil Defense is not a subordinate personnel within the meaning of the Resign to Run Law. There is no indication by statute, charter provision or constitution that a Civil Defense Director exercises any share of the sovereign power bestowed upon elected or appointed officials.

SUMMARY

The Director of Civil Defense and Emergency Medical Services in Osceola County is not an officer or a subordinate personnel within the meaning of the Resign to Run Law and need not resign or take a leave of absence in order to run for city council in St. Cloud, Florida.