

DE 83-05 March 3, 1983

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

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Prepared by: Division of Elections

This is a formal Division of Elections Opinion pursuant to s. 106.23(2), Florida Statutes (1981) on essentially the following question:

Must a member of an appointed municipal Code Enforcement Board, who is not paid a salary or compensation, but receives expenses and an honorarium, resign or take a leave of absence in order to run for office on the city commission?

The resign-to-run law (s.99.012, F.S.) contains an exception which exempts a person "who serves as a member of any appointed board or authority without salary" from the resignation requirements of that section. (emphasis added).

Section 4(C) of Highland Beach Town Ordinance No. 457 states as follows:

"The members of the Enforcement Board shall elect a Chairman from among its members. The presence of four (4) or more members shall constitute a quorum of the Enforcement Board. Members shall serve without compensation, but may be reimbursed for such travel expenses and such honorariums as are received by members of other appointed Boards, as may be authorized by the Town commissioners." (emphasis added).

Receipt of expenses such as mileage, per diem or travel are not considered to be salary so as to bring a member of an appointed board or authority within the provisions of the resign-to-run law. (DE 80-22, July 29, 1980); see also Opp Atty Gen, 073-456 (December 10, 1973). An honorarium is an honorary payment or reward usually given as compensation for services on which custom or propriety forbids any fixed business price or payment to be set or for which no payment can be enforced by law. Webster's Third New International Dictionary, Unabridged, (1966 edition). On the other hand a salary, in the ordinary meaning of the term, is a fixed compensation paid regularly for services. An honorarium is not required to be paid. In the present case, the honorarium is not fixed nor is there any expectation or right to receive it as a member of the Highland Beach Code Enforcement Board.

Therefore, a person who is appointed to the Code Enforcement Board of Highland Beach is within the above-mentioned exception to resign-to-run law. Such person need not resign or take a leave of absence in order to run for elected office on the city commission. However, be aware of the ramifications of holding a seat on the City Commission and on the Code Enforcement Board simultaneously. See Article II, Section 5 of the Florida Constitution of 1968.

SUMMARY

A member of the Municipal Code Enforcement Board who is serving without salary or fixed compensation but receives an honorarium is within an exception to the resign-to-run law and need not resign or take leave of absence in order to qualify as a candidate for elected municipal office.