

RESCINDED

DE 83-12--July 27, 1983

RESIGN TO RUN LAW SECTION 99.012, FLORIDA STATUTES

To: Honorable H. Jerome Davis, Supervisor of Elections, Bradenton County Courthouse, Room 257, Bradenton, Florida 33505

Prepared by: Division of Elections

Pursuant to your request, this is an elections opinion under Section 106.23(2), fast on essentially the following questions:

- (1) May an assistant supervisor of elections who did take a leave of absence without pay in accordance with s. 99.012(7), F.S. in order to seek election as the supervisor of elections use paid vacation leave during the required leave of absence?
- (2) May the assistant supervisor of elections take a temporary job with another government agency during the leave of absence?

The Resign to Run Law requires an elects and appointed officer to resign irrevocably when seeking an elected office, the term of which runs concurrently with the term of office he or she currently holds. Section 99.012(2), F.S. The resignation requirement also applies to a subordinate personnel, police officer or deputy sheriff when they seek elected office held by one with the authority to appoint, employ, promote or otherwise supervise them, and who has qualified as a candidate for the public office. Section 99.012(7), F.S.

Whether or not there is a resignation, subordinate personnel, deputy sheriff or police officer shall take a leave of absence without pay from his position during the period which he is seeking election to public office. Section 99.012(7), F.S.

The term subordinate personnel means subordinate officer. Opp Atty Gen, 079-81 (September 11, 1979); DE 83-2 (January 1, 1983). An officer is one who exercises some portion of the sovereign power of the state by making, executing or administering the law. See ex. rel. Claytt v. Hocker, 22 So. 721 (Fla. 1897); State v. Sheats, 83 So. 508, (Fla. 1919) and Fla. Jur. 2d, Civil servants, Pubic officers and Employees.

An assistant supervisor of elections (deputy supervisor of elections) can be characterized as a subordinate officer by virtue of the specific powers delegated to the position under s. 98.271(1), F.S. which states:

“(1) Each supervisor of elections shall elect and appoint, subject to removal by him, as many deputy supervisors as may be necessary, whose compensation shall be paid by the supervisor of elections and shall have the same powers and whose acts shall be as

effective as the acts of the supervisor. Each deputy supervisor of elections shall, before entering office, make an oath in writing that he will faithfully perform the duties of this office, which oath shall be acknowledged by the supervisor and filed in the office of the supervisor.” (emphasis added)

It appears that the assistant supervisor of elections works directly under an elected officer and exercises some portion of the sovereign power vested in that office, so as to be characterize as a subordinate officer within the meaning of the Resign to Run Law. Therefore, it is correct to assert that the assistant supervisor of elections must take a leave of absence without pay from his position during the period which he is seeking election to the office of supervisor of elections.

As to whether the assistant supervisor of elections can take paid vacation leave during the required leave of absence, I refer to the express language of s. 99.012(7) which states in pertinent part:

“(7) However, any such personnel, deputy sheriff, or police officer shall take a leave of absence without pay from his employment during the period in which he is seeking election to public office.” (emphasis added)

¹Unless otherwise indicated all references are to Florida Statutes, (1981). The amendments to s. 99.012 as a result of Chapter 83-15, Laws of Florida, are not material to the questions posed herein.

While I am not familiar with the personnel policies of Manatee County, "vacation time" is generally defined in Florida law governing state employed as earned annual leave with pay - a form of leave of absence with pay. Chapter 110, F.S.; Florida Administrative Code Rule 22A-8.10. Therefore, I do not believe that the assistant supervisor or elections can take any form of paid leave during the period in which he is required to take a leave of absence without pay.

As to whether the assistant supervisor of elections may take a temporary job within government during his required leave, I find no provisions of the statutes, case law or attorney generals opinions on this point. In essence, I find no authority to prohibit a subordinate officer such as the assistant supervisor of elections from engaging in other government employment during the required leave of absence so long as he is not an officer or subordinate officer within the meaning of the Resign to Run Law. The purposes of the resign to run law are accomplished when the subordinate officer takes a leave of absence from his employment in the supervisor of elections' office, thereby preventing any conflict of interest between his role as assistant supervisor and candidate for elected office.

Nevertheless, any person who occupies public employment must be aware of other laws which might limit the right of public employees to seek and hold public office and the appropriate county ordinances should be consulted to determine if such a limitation exists. Section 110.233, F.S. (1981) prohibits a state employee from holding or

being a candidate for public office while in the employment of the state unless there is express approval from the Department of Administration and the agency for which the employee works. See Florida Administrative Code Rule 22A-13.

I decline to render an opinion as to the hypothetical cases raised in the request for opinion. I am without knowledge about the specific job duties and responsibilities of the Tax Collector or Property Appraiser and employees thereunder so as to determine if the Resign to Run Law is applicable.

SUMMARY

An assistant supervisor of elections who must take an unpaid leave of absence in order to seek election as supervisor of elections may not take paid vacation leave during the required leave of absence. He may take other government employment during the leave of absence so long as it is not as an officer or subordinate officer within the meaning of the Resign to Run Law.