

DE 83-13 - August 3, 1983

**RESIGN TO RUN
S. 99.012, F.S. (1981)**

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Prepared by: Division of Elections

This is a formal Elections Opinion pursuant to action 106.23(2), F.S. regarding essentially the following question:

Must a member of the Civil Service Commission of the City of Springfield, who receives a monthly salary for service on the commission resign that position in order to run for a city commission seat for the City of Springfield, the term of which overlaps his present term on the Civil service Commission?

The Resign to Run Law requires an elected and appointed officer to resign irrevocably when seeking an elected office, the term or any part 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 authority to appoint, employ, promote or otherwise supervise them, and who has qualified as a candidate for public office. Section 99.012(7), F.S.

The Resign to Run Law applies to officers, either elected or appointed. An officer is defined as 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 ex rel. Clyatt v. Hocker, 22 So. 721 (F1a. 1897); State v. Sheats, 83 So. 508 (F1a. 1919).

There are exceptions to the Resign to Run Law. Section 99.012(5). F.S. states: “No person who serves as a member of any appointive board or authority without salary shall be in violation of this section by reason of holding any such officer.” (emphasis added)

However, in the present case Career Service Commissioners who are salaried would not be exempt from the Resign to Run Law under Section 99.012(5), F.S. (1981).

The Charter provisions of the City of Springfield give some evidence of the powers and duties of the Civil Service Commission. The Civil service Commissioners are more than just advisors; they register and rank all employees under the career service, prescribe and administer civil service examinations, make recommendations directly to the city commission for hiring career service employees and have the authority to hire an

independent staff. (Section 6 of the Ordinance states: . . . “provided such clerks, stenographers or assistants shall not be employees or officials of the City of Springfield either regular or part timeout Chapter 63-1946, Laws of Florida.)

Based on the foregoing, I believe there is sufficient evidence that career service commissioners exercise a portion of the sovereign power so as to be considered as appointed officers. As such, they would be subject to the Resign to Run Law.

In the present case, the term of the civil service commissioner expires in December, 1983. The City Commission term which he seeks begins September, 1983. Part of the terms are concurrent, and therefore the Civil Service commissioner must resign irrevocably not less than 10 days prior to the first day of qualifying.

SUMMARY

A Civil Service Commissioner who is salaried exercises the powers of an officer within the meaning of the Resign to Run Law and must resign his office prior to qualifying as a candidate for City Commission office.