

DE 84-3 - January 20, 1984

**RESIGN TO RUN LAW
s. 99.012, F.S.
TEACHERS**

To: Mr. Thomas C. Harrell, 946 Deedra Avenue, Pensacola, Florida 32514

Prepared by: Division of Elections

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

1. Must a tenured teacher in the Escambia County School System resign to run for a position on the Escambia County School Board?
2. If elected, assuming that the Resign to Run Law does not apply to a tenured teacher running for school board, is there any state law which would require a teacher to resign his position while serving on the school board?

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

The Resign to Run Law applies to officers, and subordinate officers, that is, those who exercise some portion of the sovereign power of the state to make, execute, or administer the law. I find no statute which invests teachers with any official power whatsoever. Therefore, a teacher need not resign or take a leave of absence to run for the school board.

The "Little Hatch Act" s. 104.31, F.S., which regulates the political activities of state, county and municipal employees, would likewise not prevent a teacher from seeking or holding public office. Assuming that the act is applicable to an employee of a school district, s. 104.31(1)(c), provides that "the provisions of this section shall not be construed so as to prevent any person from becoming a candidate for any elected office in this state." Therefore, the "Little Hatch Act" does not prevent a teacher from seeking and holding public office.

As to your second question, Florida law does limit the rights of career service

employees to seek or hold public office. s. 110.233(4), F.S.; but the application of the foregoing provision is limited to employees within the State Career Service System.

While it appears that the Resign to Run Law and the "Little Hatch Act" do not prevent a teacher from seeking or holding office, the Escambia County School District or the Florida Department of Education, by rule or regulation, may limit the rights of teachers in this area and should be reviewed. See also, Opp. Atty. Gen. 077-31 (March 28, 1977); Metropolitan Dade v. Santos, 430 So. 2d 506, (Fla. 3rd DCA 1983).

SUMMARY

The Resign to Run Law (s. 99.012, F.S.) and the "Little Hatch Act" (s. 104.31, F.S.) do not prevent a teacher from seeking or holding public office; however rules and regulations of the Florida Department of Education and the Escambia School District might address this issue and should be reviewed.