

DE 84-4 - January 20, 1984

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

*To: Mrs. Ruth W. Attaway, 425 East Central Avenue, Room 117, Blountstown, Florida
32424*

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:

“Must a judicial assistant to a county judge who is a state employee take a leave of absence or resign in order to qualify as a candidate for the Clerk of the Circuit Court, Calhoun County?”

You are a judicial assistant and a state employee under the Judicial Administration System working directly under the supervision of a county judge who has exclusive authority to hire, evaluate and terminate you. You do not work under the supervision or control of the Clerk of the Circuit Court of Calhoun County.

The Resign to Run Law requires an elected 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. s. 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 public office. s. 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 someone 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. 2d 721, (F1a. 1897); State v. Sheats, 83 So. 2d 508 (F1a. 1919) and Fla. Jur. 2d, Civil servants, Public Officers and Employees.

I find no statute which invests a judicial assistant with any official power whatsoever. Therefore, you are not an officer or subordinate officer within the meaning of the law, and you need not resign or take a leave of absence to be a candidate for the office of Clerk of the Circuit Court.

However, if you are a state employee under the State Career Service System, you

should be aware of s. 110.233(4)(a) which states:

“(4) As an individual, each employee retains all rights and obligations of citizenship provided in the Constitution and laws of the state and the Constitution and laws of the United States. However, no employee in the career service shall: (a) Hold, or be a candidate for, public office while in the employment of the state or take any active part in a political campaign while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the state. However, when authorized by his agency head and approved by the Department of Administration as involving no interest which conflicts or activity which interferes with his state employment, an employee in the career service may be a candidate for or hold local public office. The Department of Administration shall prepare and make available to all affected personnel who make such request a definite set of rules and procedures consistent with revisions herein.”

This office is not empowered to render opinions as to whether you may seek or hold office under s. 110.233(4)(a), F.S.

SUMMARY

The Resign to Run Law applies only to public officers and not to persons holding positions of employment. A judicial assistant is not an officer within the meaning of the law and need not resign or take a leave of absence to seek public office.