

DE 84-5 - February 2, 1984

**RESIGN TO RUN LAW
MEMBER OF DOWNTOWN DEVELOPMENT AUTHORITY
s. 99.012, F.S.**

To: Mr. Robert E. Huebner, General Counsel, Downtown Development Authority, City of Fort Lauderdale, 321 Southeast 15th Avenue, Fort Lauderdale, Florida 33303

Prepared by: Division of Elections

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

“Should a member of the Board of the City of Fort Lauderdale Downtown Development Authority resign his position to run for a seat on the Broward County School Board?”

According to your letter, the City of Fort Lauderdale Downtown Improvement Authority, created by Chapter 69-1056, Laws of Florida, is a body appointed by the Fort Lauderdale City commission with the responsibility to direct the re-development of Downtown Fort Lauderdale. Section 5 of Chapter 69-1056, Laws of Florida, states: “Each member of the Board shall be paid a salary of \$1.00 per year for services on the Board, unless the City Commission shall otherwise designate such salary and provide from the general funds of the City for such salary.”

Section 99.012(5), F.S., states: “No person who serves as a member of any appointed board or authority without salary shall be in violation of this section by reason of holding any such office.” Thus, any person who serves on an appointive board or authority without salary is exempt from the resignation requirements of the law.

The above-quoted provision of the special act appears to expressly reserve in the City the power to appropriate and pay a salary; therefore \$1.00 per year is nothing more than an honorarium, until such time as a salary is appropriated. The Division of Elections has stated that an honorarium is not considered to be salary within the meaning of the Resign to Run Law. See DE 80-22 (July 29, 1980); DE 83-5 (March 3, 1983). An honorarium is a 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. On the other hand a salary, in the ordinary meaning of the term, is fixed compensation paid regularly for services. Webster Third International Dictionary, Unabridged, (1966). In the present case, it does not appear that the members of the Board receive a fixed salary nor is there any expectation or right to receive a salary. Therefore, a person who is appointed to the Development Authority is exempt from the Resign to Run Law and need not resign or take a leave of absence in order to run for elected office on the county school board.

While the Resign to Run Law does not require a resignation or leave of absence in this case, take note that the Constitution of Florida, Article II, Section 5(a) prohibits dual office holding and states in pertinent part:

“. . .No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, constitutional convention, or statutory body having only advisory powers.”

This opinion does not address whether service as a member of the Development Authority and the School Board would constitute dual office holding.

SUMMARY

A person who is serving as a member of the City of Fort Lauderdale Downtown Improvement Authority without salary is exempt from the resignation and leave of absence provisions of the Resign to Run Law.