

RESCINDED

DE 84-6 - February 2, 1984

**RESIGN TO RUN LAW
DEPUTY SUPERVISOR OF ELECTIONS
s. 99.012, F.S.**

To: Mrs. Paulette E. Davison, Route 3, Box 13, Lake butler, Florida 32054

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 part-time deputy supervisor of elections resign or take a leave of absence in order to seek election as supervisor of elections in Union County and if so, when should the resignation or leave of absence begin?”

The Resign to Run Law requires an elected or appointed officer to resign irrevocably when seeking an ejected office, the term of which runs concurrently with the term of office he or she currently holds. s. 99.012, F.S. The resignation must be tendered not less than 10 days prior to the first day of qualifying for the office he or she intends to seek. 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 and 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 one who exercises a 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, Public Officers and Employees.

A deputy supervisor of elections, even in a part-time capacity, can be characterized as subordinate officer by virtue of the specific powers delegated to the position under s. 98.271(1), F.S. which states:

“Each supervisor of elections shall select 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 who call 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 his office, which oath shall be acknowledged by the supervisor and filed in the office of the supervisor.” (emphasis added).

Thus, a deputy supervisor of elections who works directly under an elected officer and who exercises a portion of the sovereign power vested in that office is a subordinate

officer within the meaning of the Resign to Run Law.

In the present case, a part-time supervisor of elections would be required to resign his position only if the deputy is seeking to qualify and run for office against the incumbent supervisor of elections. Clearly, the supervisor has power to appoint, supervise and terminate a deputy. s. 98.271(1), F.S. If the incumbent supervisor of elections does not run for re-election, the deputy would not be required to resign; but in such case, the deputy shall take a leave of absence without pay from his position during the period in which he is seeking election to public office. s. 99.012(7), F.S. In the present case, a leave of absence would extend from the date on which the deputy qualifies for public office until such time as the deputy withdraws, is eliminated, or is no longer seeking election for such office. A candidate is no longer seeking office if he or she is nominated in a primary without opposition in a general election. Then, the deputy may return to his job.

As to the hypothetical question posed in your letter regarding a possible conflict of interest as to the office of the supervisor of elections and your husband's business which maintains contracts with the State of Florida, I cannot render an opinion. Questions on conflict of interest involving public office come under the jurisdiction of the Florida Commission on Ethics, and should be addressed to them at Post Office Box 6, Tallahassee, Florida 32302.

SUMMARY

A deputy supervisor of elections is only required to resign his position if he is seeking to qualify and run for the office of Supervisor of Elections against the incumbent supervisor. If the incumbent supervisor does not seek re-election, the deputy need not resign but shall take a leave of absence without pay during the period of time she is seeking election to public office.