

DE 84-10 - March 1, 1984

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

To: Honorable Elizabeth J. Foote, Supervisor of Elections, Hendry County, P.O. Box 174, LaBelle, Florida 33935

Prepared by: Division of Elections

This is a formal Division of Elections Advisory Opinion pursuant to s. 106.23(2), F.S., (1983) on essentially the following questions:

1. "Does s. 99.012, F.S. require a classroom teacher to resign or to take a leave of absence if he or she becomes a candidate for school superintendent?"
2. "Does s. 99.012, F.S. require a public school principal to resign or take a leave of absence if he or she becomes a candidate for school superintendent?"

The Resign to Run Law requires an elected or appointed officer to resign irrevocably when seeking an elected office, the term of which runs concurrently with the term of office he or the currently holds.

s. 99.012(2), F.S. The resignation requirement also applies, in a limited way, 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. 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. *Clyatt v. Hocker*, 22 So. 721 Fla. (1897); *State v. Sheats*, 83 So. 508 Fla. (1919) and Florida Jur. 2d Civil Servants, Public Officers and Employees.

I know of no state law or county ordinance which would confer upon a classroom teacher or a high school principal sovereign power. They do not act in a direct or indirect way as the immediate subordinate to one who exercises the sovereign power entrusted to officers. Therefore, a classroom teacher or a high school principal need not resign or take a leave of absence in order to seek election as the superintendent of schools.

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 or principal from seeking or holding public office.

Assuming that the act is applicable to an employee of a school district, s. 140.31(1)(c), F.S., 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 or principal from seeking and holding public office.

As to s. 110.233(4), F.S., which limits the rights of career service employees to see or hold public office, the application of the foregoing provision is limited to employees within the State of Florida career service system.

While it appears that the Resign to Run Law and the "Little Hatch Act" do not prevent a teacher or high school principal from seeking or holding public Office, the Hendry County School District or the Florida Department of Education, by rule or regulation may regulate the rights of school personnel to seek and hold public office. The appropriate rule or regulation should be consulted, See, Opp. Atty. Gen. 077-31 (March 28, 1977); and Metropolitan Dade County v. Santos, 430 So 2d 506, (Fla. 4th D.C.A. 1983).

SUMMARY

The Resign to Run Law does not prevent a teacher or a high school principal from seeking or holding public office as superintendent of schools. However, rules and regulations of the Florida Department of Education and the Hendry County School District might regulate the rights of school personnel to seek and hold public office and should be consulted.