

DE 84-13 - May 10, 1984

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

To: Honorable Bette Foote, Supervisor of Elections, Hendry County, Post Office Box 174, LaBelle, Florida 33935

Prepared by: Division of Elections

Pursuant to your request, this is a formal elections opinion under s. 106.23(2), F.S., on essentially the following question:

"Must an employee of Hendry County now holding the title of both the Purchasing Director and the Welfare Director, resign to run for an elective office (Tax Collector)?"

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 she currently holds. s. 99.012(2), F.S. The resignation requirement also applies to subordinate personnel, deputy sheriffs or police officers who seek an elected office held by one with authority to appoint, employ, promote or otherwise supervise them and who has qualified as a candidate for reelection to that public office. s. 99.012(7), F.S.

The Resign to Run law applies to officers either elected or appointed. An officer is defined as one who exercises some portion of the sovereign power, either in making, executing or administering the laws and "whose duties are continuous in their nature, and defined by rules prescribed by government, and not by contract, consisting of the exercise of important public powers, trusts, or duties, as a part of the regular administration of the government, the place and the duties remaining, though the incumbent dies or is changed." State ex rel. Clyatt v. Hocker, 39 Fla. 477, 22 So. 721 (1887). See also State ex rel. Holloway v. Sheats, 83 So. 508 (Fla. 1919).

The question here is whether the Purchasing and Welfare Director is an officer within the meaning of the law. According to the information and the job descriptions that you provided to us, the position of Purchasing and Welfare Director was created by the Board of County Commissioners, as were his duties and qualifications. One of the criteria for determining whether a certain office is a public office is whether it is created by some tribunal or body and, as mentioned above, whether the duties are defined by rules prescribed by government. It seems clear that the Purchasing and Welfare Director meets these requirements for being a public officer.

A further requirement for determining whether a person is a public officer is whether the job and duties are of a continuous nature, and not transient, decisional or incidental. We have no information that would lead us to believe that the position of

Purchasing and Welfare Director is anything but a permanent position that will continue to exist even after the person who currently holds the position leaves that office.

As mentioned above, an officer must be a person who exercises some portion of the sovereign powers, either in making, executing, or administering the laws. An officer is distinguished from an employee in the greater importance, dignity and independence of his position, and the authority to direct and supervise. 9 Fla. Jur. 2d. Civil Servants and Other Public Officers and Employees, Section 10. The duties and responsibilities of the Purchasing and Welfare Director are extensive. As Welfare Director he screens and interviews applicants for welfare aid and makes disposition of cases on the basis of eligibility, unless the applicants are not covered by his policies, in which case he meets with the County Commission for their decision. He is responsible for planning, assigning and directing the work of the county welfare program and his work "is performed with considerable independence within established laws, rules and regulations governing the program." As Purchasing Director he is responsible for directing all phases of the county purchasing program and for supervising the personnel.

Based on the above, I am of the opinion that the Purchasing and Welfare Director of Hendry County is an officer within the meaning of the Resign to Run Law and, therefore, must resign from that office not less than ten days prior to the first day of qualifying for the office of Tax Collector.

SUMMARY

The Purchasing and Welfare Director of Hendry County is an officer within the meaning of the Resign to Run Law and must resign from that office not less than ten days before the first day of qualifying for the office he intends to seek.