

DE 84-18 - June 19, 1984

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

To: Mr. John K. Renke, II, Attorney at Law, 7637 Little Road, New Port Richey, Florida 33553

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 individual who is a City Attorney, pursuant to contract and ordinance of a city, resign his position as City Attorney in order to run for State Representative?”

The Resign to Run Law requires an elects 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 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 Attorney General has rendered an opinion regarding application of the Resign to Run Law to county attorneys. In AGO 072-176, the Attorney General stated that a county attorney employed by the county commissioners pursuant to s. 125.01, F.S., is not an officer within the meaning of the Resign to Run Law. Section 180.23, F.S., is the corresponding statute that applies to municipalities. It authorizes any municipality to contract with attorneys "for professional services required for the accomplishment of any or all the purposes of this chapter; provided, however, that such employment is to be evidenced by written agreement setting forth the terms and conditions of the employment.”

The primary question, therefore, is whether or not you are an officer within the meaning of the Resign to Run Law. As mentioned above, an officer must be one whose

duties are "prescribed by government, and not by contract." Even though s 2-20 of the New Port Richey Charter sets forth in detail the duties of the City Attorney. Contrary to the above requirement for a person to be an officer, your duties of city attorney are prescribed by contract and not by government.

Another requirement for a person to be an officer is that he exercise some portion of the sovereign power. Your duties as a City Attorney are to provide "service for those who hold office," i.e., counsel the board members on any legal matter which confronts the board, provide legal counseling and guidance, prepare legal documents at the request of the city council or mayor. In Pace v. King, 38 So. 2d 823 (Fla. 1949) the Florida Supreme Court dealt with the question of whether the City Attorney of Jacksonville was an officer or an employee of the city. The Supreme Court stated:

An office carries with it the power to exercise authority of a governmental nature, rather than perform services for an office or officer. The plaintiff 's position (as city attorney) is clearly of the latter class, i.e., service for those who hold office.

The Court, therefore, held that the city attorney was an employee and not an officer.

Your duties as city attorney do not involve the exercise of any sovereign powers nor are the duties prescribed by law, but instead by contract. Your duties are not continuous in that you are under a one-year contract, terminable by either party upon 30 days notice to the other party.

Accordingly, you are not an officer within the meaning of the Resign to Run Law, but, instead, an employee; therefore, you are not required either to resign from office or take a leave of absence in order to run for State Representative. See also DE 077-35.

SUMMARY

The City Attorney of New Port Richey is not an officer within the meaning of the Resign to Run Law, and, therefore, is not required to resign or take a leave of absence in order to run for election.