

DE 84-21 - July 2, 1984

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

To: Mr. Francis E. Rowell, Superintendent, School Board of Levy County, P.O. Drawer 129, Bronson, Florida 32621-0129

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 the Director of Instruction of Levy County resign to run for the office of Superintendent of Schools?”

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 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 primary question is whether the Director of Instruction is an officer or a subordinate personnel within the meaning of the Resign to Run Law. According to the information and job descriptions provided us, the Director of Instruction is recommended by the Superintendent and appointed by the School Board. He is directly responsible to the Superintendent with a staff relationship to the Assistant Superintendent. His duties are prescribed by the School Board, and not by any contract. One of the criteria for determining whether a certain office is a public office is whether it was created by some tribunal body, and as mentioned above, whether the duties are defined by rules prescribed by government. It seems clear that the Director of Instruction 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, occasional or

incidental. We have no information that would lead us to believe that the position of Director of Instruction is anything but a continuous position that will continue to exist even after the person who currently holds that 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 also has the authority to direct and supervise. As indicated in the information sent to us, the Director of Instruction exercises broad powers. He is responsible for the curriculum development of the entire school system; he represents the Superintendent at all Consortium meeting of the nine county cooperative groups that the school system belongs to; he is responsible for facilities planning; and provides supervision of instructional staff coordinators. In the absence of the Superintendent and Assistant Superintendent, the Director of Instruction serves in the capacity of an Assistant Superintendent.

Based on the above, I am of the opinion that the Director of Instruction is an officer within the meaning of the Resign to Run Law. However, as mentioned above, you must note that s. 99.012(7), F.S., exempts a subordinate personnel from the resign to run requirements unless that person is seeking a public office currently held by an individual who has the authority to appoint, employ, promote, or otherwise supervise the subordinate personnel. The Director of Instruction is a subordinate personnel in that he is in a position subject to the control and supervision of the Superintendent, who is his supervisor. See, DE 84-17 and AGO 079-81. Since the Director of Instruction is nominated by and works under the supervision of the Superintendent, he falls within the above stated requirement of s. 99.012(7), F.S. and therefore, must resign his position pursuant to s. 99.012(2), (7), F.S., not less than ten days before the first day of qualifying for the office of Superintendent of Schools.

SUMMARY

The Director of Instruction of Levy County is a subordinate personnel within the meaning of the Resign to Run Law. As such he is required to resign from his current position at least ten days before the first day of qualifying from the office of Superintendent of Schools.