

**DE 84-25 - July 10, 1984**

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

*To: Mr. Lawrence D. Browning, Route 7, 72 Masters Road, Arcadia, Florida 33821*

*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 Adult and Community Education of DeSoto 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 a part of the regular administration of the government; the place and the duties remaining though the incumbant dies or is changed." *State ex rel. Clyatt v. Hocker*, 39 Fla. 477 So. 721. (1887). See *State ex rel. Holloway v. Sheats*, 83 So. 508 (Fla. 1919).

The Director of Adult and Community Education is appointed by the School Board of Desoto County to his position. His duties and qualifications are prescribed by School board policy. He is responsible for developing programs for adult education. He determines the feasibility for courses based upon the need and the demand for a particular course. Based upon these duties and the above definition of an "officer", it is our opinion that you are an officer within the meaning of the Resign to Run Law.

However, s. 99.012(7), F.S., provides an exemption from the resign to run requirement for a subordinate personnel 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. A subordinate personnel must be an officer who otherwise would be required by the Resign to Run Law to resign from his current office when seeking election to another. AGO 079-81. Inasmuch as you are appointed by the School Board of Desoto County, and perform your duties under the

supervision of another, you are considered a subordinate personnel within the meaning of the Resign to Run Law. However, we are unable to determine from the information you have provided us, who officially has supervisory authority over the Director of Adult and Community Education. If the Superintendent officially has supervisory authority over you, then you must resign from your position not less than ten days prior to the first day of qualifying for the office of Superintendent pursuant to s. 99.012(7). F.S. On the other hand, if the School Board of DeSoto County or the Assistant Superintendent officially has supervisory authority over you, then you must take a leave of absence from your position during the time period in which you are seeking election to the office of Superintendent. The leave of absence without pay must be effective no later than the date you qualify for election.