

DE 85-08 - July 23, 1985

**RESIGN-TO-RUN LAW
s. 99.012(2), F.S.**

To: Carolyn M. Fields, Esquire, 705 East Kennedy Boulevard, Tampa, Florida 33602-5011

Prepared by: Division of Elections

Pursuant to your request, this is a formal elections opinion pursuant to Section 106.23(2), Florida Statutes, on essentially the following question.

Must the Safety and Risk Management Director of the City of Bradenton resign or take a leave of absence in order to seek election to the Bradenton City Council?

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. Section 99.012(2), Florida Statutes. 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. Section 99.012(7), Florida Statutes.

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 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 Safety and Risk Management Director is appointed by the City Council and works under the direction of the City Clerk and Treasurer. His duties are extensive and deal generally with the administration and supervision of the work in the management of the City of Bradenton's accident prevention, loss control and other related programs and plans. The Director has broad supervisory powers, but any action must be taken only after approval from the department head and the councilman in charge of the department or the personnel director. The Director has the authority, without consulting his supervisor, to coordinate safety training classes for employees and to maintain safety bulletin boards for employees. It appears from the information provided us that while the duties of the Director are continuous in nature and extensive, they do not involve the exercise of any sovereign powers. Therefore, the Safety and Risk Management Director is not an officer within the meaning of the resign-to-run law.

The Resign-to-Run Law, as mentioned above, also applies to subordinate personnel. A subordinate personnel, however, 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. DE 83-12; AGO 079-81. The law does not apply to an employee. An employee does not exercise in one's own right any sovereign power or a prescribed independent authority of a governmental nature. State ex. rel. Holloway v. Sheats, supra. Since the Safety and Risk Management Director is not an officer, he is not considered to be a subordinate personnel within the meaning of the resign-to-run law, but instead is considered to be an employee. The resign-to-run law does not apply to employees and the Director is not required to resign or take a leave of absence to run for City Council.

However, you should note that this opinion is for purposes of the resign-to-run law only. It does not take into account any city regulations that may require a resignation or a leave of absence.

SUMMARY

The Safety and Risk Management Director of the City of Bradenton is not an officer within the meaning of the Resign-to-Run Law and need not resign or take a leave of absence in order to run for City Council.