

DE 85-10 - November 20, 1985

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

To: Mr. Garry Dye, 4003 36th Street, West, Bradenton, Florida 33505

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 a person who is employed by Manatee County and who is second in charge of the Employee Relations Department Resign-to-Run for county commission?

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 Resign-to-Run 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.

Based on the information that you have supplied this office, it appears that you are not an officer within the meaning of the Resign-to-Run Law, but are instead an employee. The Resign-to-Run Law does not apply to employees, and you are not required to resign or take a leave of absence to run for county commissioner.

However, you should note that this opinion is for purposes of the Resign-to-Run Law only. It does not take into consideration any county regulations that may require a resignation or leave of absence.