

DE 86-01 - January 20, 1986

**RESIGN-TO-RUN LAW
s. 99.012(2),(7), F.S.**

*To: Mr. Charles Lee Andrews, VI, 4232B Palm Bay Circle, West Palm Beach, Florida
33406*

Prepared by: Division of Elections

Pursuant to your request, this is a formal Division of Elections' opinion authorized by Section 106.23(2), Florida Statutes, on essentially the following question:

Must a Mechanic I employed by the County Commission of Palm Beach County resign or take a leave of absence in order to seek election to the Palm Beach 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 elected and appointed officers. 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 duties of a Mechanic I as described in your letter are non-supervisory and involve the repair of small equipment owned by the county. In addressing your question, reliance is placed upon your description of your duties. To this end, it appears that your duties do not involve the exercise of any sovereign power and, therefore, a Mechanic I is not an officer within the meaning of the Resign-to-Run Law.

This law, however, also applies to subordinate personnel. The Division of Elections previously has determined that such a subordinate 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 85-08, 83-12, 83-02; 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. DE 85-

08; State ex. rel. Holloway v. Sheats, supra. Since a Mechanic I 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. Because the Resign-to-Run Law does not apply to employees, a Mechanic I is not required to resign or take a leave of absence to run for the County Commission of Palm Beach County.

However, please note that this opinion is for purpose of the Resign-to-Run Law only and does not take into account any county ordinance that may require a resignation or a leave of absence under the circumstances as set out in your letter.

SUMMARY

A Mechanic I employed by the County Commission of Palm Beach County is not an officer or subordinate personnel within the meaning of the Resign-to-Run Law and need not resign to take a leave of absence under that law in order to run for county commission.