

DE 86-04 - March 24, 1986

RESIGN TO RUN
s. 99.012(7), F.S., Police Officers Leave of Absence;
Continuation of Employment Status if Elected

*To: Ms. Lucia A. Dougherty, City Attorney, City of Miami, Miami Police Department,
Post Office Box 016777, Miami, Florida 33101*

Prepared by: Division of Elections

Pursuant to your request, this is a formal elections opinion issued under Section 106.23(2), Florida Statutes, on the following questions:

1. When must a police officer take a leave of absence when he announces he is running for public office?
2. If the police officer wins the election, must he resign as a municipal police officer or may he continue his status of leave without pay?

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 a police officer who seeks an elected office held by one with authority to appoint, employ, promote or otherwise supervise him and who has qualified as a candidate for election to that public office. Section 99.012(7), Florida Statutes. If a police officer is not seeking an elected office held by one with authority to appoint, employ, promote or otherwise supervise him, he is required to take a leave of absence without pay during the time in which he is seeking election to public office. It is to this portion of Section 99.012(7), Florida Statutes, that your first question is directed.

In DE 80-12, issued May 21, 1980, this office determined that the leave of absence must begin no later than when the police officer qualifies as a candidate; i.e., when he pays his qualifying fee and files his qualifying papers.

Your opinion request does not specify which office the police officer seeks; however, for the 1986 elections, qualifying begins for federal office candidates at noon July 7 and ends noon, July 11. Qualifying for state, multicounty, county, district, nonpartisan judicial offices and write-in candidates begins noon July 14 and ends noon July 18. Of course, the police officer will be able to return to work if he is defeated in the primary or general election.

With regard to your second question, Section 99.021(7), Florida Statutes, specifies that the required leave of absence without pay covers the period of time during which the candidate is seeking election; the statute does not contemplate that a leave of absence extend beyond the election-seeking period. Therefore, once the election is over

and the candidate/police officer is elected, he cannot thereafter remain on leave of absence without pay.

For guidance, please note that in DE 80-25, issued by this office on July 31, 1980 it was determined that an unopposed candidate not actively campaigning for office may resume his previous duties so long as he remains an unopposed candidate. Citing the main purpose of the Resign to Run Law as being the prevention of those who hold public office from using their position to obtain higher offices, this office determined that where the election is a far-gone conclusion, reemployment does not raise a potential for abuse of office which necessitates a leave of absence, DE 80-25. Therefore, in reliance upon the same logic, this office concludes that if the police officer wins the election, he may return to his employ until such time as he lawfully assumes the office to which he is elected. Of course, this assumes that the police officer has in fact been elected and that there is no impediment (for example, a write-in opponent) to his assumption of the office to which he has been elected. The law does not require that an elected police officer resign prior to assuming office; however, this opinion addresses only the Resign to Run Law's application to the cited circumstances.