

DE 86-07 - May 20, 1986

**RESIGN-TO-RUN LAW; CITY ATTORNEY; ATTORNEY FOR COMMUNITY
COLLEGE BOARD OF TRUSTEES
s. 99.012, F.S.**

*To: Mr. J. David Langford, Attorney at Law, 118 South Anoka Avenue, Avon Park,
Florida 33825*

Prepared by: Division of Elections

This is in response to your request for a formal advisory opinion issued pursuant to Section 106.23(2), Florida Statutes, on the application of Florida's Resign-to-Run Law, Section 99.012, Florida Statutes, to your status as city attorney for the City of Avon Park, Florida and as the attorney for the District Board of Trustees of South Florida Community College.

You advise that you are paid by both the City of Avon Park and South Florida Community College on a flat monthly retainer with no social security or income tax withheld. You further advise that you anticipate filing for the office of county judge, Highlands County, Florida.

In DE 84-18, issued by this office on June 19, 1984, I determined that a city attorney is not an officer within the meaning of the Resign-to-Run Law and is not required to resign or take a leave of absence in order to run for elective office.

In that 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 issue with regard to the second part of your question turns on whether the attorney for the District Board of Trustees of South Florida Community College holds an appointed office. 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 continuance 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 incumbent dies or is changed." State ex. rel. Clyatt vs Hocker, 39 Fla. 477, 22 So. 721 (1897). See also State ex. rel. Holloway vs Sheats, 83 So. 508 (Fla. 1919).

As pointed out in DE 84-18, the Attorney General has rendered an opinion regarding application of the Resign-to-Run Law to county attorneys by establishing that a county attorney is not an officer within the meaning of the Resign-to-Run Law. In DE 84-18, this office reaffirmed its position taken in DE 77-35 by declaring that attorneys for municipalities were not officers.

I now determine that the attorney for the District Board of Trustees of South

Florida Community College is not an officer. Accordingly, you are not required to resign or take a leave of absence in order to run for public office.

SUMMARY

The city attorney for the City of Avon Park, Florida, is not an officer within the meaning of the Resign- to-Run Law. The attorney for the District Board of Trustees of South Florida Community College is not an officer within the meaning of the Resign-to-Run Law. Therefore, in neither circumstance is the attorney required to resign or take a leave of absence in order to run for public office. As a note of caution, however, this opinion applies only to the Resign-to-Run Law and does not involve any other law which may be applicable to your situation.