

DE 87-15 - October 13, 1987

**Resign-to-Run Law
Sections 99.012(2) and 99.012(7), F.S.**

To: Mr. John W. Bonde, 11479 - 56 Place North, Royal Palm Beach, Florida 33411

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion regarding whether you as an employee of the Palm Beach County Engineering Department must resign from your employment to run for election for the position of supervisor of the Indian Trail Water Control District.

Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

The Resign-to-Run Law, Section 99.012, Florida Statutes, requires an elected or appointed officer to irrevocably resign when seeking an elected office, the term of which runs concurrently with the term of office he currently holds. S. 99.012(2), Fla. Stat.

The resignation requirement also applies to subordinate personnel who are officers, 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. S. 99.012(7), Fla. Stat.

The Resign-to-Run Law applies only to elected and appointed officers and not employees. An officer is defined as one who exercises some portion of the sovereign power, either in making, executing or administering the laws. 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). An employee does not exercise in his own right any sovereign power. DE 86-18, 86-01, 85-08; State ex rel. Holloway v. Sheats.

As mentioned previously, the law also applies to subordinate personnel who are officers. Such subordinate personnel are exempted from resigning by Section 99.012(7), Florida Statutes, if they are not running against someone who has authority to appoint, employ, promote or otherwise supervise them. DE 86-18, 86-01, 85-08, 83-12, 83-02; AGO 79-81.

You state that you are an employee of the Palm Beach County Engineering Department and that you make no policy or planning decisions. Therefore, it appears from your description of your employment that you are not an officer within the meaning of the Resign-to-Run Law. In that the Resign-to-Run Law applies to officers and not to employees, if you are not serving as an officer, you are not required to resign or take a leave of absence to run for supervisor of the Indian Trail Water Control District.

This opinion pertains only to the Resign-to-Run Law and does not pertain to Section 110.233(4)(a),

Florida Statutes, which section regulates under what conditions a public employee may run for public office.

SUMMARY

An employee of the Palm Beach County Engineering Department who does not serve as an officer within the meaning of the Resign-to-Run Law, need not resign or take a leave of absence under that law to run for supervisor of the Indian Trail Water Control District.