

RESCINDED

DE 88-04 - February 17, 1988

Resign-to-Run Law Section 99.012(2), (7), F.S.

To: John J. Bonaccorsy, 1675 Brady Drive, Deltona, Florida 32725-6001

Prepared by: Division of Elections

This is in reference to your letter asking for a legal opinion on the following questions:

1. Whether an assistant state attorney must resign or take a leave of absence to run for sheriff, and
2. If an assistant state attorney must take a leave of absence, must the leave begin no later than:
 - a. when a campaign treasurer is designated and a campaign account is opened,
 - b. when the candidate qualifies by paying the filing fee and taking an oath, or
 - c. when the candidate announces his candidacy?

You are an assistant state attorney and considering running for sheriff. Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue this opinion.

The Resign-to-Run Law requires an elected or appointed officer to irrevocably resign when seeking an elected office which runs concurrently with the term of office he presently holds. Section 99.012(2), Fla. Stat. The Division has previously determined that an assistant state attorney is an officer within the meaning of the Resign-to- Run Law. Op. Div. Elect. 80-37.

Section 99.012(7), Florida Statutes, provides an exemption from the Resign-to- Run Law for three categories of persons: an officer who is a subordinate personnel, a deputy sheriff, or a police officer. Each of these need not resign unless seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote or otherwise supervise that person and who has qualified for reelection to that office.

You are considering running for sheriff. The sheriff is not your current supervisor. Therefore, under the Resign-to-Run Law, you do not need to resign your position as assistant state attorney to run for the office of sheriff, but, you must take a leave of absence at the time you are "seeking election to public office." Section 99.012(7), Fla. Stat.

Regarding when such leave of absence must begin, we refer you to previous Division of Elections' Opinions which provides that a leave of absence must begin no later than when the person qualifies for

office, i.e., when he pays his qualifying fee and files his qualifying papers. Op. Div. Elect. 86-04, 80-12. However, the First District Court of Appeal in Humphries v. Department of Highway Safety and Motor Vehicles broadened this interpretation by holding that when a person hires a campaign manager and prepares and distributes leaflets, cards and other election paraphernalia, he is "seeking election" and, therefore, the leave of absences is triggered. 400 So.2d 1311 (Fla. 1st DCA 1981).

In Humphries, the court is focusing on several major campaign activities as the indicator of "seeking election." In order to hire a campaign manager and to prepare and distribute campaign materials, a candidate must have previously designated his campaign treasurer and campaign depository. Section 106.021(1)(a), Fla. Stat. In addition, before he incurs any expenses related to the campaign such as paying a campaign manager or paying for campaign materials, he must have sufficient funds in the campaign depository to cover those expenses. Section 106.11(3), Fla. Stat. Therefore, we must assume that prior to hiring a campaign manager and preparing and distributing campaign materials, the candidate has designated his campaign treasurer and campaign depository and engaged in some fund-raising activities. In Division of Elections' Opinion 88-03, we concluded that simply announcing one's candidacy did not meet the Humphries standard.

In light of the above, we interpret the Humphries decision as not requiring a candidate to take a leave of absence at the time a campaign treasurer and a campaign depository are designated. However, if this act is in conjunction with other major campaign activities such as hiring a campaign manager and preparing and distributing campaign materials, the leave provision would become applicable.

SUMMARY

An assistant state attorney is both an officer and subordinate personnel within the meaning of the Resign-to-Run Law. However, he need not resign to run for office unless he is running against an individual who has the authority to appoint, employ, promote or otherwise supervise that person and his supervisor has qualified for reelection to that office. He must take a leave of absence when he becomes a candidate and the First District Court of Appeal held in Humphries that you are a candidate when you engage in several major campaign activities. Simply announcing your candidacy, or designating a campaign treasurer and a campaign account, does not meet the Humphries standard. These activities, done in conjunction with other major campaign activities, i.e., fund-raising, hiring a campaign manager and preparing and distributing campaign materials, would trigger the leave of absence provisions of the Resign-to- Run Law.