

DE 88-08 - February 26, 1988

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

To: Mr. William M. LaValle, Route Two, Box 278, Perry, Florida 32347

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the Resign-to- Run Law. You are presently employed by the Clerk of the Circuit Court as the County Finance Director for Taylor County and you are interested in running, for the office of clerk if the present clerk, Ralph Carlton, does not qualify for reelection.

The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to certain categories of persons including candidates. Therefore, the Division has authority to issue this opinion to you.

Your specific questions are as follows:

1. Do you have to resign from your employment with the clerk's office in order to run for clerk of the circuit court in the event the present clerk does not qualify? If you do have to resign, what date would the resignation have to be effective?

2. If you do not have to resign, do you have to take a leave of absence without pay from your employment with the clerk's office in order to run for clerk of the circuit court in the event the present clerk does not qualify? If the answer is yes, what date would the leave of absence without pay have to be effective?

The Resign-to-Run Law applies to elected or appointed officers and certain subordinate personnel. Therefore, the first consideration is whether the county finance director is an officer or subordinate personnel within the meaning of the Resign-to- Run Law.

An officer is defined as one who exercise some portion of the sovereign power, either in making, executing or administering the law. 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); Op. Att'y Gen. Fla. 80-1.

The clerk of the circuit court acts as ex officio clerk of the board of county commissioners. In this capacity, the clerk is "auditor, recorder and custodian of all county funds." Art. V, s. 16, Fla. Const. These duties are further defined by Section 28.12, Florida Statutes, (1987):

The clerk of the circuit court shall be clerk and accountant of the board of county commissioners. He shall keep the minutes and accounts and perform such other duties as

provided by law. He shall have custody of the seal and affix the same to any paper or instrument as required by law.

The clerk of the circuit court is a constitutional officer who exercises a share of the sovereign power in the area of court administration and county financial administration. The clerk has the authority to appoint deputy clerks who "shall have and exercise each and every power of whatsoever nature and kind as the clerk himself may exercise, excepting the power to appoint a deputy or deputies." Section 28.06, Fla. Stat. (1987).

While not a deputy clerk, the county finance director assists the clerk of the circuit court in carrying out the duties over county finances. According to information that you submitted to us, your position assists the clerk in managing the day-to-day operation of the finance division, but you do not have the status of deputy clerk. Only deputy clerks share in the exercise of sovereign power vested in the clerk of the circuit court. Section 28.06, Fla. Stat. (1987). Therefore, a county finance director, whose duties are not defined by law and who is not delegated sovereign power by law, is not an officer for the purposes of the Resign-to-Run Law. Therefore, your first question is answered in the negative - you do not need to resign from your employment with the clerk's office in order to run for clerk of the circuit court.

In reference to your second question, whether you need to take a leave of absence without pay from employment with the clerk's office in order to run for the clerk of the circuit court, the Resign-to-Run Law is not applicable to subordinate personnel who are not officers. See Op. Att'y Gen. Fla. 79-81. Since you serve in a position which is not an officer, the exception from the Resign-to-Run Law contained in Section 99.012(7), Florida Statutes, for subordinate personnel is not applicable in your situation. Therefore, the answer to your second question is also answered in the negative - you do not need to take a leave of absence from your employment with the clerk's office in order to run for clerk of the circuit court.

Without rendering an opinion as to its applicability to you, I would direct your attention to Chapter 110, Florida Statutes, as it relates to political activities of state employees.

SUMMARY

The position of county finance director for a clerk of the circuit court is not an officer within the meaning of the Resign-to-Run Law so that you do not need to resign or take a leave of absence to run for clerk of the circuit court.