

DE 88-14 - April 5, 1988

**Resign to Run
Section 99.012, F.S.**

To: Mr. Fletcher Brown, Attorney at Law, 124 North Brevard Avenue, Arcadia, Florida 33821

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the Resign-to- Run Law, Section 99.012, Florida Statutes. You are counsel for the School Board of DeSoto County and the Division of Elections has the authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapter 97-106, Florida Statutes.

You asked the following question:

Whether a principal of a school in DeSoto County must resign or take a leave of absence to run against the incumbent superintendent of schools?

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.

Section 99.012(7), Florida Statutes, provides an exemption from the Resign-to- Run Law for three categories of persons: an officer who is subordinate personnel, a deputy sheriff or a police officer. Each of these three 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.

Therefore, in reference to your question, the first consideration is whether a principal of a public school is an officer or subordinate personnel within the meaning of the Resign-to-Run Law.

An officer is defined as one who exercises 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). The Division has previously determined that a principal is not an officer within the meaning of the Resign-to-Run Law. Op. Div. Elect. 80-9. Therefore, since a principal is not an officer, the Resign-to-Run Law does not apply. The principal does not need to resign or take a leave of absence to run against the incumbent superintendent of schools.

This opinion applies only to the Resign-to-Run Law, Section 99.012, Florida Statutes, and does not pertain to Chapter 110, Florida Statutes, as it relates to political activities of state employees or any regulations which your local school board may have.

In your letter you made reference to a previous Division of Elections' Opinion, DE 84-21, which directed that the Director of Instruction for Levy County must resign from his position to qualify for superintendent of schools. You stated that you did not have access to the full opinion and were seeking clarification in reference to your particular question.

In DE 84-21, the Division found the Director of Instruction exercised broad powers. He was responsible for the curriculum development of the entire school system; he represented the superintendent at all consortium meetings of a nine-county cooperative group that the school system belonged to; he was responsible for facilities planning and provided supervision of instructional staff coordinators. In addition, in the absence of the superintendent and assistant superintendent, the Director of Instruction served as an assistant superintendent.

Based upon these responsibilities, the Division found that the Director of Instruction was an officer within the meaning of the Resign-to-Run Law. We are enclosing a copy of that opinion for your information.

SUMMARY

The principal of a public school is not an officer within the meaning of the Resign-to-Run Law and, therefore, need not resign or take a leave of absence to run against the incumbent superintendent of schools. This opinion applies only to the Resign-to-Run Law and not to Chapter 110, Florida Statutes, or local policies of the school board.