

RESCINDED

DE 88-15 - April 27, 1988

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

To: Honorable Penny Halyburton, Supervisor of Elections, St. Johns County, County Courthouse, Room 337, St. Augustine, Florida 32084

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion. You wrote on behalf of a deputy sheriff who is considering becoming a candidate for county commissioner. You are the St. Johns County Supervisor of Elections and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes. You asked the following questions:

1. Whether a deputy sheriff, appointed by the sheriff, must resign from office to run for county commissioner?
2. If he is not required to resign to run, must he take a leave of absence?
3. If he must take a leave of absence, is it with or without pay?
4. If he must take a leave of absence, when must his leave of absence begin?
5. Prior to qualifying for office and prior to his resignation or leave of absence, may this individual use vacation time for campaigning?
6. May this person open a campaign account while he is employed as a deputy sheriff and without taking a leave of absence?

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 a subordinate personnel, a deputy sheriff or 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 first question, whether a deputy sheriff must resign from office to run for county commissioner, the exemption contained in Section 99.012(7), Florida Statutes, provides

that he need not resign when running for county commissioner.

In reference to your second and third questions, whether the deputy sheriff must take a leave of absence and, if so, is his leave of absence with or without pay, Section 99.012(7), Florida Statutes, provides that a deputy sheriff must take a leave of absence and that such leave of absence is without pay. The Division has previously opined that leave time, whether annual or compensatory, may not be used during this leave of absence. Op. Div. Elect. 85-02, 80-12.

In reference to your fourth question, at what time must this leave of absence be taken, we refer you to two recent Division of Elections' Opinions regarding this matter, DE 88-03 and DE 88-04. These opinions followed the First District Court of Appeal's decision in Humphries v. Dept. of Highway Safety and Motor Vehicles, and provided that when a person is "seeking election," which is manifested by such activities as hiring a campaign manager and preparing and distributing leaflets, cards and other election paraphernalia, the leave of absence provision is triggered. 400 So.2d 1311 (Fla. 1st DCA 1981).

In reference to your fifth question, whether the deputy sheriff may use vacation time for campaigning prior to qualifying for office and prior to his resignation or leave of absence, the Election Code does not specifically address this issue. However, in view of the Humphries' decision, by the time a person is actively campaigning for office, he is "seeking election" and the leave of absence provision is triggered. Id.

In reference to your sixth question, whether the deputy sheriff may open his campaign account while employed as a deputy sheriff, DE 88-04 opined that "simply announcing your candidacy, or designating a campaign treasurer and a campaign account," does not trigger the Humphries standard requiring an individual to take a leave of absence. Id.

SUMMARY

A deputy sheriff does not need to resign from office to run for county commissioner. However, he must take a leave of absence without pay and such leave of absence must be taken when he "seeks election." The Election Code does not specifically address whether the deputy sheriff may use vacation time for campaigning prior to qualifying for office and prior to his taking a leave of absence, but in view of the Humphries' decision, by the time a person is actively campaigning for office, he is "seeking election" and the leave of absence provision is triggered. Id. Opening a campaign account will not mandate the deputy sheriff taking a leave of absence.