

RESCINDED

DE 88-20 - April 29, 1988

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

To: Ms. Joyce Bryan, Acting Town Manager, Town of Orange Park, 2042 Park Avenue, Orange Park, Florida 32073

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the Resign-to- Run Law. You are Acting Town Manager for the Town of Orange Park and are requesting the opinion for the Orange Park Town Council. Your specific questions are as follows:

1. Whether the police chief, Dalton Bray, must resign or take a leave of absence from his position prior to qualifying to run for county sheriff?
2. If Chief Bray needs to resign or take a leave of absence, when should such resignation or leave be effective?

The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions to several categories of persons including local officers having election-related duties. Therefore, we have authority to issue this opinion.

In reference to your first question, whether Chief Bray must resign or take a leave of absence from his position prior to qualifying, 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 has qualified for reelection to that office.

We have previously determined that a police chief is an officer but because of the exemption contained in Section 99.012(7), Florida Statutes, he need not resign to run for sheriff unless he is seeking to qualify for a public office which is currently by an individual who has the authority to appoint, employ, promote or otherwise supervise him and that person has qualified for reelection. Since this is not the situation with Chief Bray, he need not resign, but must take a leave of absence without pay during the period in which he is seeking election.

In reference to your second question, when must Chief Bray's leave of absence be effective, the

Division has discussed this in previous opinions this year. Op. Div. Elec. 88-18, 88-04, 88-03. Prior to the First District Court of Appeal's decision in Humphries v. Dept. of Highway Safety and Motor Vehicles, the division had interpreted the statutory language "shall take a leave of absence...during the period in which he is seeking election to public office" as meaning the leave of absence must begin no later than when the officer qualifies as a candidate, i.e., when he pays his qualifying fee and files his qualifying papers. 400 So.2d 1311 (Fla. 1st DCA 1981). However, the First District Court of Appeal broadened the interpretation of that statutory language in Humphries by holding that the leave of absence provision is triggered when a person "seeks election" which is manifested by such activities as hiring a campaign manager and preparing and distributing leaflets, cards and other election paraphernalia. Id. Op. Div. Elect. Fla. 88-03.

Simply announcing your candidacy or designating a campaign treasurer and a campaign account will not trigger the leave of absence provision of Section 99.012(7), Florida Statutes. Op. Div. Elect. Fla. 88-04, 88-03. In addition, the acceptance of contributions and expenditure of funds is permissible as long as the individual is preparing to seek election and is not actively "seeking election." Op. Div. Elect. Fla. 88-18.

However, it appears that from information submitted to our office, Chief Bray is presently actively seeking election as county sheriff. He has prepared and is distributing campaign literature which states that he is a candidate for sheriff. The campaign materials include leaflets, bumper stickers and newspaper advertisements. In addition, while Chief Bray has not hired a campaign manager, he has hired a media consultant. The Humphries decision does not mandate that a person must hire a campaign manager before he "seeks election." The Humphries decision focused on a person's activities which signaled to the general public that the person is a candidate and is actively seeking election to a particular office. Chief Bray's activities, in our opinion, have signaled to the general public that he is a candidate for sheriff and is, in fact, actively seeking election to that office. Therefore, it is our opinion that Chief Bray should immediately take a leave of absence from his position as police chief.

SUMMARY

A police chief who is running for sheriff must take a leave of absence when actively seeking election.