

RESCINDED

DE 88-23 - May 26, 1988

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

To: Ms. Lillie May Greene, 208 Third Street, 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 a deputy clerk of the circuit court and are interested in running for the office of county commissioner.

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, Chapter 97-106, Florida Statutes.

Your specific questions are as follows:

1. If you qualify as a candidate for county commissioner, will you be required to take a leave of absence from your present position?
2. If you are elected to the county commission, will you be able to continue your employment as deputy clerk?

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. However, any such subordinate personnel, deputy sheriff, or police officer must take a leave of absence without pay from his employment during the period he is seeking election to public office.

In reference to you first question, if you qualify as a candidate for county commissioner, will you be required to take a leave of absence from your present position, it must first be determined whether a deputy clerk of the circuit court is an officer 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 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). Therefore, a deputy clerk shares in the exercise of sovereign power vested in the clerk of the circuit court and is an officer for the purposes of the Resign-to-Run Law.

Although you, as a deputy clerk, do not exercise each and every power the clerk himself may exercise, you do exercise certain powers of the clerk which only a clerk of a deputy clerk may exercise. Because you have the power to issue marriage licenses, administer oaths, and certify documents as correct, you are a deputy clerk with delegated sovereign power by law and are an officer for the purposes of the Resign-to-Run Law.

Our second determination is whether a deputy clerk of the circuit court is a subordinate personnel for the purposes of the Resign-to-Run Law and exempt from the resignation requirements of Section 99.012(2), Florida Statutes. Since the deputy clerk is appointed by the clerk of the circuit court, he is subordinate to the clerk and is a subordinate personnel. The exemption contained in Section 99.012(7), Florida Statutes, from the Resign-to-Run Law for an officer who is also a subordinate personnel provides that the deputy clerk of the circuit court need not resign unless he is running against the incumbent clerk of the circuit court. However, he must take a leave of absence without pay from his employment during the period in which he actively seeks election to public office.

In reference to your second question, if you are elected to the county commission, will you be able to continue your employment as deputy clerk, we do not have jurisdiction to answer this question. The Department of Legal Affairs has jurisdiction over matters relating to dual office holding and we are forwarding a copy of your letter and our opinion to the Department for their information and response. You may reach them at the Opinions Section, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050.

SUMMARY

A deputy clerk who exercises several but not all sovereign powers of the clerk of the circuit court is an officer who is a subordinate personnel within the meaning of the Resign-to-Run Law. He must take a leave of absence without pay when seeking election to a public office.