

DE 88-24 - June 6, 1988

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

To: Mr. Mack D. Bryan, City Manager, City of Bowling Green, Post Office Box 608, Bowling Green, Florida 33834

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion. You are City Manager of the City of Bowling Green, Florida, and are considering running for the county commission. The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you.

You asked the following questions:

1. Do you need to take a leave of absence to run for county commission?
2. If elected to the county commission, can you still serve as city manager?

The Resign-to-Run Law applies to officers, whether elected or appointed, and requires such an officer to irrevocably resign when seeking an office which runs concurrently with the term of office he presently holds. Section 99.012(2), Fla. Stat. However, 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. These persons may take a leave of absence when seeking election unless they are running against a person who has the authority to appoint, employ, promote or otherwise supervise that person.

An officer is defined as one who exercises some portion of the sovereign power, either in making, executing, or administering the laws and

...whose duties are continuous in nature, and defined by rules prescribed by government, and not by contract, consisting of exercise of important public powers, trusts, or duties, as part of the regular administration of the government, the place and the duties remaining, though the incumbent dies or is changed.

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 primary question, therefore, is whether or not you are an officer within the meaning of the Resign-to-Run-Law. As mentioned above, for a person to be an officer, he must exercise some portion of the sovereign power. According to Bowling Green City Ordinance 85-3, which you submitted to us, the city manager works at the direction of the city commission. In Pace v. King, 38 So.2d 823 (Fla. 1949),

the Florida Supreme Court stated "An office carries with it the power to exercise authority of a governmental nature, rather than perform services for an office or officer."

The city commission employs you to manage the overall operations of the city which includes submitting recommendations to the commission regarding personnel, and performing "such other duties as may be assigned by the city commission." Your duties do not involve the exercise of any sovereign powers.

Accordingly, you are not an officer within the meaning of the Resign-to-Run Law, but instead, an employee. Therefore, you are not required to resign or take a leave of absence in order to run for county commission.

In reference to your inquiry of whether, if elected, you could still serve as city manager, we do not have jurisdiction to answer this question. The Florida Commission on Ethics has jurisdiction over conflict of interest matters and we are forwarding a copy of your letter and our opinion to the Commission for the Commission's response. You may reach the Commission by writing the Florida Commission on Ethics, Post Office Box 6, Tallahassee, Florida 32399-0006.

SUMMARY

The City Manager of Bowling Green is not an officer within the meaning of the Resign-to-Run Law, and therefore, he does not need to take a leave of absence to run for county commission.