

RESCINDED

DE 88-27 - July 14, 1988

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

To: Mr. Charles S. Lambright, 502 Lake Denton Terrace, Avon Park, Florida 33825

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the Resign-to- Run Law. You are an Appraisal Supervisor for the Highlands County Property Appraiser and are interested in running for the office of Property Appraiser.

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.

Your specific questions are as follows:

1. Before you take a leave of absence from your present position, can you speak at clubs and other meetings about values and taxes, your qualifications to hold your present job, or your qualifications for the office of property appraiser?
2. Can you hand out personal letters to friends that have asked for your qualifications before you take a leave of absence from your present position?
3. Can you order printed materials?
4. Can you pass out printed material before taking a leave of absence from your present position?
5. Must your three and one-half weeks accumulated vacation time be taken before your leave or may you take it during your leave?

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 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 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.

Before answering your questions, it must first be determined whether an appraisal supervisor for the property appraiser 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 laws. 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 property appraiser is a constitutional officer who exercises a share of the sovereign power in determining the value of all property after taxes have been levied. Section 192.001(3), Fla. Stat. Property appraisers have the authority to appoint deputy property appraisers to "act in their behalf in carrying out the duties prescribed by law." Section 193.024, Fla. Stat. Therefore, as found in Division of Elections' Opinion 88- 16, a deputy property appraiser shares in the exercise of sovereign power vested in the property appraiser and is an officer for the purposes of the Resign-to-Run Law.

As noted in Division of Elections' Opinion 88-23, title is not necessarily indicative of deputy status. Although you, as an appraisal supervisor, do not exercise each and every power the property appraiser himself may exercise, you do exercise certain powers of the property appraiser which only a property appraiser or his deputy may exercise. As stated by the Property Appraiser of Highlands County, Mr. J. W. Martin, you are a deputy property appraiser who supervises data collecting personnel, prepares the value preparation of the tax roll, and appraises property. Because you exercise these powers, you are a deputy property appraiser with delegated sovereign power by law and are an officer for the purposes of the Resign-to-Run Law.

Our second consideration is whether a deputy property appraiser 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 a deputy property appraiser is appointed by the property appraiser, he is subordinate to the property appraiser 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 a deputy property appraiser need not resign unless he is running against the incumbent property appraiser. 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 first question, you may talk about values and taxes and your qualifications to hold your present job at clubs and other meetings before you take a leave of absence, but you may not speak about your qualifications to hold the office of property appraiser as that would be "actively seeking election." Once a candidate begins actively seeking election, the leave of absence provision has been triggered. As discussed in Division of Elections' Opinion 88-20, "actively seeking election" means that a candidate's activities signal to the general public that he is a candidate and is actively seeking election to a particular office. See also Op. Div. Elect. Fla. 88-18, 88- 04, 88-03.

In reference to your second question, handing out personal letters to friends that have asked for your qualifications before you take a leave of absence from your present position is actively seeking

election. Before distributing letters regarding your qualifications for the office of property appraiser, you must take a leave of absence.

In reference to your third question, can you order printed material, the acceptance of contributions and expenditures of funds is permissible as long as the individual is preparing to seek election and is not "actively seeking election." Op. Div. Elect. Fla. 88-20, 88-18. Therefore, you may order printed material before you take a leave of absence as that activity is in the "preparation process" rather than in the actively "seeking election process."

In reference to your fourth question, can you pass out printed material before taking a leave of absence from your present position, such activity reflects that you are actively seeking election and you must, therefore, take a leave of absence from your present position before passing out printed material.

In reference to your fifth question, must your three and one-half weeks accumulated vacation time be taken before your leave or may you take it during your leave, the Division has previously addressed this question in Division of Elections' Opinions 88-18, 85-02, 80-12 and opined that accumulated vacation time may not be taken during the required leave of absence.

SUMMARY

An appraisal supervisor who exercises several but not all sovereign powers of the property appraiser is a deputy property appraiser and 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 actively seeking election to a public office.