

DE 88-28 - July 15, 1988

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

To: Ms. Lila L. Mobley, Assistant Supervisor of Elections, Lee County, Post Office Drawer 2545, Fort Myers, Florida 33902

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion. You are Assistant Supervisor of Elections in Lee County and pursuant to Section 106.23(2), Florida Statutes, we have jurisdiction to issue this opinion to you. Your question is as follows:

Is an elected commissioner of the Estero Fire Protection and Rescue Service District required to resign to run the position of county commissioner?

The Estero Fire Protection and Rescue Service District was created by Chapter 76-408, Laws of Florida, and provides fire protection and rescue services in Lee County. The fire protection and rescue service is governed by a board of commissioners who are elected.

The Division of Elections has previously issued two opinions on whether the Resign-to-Run Law applies to special district offices. Op. Div. Elect. Fla. 82-09, 80-07. However, these opinions were in conflict with a previous Attorney General's Opinion issued in 1971. See Op. Att'y Gen. Fla. 71-328.

Section 99.012(2), Florida Statutes, provides that a person may not qualify as a candidate for public office who holds another elective or appointive office, whether state, county or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning.

This statutory provision does not specifically name district offices. However, in Ballard v. Cowart the Second District Court of Appeals found that an appointed member of the Hospital District Board of Hardee County had to resign prior to qualifying for another public office pursuant to the Resign-to-Run Law. 238 So.2d 484 (2nd DCA Fla. 1970). See DE 80-7.

After reviewing the 1971 Attorney General's Opinion related to this matter, we draw the same conclusion that the Division did in Opinion 80-7, that the Attorney General's ruling was based upon the "dual officeholding" prohibitions of Article II, Section 5 of the Florida Constitution and not the Resign-to-Run Law, Section 99.012, Florida Statutes. Therefore, this opinion reaffirms the two previous opinions of the Division of Elections relating to special district offices and the Resign-to-Run Law.

SUMMARY

The Resign-to-Run Law applies to special district offices. An elected commissioner of the Estero Fire Protection and Rescue Service District Board is an officer under the Resign-to-Run Law and must resign from office pursuant to the Resign-to- Run Law to run for another office.