

DE 89-09 - February 26, 1990

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

To: Honorable Harry L. Sawyer, Jr., Supervisor of Elections, Monroe County, 500 Whitehead Street (Rear), Key West, Florida 33040-6547

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion. Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including supervisors of elections.

You have asked the following question:

Does Section 99.012, Florida Statutes, require the Monroe County Medical Examiner to resign to run for the Monroe County School Board?

The Monroe County Medical Examiner is appointed by the Governor and his position is funded entirely by the Monroe County Commission. In addition, you state that the medical examiner is responsible for the preparation of the Medical Examiner's Office budget and payment of expenses incurred by his office.

District medical examiners are authorized by Section 406.06, Florida Statutes. The Governor appoints the medical examiner for each medical examiner district.

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 term of office he presently holds. Section 99.012(2), Fla. Stat. 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 their nature, and defined by rules prescribed by government, and not by contract, consisting of the 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 the Monroe County Medical Examiner is an officer within the meaning of the meaning of the Resign-to-Run Law. As stated above, for a person to be an officer,

he must exercise some portion of the sovereign power.

A medical examiner does exercise a portion of the sovereign power in representing the state's interest in determining the cause of death when a human being dies and there are certain unusual statutorily listed circumstances. Section 406.11, Fla. Stat. The medical examiner of the district in which the death occurred or the body was found determines for the State of Florida the cause of death. In addition, the medical examiner is authorized to make or have performed examinations, investigations, and autopsies as the medical examiner deems necessary or as requested by the state attorney.

The medical examiner also represents the state's interest when an unmarked human burial is discovered. All activity that may disturb the human burial must cease immediately, and the district medical examiner must be notified. Section 872.05(4), Fla. Stat. If the medical examiner finds that the unmarked human burial may be involved in a legal investigation or represents the burial of an individual who has been dead less than 75 years, the district medical examiner assumes jurisdiction over and responsibility for such unmarked human burial. Section 872.05(4)(a), Fla. Stat.

Thus a medical examiner has, by Sections 406.11 and 872.05(4), Florida Statutes, been delegated in certain statutorily mandated situations the sovereign power of the State of Florida to determine the cause of death when a human being dies and to assume responsibility and jurisdiction over unmarked human burials. Therefore, a medical examiner is an officer and must resign pursuant to Section 99.012 (2), Florida Statutes, to run for the Monroe County School Board.

SUMMARY

A district medical examiner is an officer for the purposes of the Resign- to-Run Law and must, therefore, resign from his position prior to running for county school board.