

DE 90-01 - January 11, 1990

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

To: Mr. William E. Phillips, Orange City Building Official, 207 North Holly Avenue, Orange City, Florida 32763

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the Resign-to-Run Law, Section 99.012, Florida Statutes. You are the Orange City Building Official and are considering running for the Volusia County Council. Therefore, under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue this advisory opinion related to the Florida Election Code, Chapters 97-106, Florida Statutes.

You asked the following question:

Whether you must resign your position as the Orange City Building Official to run for the Volusia County Council?

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 who has qualified for reelection to that office.

Therefore, in reference to your question, the first consideration is whether a city building official is an officer or subordinate personnel 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). As the Orange City Building Official your responsibilities include inspection of buildings and issuance of permits. These functions do not exercise sovereign power in making, executing or administering the law so that your position is not that of an officer for the purposes of the Resign-to-Run Law. Therefore, you do not need to resign or take a leave of absence to run for the county council seat.

SUMMARY

A city building official who inspects buildings and issues permits is not an officer for the purposes of the Resign-to-Run Law and need not resign or take a leave of absence to run for a county council seat.