

RESCINDED

DE 90-19 - March 29, 1990

Resign-to-Run Law Section 99.012, F.S.

To: Mr. Thomas D. McKane, III, 259 Lombardy Avenue, Lauderdale By The Sea, Florida 33308

Prepared by: Division of Elections

This is in response to your request for an opinion on the Resign-to-Run Law, Section 99.012, Florida Statutes. You are Town Commissioner and Vice Mayor for Lauderdale By The Sea. Additionally, you are a lieutenant for the police department for the City of Sunrise. You are running for reelection as Town Commissioner in Lauderdale By The Sea and you ask whether you should resign or take a leave of absence without pay from your employment as lieutenant in Sunrise during the period in which you seek reelection as Town Commissioner in Lauderdale By The Sea. You also ask for an interpretation of the Town Charter for Lauderdale By The Sea; however, the Division of Elections is unable to render opinions requiring an interpretation of a municipal charter or ordinance.

Pursuant to Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an advisory opinions to several categories of persons related to provisions or possible violations of Florida election laws. Since you are a candidate, the Division has authority to issue this opinion.

The Resign-to-Run Law, Section 99.012, Florida Statutes, requires an elected or appointed officer to irrevocably resign when seeking an elected office when the term of that office, or any part of it, runs concurrently with the term of office he presently holds. Section 99.012(2), Fla. Stat. The Division has previously determined that a police officer is an officer within the meaning of the Resign-to-Run Law. See Op. Div. Elect. 86-04, 85-03, 85-02, and 80-12.

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 has qualified for reelection to that office. You will be running for reelection as Town Commissioner in Lauderdale By The Sea. No person against whom you are running is your current supervisor. Therefore, under the Resign-to-Run Law, you do not need to resign your position as a lieutenant in the police department in the City of Sunrise.

However, pursuant to Section 99.012(7), Florida Statutes, you must take a leave of absence at the time you are "seeking election to public office." For information regarding what constitutes "seeking election to public office" we refer you to Division of Elections' Opinions 88-18, 88-04, and 88-03. These opinions interpret Humphries v. Dept. of Highway Safety and Motor Vehicles, 400 So.2d 1311 (Fla. 1st DCA 1981), which held that the leave of absence provision is triggered when a person is "seeking election" which is manifested by such activities as hiring a campaign manager and preparing

and distributing leaflets, cards and other election paraphernalia.

This opinion does not relate to any provisions of the Town of Lauderdale By The Sea's Town Charter or ordinance. In addition, this opinion does not relate to the dual officeholding prohibition contained in the Florida Constitution. For additional information on interpretation of the Town Charter, you may wish to contact the town attorney. For additional information on the prohibition against dual officeholding, you may contact the Department of Legal Affairs, Opinions Division.

SUMMARY

A lieutenant working for a police department in the City of Sunrise who is Town Commissioner and Vice Mayor for Lauderdale By The Sea must take a leave of absence pursuant to Section 99.012(7), Florida Statutes, when seeking reelection to the Town Commission.