

DE 90-22 - May 17, 1990

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

To: Honorable Dianne E. Hysell, Supervisor of Elections, Hernando County, 20 North Main Street, Room 217, Brooksville, Florida 34501

Prepared by: Division of Elections

This is in response to your request for an advisory opinion on the Resign-to-Run Law. 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.

Your specific questions are:

Must a school teacher for the Hernando County School System resign to run for the office of School Board Member?

May a School Board Member remain a teacher in the school system once elected?

The Division of Elections has previously opined that a teacher is not an officer for the purposes of the Resign-to-Run Law, Section 99.012, Florida Statutes, and, therefore, need not resign to run for office. See DE 84-03, 83-10.

In reference to your second question, whether a school board member may remain a teacher in the school system once elected, the Resign-to-Run Law does not address this issue. However, the Code of Ethics for Public Officers and Employees, contained in Section 112.313, Florida Statutes, does address this issue and the Commission on Ethics has issued several opinions which address conflicting employment by school board members. See CEO 78-94, 77-166, 76-127, and 75-179. (Copies enclosed.) In opinions CEO 77-166 and 75-179, the Commission specifically addressed the question as to whether a conflict of interest exists when a school board member is also an instructional employee in the school system regulated by the board.

Section 112.313(10)(a), Florida Statutes, prohibits a public officer or employee from holding office as a member of the governing board which is his employer while continuing as an employee of such employer. In CEO 77-166 and 75-179, the Commission specifically held that this provision would prohibit members of a school board from also being employees of that school district. However, interpretation of this provision is not within the jurisdiction of the Division of Elections. For additional guidance as to how this provision may apply to the situation you describe, I suggest you contact the Commission on Ethics.

SUMMARY

A school teacher is not an officer for the purposes of the Resign-to-Run Law and need not resign from the teaching position to run for school board. The Commission on Ethics has opined that if elected to the school board, the teacher must resign his position as a teacher within that school system pursuant to the Code of Ethics for Public Officers and Employees.