

**DE 90-26 - June 5, 1990**

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

*To: Mr. James G. Yaeger, County Attorney, Lee County, Post Office Box 398, Ft. Myers, Florida  
33902-0398*

*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 ask on behalf of Mr. Lovie Wells, Lee County Director of the Office of Equal Opportunity, who is considering running for the Lee County School Board. Your question is whether Mr. Wells will need to resign his position as Director of the Office of Equal Opportunity to run for school board.

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 local officers with election related duties.

The Resign-to-Run Law applies to officers and subordinate officers and requires an officer to irrevocably resign when seeking an elected office which term of office 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 has qualified for reelection to that office.

An officer is defined as one who exercises some portion of the sovereign power, either in making, executing, or administering the laws. 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). Therefore, we must determine whether the Director of the Lee County Office of Equal Opportunity is an officer for the purposes of the Resign-to-Run Law.

You included the job description for the Director of the Lee County Office of Equal Opportunity as well as several pertinent Lee County Ordinances. This position administers and supervises the implementation of programs to promote equal opportunities for persons residing in Lee County. The director oversees the county's equal employment opportunities affirmative action program to assist in the recruitment, selection, and training of qualified minority, female, handicapped, and underrepresented groups in the county's work force. In addition, this position is responsible for maintaining a discrimination-free work environment for county employees, as well as serving several

other related functions. The work is performed under the general direction of the assistant county administrator. The position, from information furnished to us, is that of an employee rather than an officer who exercises sovereign power. Therefore, this person need not resign or take a leave of absence from this position to run for Lee County School Board.

### **SUMMARY**

The position of Director of the Lee County Office of Equal Opportunity is not an officer within the meaning of the Resign-to-Run Law. The Director of the Lee County Office of Equal Opportunity does not need to resign or take a leave of absence to run for county school board.