

DE 90-28 - June 5, 1990

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

To: Mr. Samuel Patterson Stafford, Judicial Hearing Officer, Eighth Judicial Circuit, Alachua County Courthouse, Gainesville, Florida 32601

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 a support enforcement hearing officer for the Eighth Judicial Circuit. You are a full time employee and paid by Alachua County. You are interested in qualifying and running for a county court judgeship and ask whether you will be able to retain your present job while campaigning.

Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

The Resign-to-Run Law requires an elected or appointed officer to irrevocably resign when seeking an elected office which runs concurrently, or any part 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.

As the Resign-to-Run Law applies to officers or subordinate officers, the first consideration is whether a support enforcement hearing officer is an officer 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).

The Florida Constitution creates three branches of government who share the sovereign power of the state: the legislative whose power is vested in a Senate and House of Representatives; the executive whose power is granted to the Governor and Lieutenant Governor, Cabinet members and other executive departments; and, the judicial whose power is shared by the Supreme Court, district courts of appeal, circuit courts, and county courts. Therefore, the question is whether you are vested with any of the judicial power of the judiciary. If so, you would be vested with some of the sovereign power of the State of Florida and an officer for the purposes of the Resign-to- Run Law.

Rule 1.491, Florida Rules of Civil Procedure, provides that the chief judge of each judicial circuit may appoint support enforcement hearing officers. A hearing officer must be a member of the Florida Bar unless waived by the Chief Justice and serves at the pleasure of the chief judge and a majority of the circuit judges in the circuit.

Under Rule 1.491, upon the filing of a proceeding for the establishment, enforcement, or modification of child support, the clerk of the circuit court refers such proceedings to a support enforcement hearing officer. The support enforcement hearing officer may issue process, administer oaths, require the production of documents, and conduct hearings for the purpose of taking evidence. In addition, he may assign a time and place for a hearing and give notice to each of the parties as required; take testimony and establish a record; accept voluntary acknowledgment of paternity and support liability and stipulated agreements setting the amounts of support to be paid; and evaluate evidence and make a recommended order to the court for the establishment and enforcement of support. The recommended order also sets forth findings of fact.

Upon receiving the recommended order from the support enforcement hearing officer, the court reviews the order and findings of fact and enters these as the court's order unless good cause appears to amend the order or conduct further proceedings.

As the support enforcement hearing officer's recommendations are just that, recommendations to the court, we opine that the hearing officer has none of the sovereign responsibility of the judiciary for the State of Florida and is not an officer for the purposes of the Resign-to-Run Law. The role of support enforcement hearing officer is to expedite child support, but the award of child support remains within the control of the circuit support enforcement judge and not within the control of the hearing officer. The hearing officer's role is that of a fact finder who makes recommendations for the circuit judge.

We note that in a previous Division of Elections' Opinion concerning the Resign-to-Run Law, that the Division opined that a general master appointed by the circuit court judges pursuant to Rule 1.490(a), Florida Rules of Civil Procedure, is not a judicial officer and exercises no judicial power. See Op. Div. Elect. Fla. 84-23. We concur in that opinion and find similarly in this opinion that the Resign-to-Run Law does not apply to a support enforcement hearing officer and that you do not need to resign or take a leave of absence to run for office.

SUMMARY

A support enforcement hearing officer 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 public office.