

DE 91-05 - July 23, 1991

**Application of Section 99.012, F.S., amended by Ch. 91-107, Laws of Fla., "Resign-to-Run Law,"
to Well Inspector for Collier County**

TO: Mr. Steven D. Ritter, 175 19th Street Northwest, Naples, Florida 33964

Prepared by: Division of Elections

This is in response to your May 28, 1991, letter requesting an opinion from this office on Florida's Resign-to-Run Law, Section 99.012, Florida Statutes, amended by Chapter 91-107, Laws of Florida. The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including candidates.

You stated in your letter that you are employed as a well inspector by the Board of County Commissioners, Collier County. In a phone conversation with this office on June 12, 1991, you further stated that your duties are to inspect wells being drilled by private contractors and to issue stop-work orders to well drillers. You also stated that all stop-work orders require prior approval by your supervisor, that the final "cease and desist" order is issued by the Collier County Developmental Services Department, and that you have no control over either process.

Based on the foregoing you ask:

Whether a well inspector employed by the Board of County Commissioners of Collier County must resign or take a leave of absence to run for the office of county commissioner?

Both questions are answered in the negative.

Section 99.012, Florida Statutes, was amended during the 1991 session of the Florida Legislature, has been signed into law by the Governor, and takes effect January 1, 1992. However, the recent amendments to the Resign-to-Run Law are primarily for clarification and do not affect this opinion. Chapter 91-107, Sections 31 and 37, Laws of Florida.

Whether you must resign or take a leave of absence from your position as a well inspector to run for county commissioner turns upon whether you are either an officer, subordinate officer or an employee.

Subsection (3) of Section 31, Chapter 91-107, Laws of Florida, provides:

No officer may qualify as a candidate for another public office, whether state, district, county, or municipal, if the terms or any part thereof run concurrently with each other, without resigning from the office he presently holds.

Subsection (1) of Section 31, Chapter 91-107, Laws of Florida, defines an officer as:

[A]...person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state....

This subsection goes on to define "subordinate officer" as "a person who has been delegated the authority to exercise the sovereign power of the state by an officer." A subordinate officer need not resign to run unless he is seeking an office held by a person who has the authority to appoint, employ, promote, or otherwise supervise him and who has also qualified for the office sought by the subordinate officer. However, the subordinate officer must, upon qualifying, take a leave of absence without pay during the period in which he is a candidate for office.

Based on the information supplied by you, as stated at the outset of this opinion, it is our view that you are neither an officer nor a subordinate officer within the meaning of the Resign-to-Run Law. Although, arguably, you may exercise the state's power in stopping a well drilling project, you cannot do so without the approval of your supervisor. Furthermore, a permanent stoppage can only be effected by a "cease and desist" order issued by the Collier County Developmental Services Department.

Therefore, your status is that of an employee as opposed to an officer or a subordinate officer. Thus, you do not need to resign or take a leave of absence without pay in order to run for county commissioner.

SUMMARY

Under the Resign-to-Run Law, a well inspector employed by the Board of County Commissioners of Collier County need not resign or take a leave of absence to run for a county commission seat.