

RESCINDED

DE 92-01

Application of Resign-to-Run Law to Chief of School Investigative Unit Section 99.012, F.S., as amended by Ch. 91-107, Laws of Fl.

TO: Mr. Ron Cochran, Chief, Special Investigative Unit, Broward County School Board, 1320 Southwest Fourth Street, Fort Lauderdale, Florida 33312

Prepared by: Division of Elections

This is in reference to your letter of October 1, 1991, requesting an opinion on whether Florida's Resign-to-Run Law applies to you. You state that you are employed by the Broward County School Board as chief of the school board's special investigative unit and that you are considering becoming a candidate for sheriff of Broward County. Pursuant to 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.

You ask whether you need to resign or take a leave of absence from your current position to run for the office of sheriff of Broward County. It is the opinion of the Division of Elections that you would need to take a leave of absence from your current position to run for the office of sheriff.

Florida's Resign-to-Run Law, Section 99.012, Florida Statutes, as amended by Chapter 91-107, Laws of Florida, requires that an elected or appointed officer must resign to run for another elected office when he is an officer and when the term of office he presently holds overlaps with the term of the office he seeks.

An officer is one who exercises some portion of the sovereign power, either in making, executing or administering the law, and whose duties are regular, continuous in nature, and defined by law as opposed to a contract. State ex.rel. Clyatt v. Hocker, 22 So.721 (Fla. 1887); State ex.rel. Holloway v. Sheats, 83 So.508 (Fla. 1919). An officer is one who also exercises important powers, trusts, or duties, as a regular part of the administration of government. Moreover, the duties of one who is an officer remain in the office even though the incumbent officer dies or is changed. Hocker, supra; Sheats, supra.

Section 99.012(5), Florida Statutes, as amended by Chapter 91-107, Laws of Florida, provides subordinate officers, deputy sheriffs and police officers need not resign unless the office they are seeking is held by their boss. If the office they seek is not held by their boss, the Resign-to-Run Law currently provides that such persons must take a leave of absence without pay during the period they are "seeking election to public office." However, beginning January 1, 1992, the leave of absence must begin no later than when one qualifies for office. See, Chapter 91-107, Laws of Florida.

Chapter 88-521, Laws of Florida, establishes special security officers for the Broward County School Board. Such special security officers may bear arms and make arrests under the same conditions as

deputy sheriffs. Your office, therefore, meets the test imposed by Hocker and Sheats, i.e., you execute the sovereign power of arrest, your duties are regular and continuous, your duties are defined by law, and you exercise important powers, trusts, or duties on behalf of the school board. Moreover, the office remains even though the incumbent may change.

As to overlapping or concurrent terms, you advise that you are on a continuing contract with the school board which is renewed annually by the board based upon a favorable recommendation by the superintendent. Therefore, the term of your present office and that of sheriff would be overlapping.

With respect to whether you need to resign or take a leave of absence without pay, you need not resign, since the public office you seek is not the office occupied by your boss. However, under current law you must take a leave of absence without pay during the period you are seeking election to public office. Effective January 1, 1992, the leave of absence must begin upon qualifying for the office of sheriff.

As to when one is "seeking election to public office," we refer you to Humphries v. Dept. of Highway Safety and Motor Vehicles, 400 So.2d 1311 (Fla. 1st DCA 1981), and Op. Div. Elec. 88-24, wherein we stated that one is seeking election when he begins to perform activities which signal to the general public that he is a candidate and actively seeking election. Simply opening a campaign account and designating a treasurer is not enough. However, hiring a campaign manager, preparing and distributing campaign materials, making public appearances, etc., would be examples of that activity which would be sufficient to signal to the general public that an individual is a candidate and actively seeking election.

SUMMARY

The chief of the special investigative unit of the Broward County School Board and such other special officers appointed pursuant to Chapter 88-521, Laws of Florida, must take a leave of absence without pay during the period they are actively seeking election to the office of sheriff. Effective January 1, 1992, the leave of absence must begin upon qualifying for the office of sheriff.