

DE 92-14 - July 20, 1992

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

TO: Mr. James N. "Jimmy" Charles, Post Office Box 2262, Daytona Beach, Florida 32115

Prepared by: Division of Elections

This is in response to your letter of June 16, 1992, regarding Section 99.012, Florida Statutes, commonly referred to as Florida's Resign-to-Run Law. You are a candidate for State Representative and pursuant to Section 106.23(2), Florida Statutes, the division has authority to issue this advisory opinion to you regarding Florida's Election Code, Chapters 97-106, Florida Statutes.

You ask:

Whether, pursuant to Section 99.012, Florida Statutes, you must resign your position as senior attorney with the Department of Legal Affairs or take a leave of absence without pay to run for state representative?

For reasons which follow, a senior attorney, who is employed by the Florida Department of Legal Affairs and who is not delegated the authority to exercise the sovereign power of the State of Florida by the Attorney General, must neither resign nor take a leave of absence without pay when seeking elected public office.

Based on the information you provided us, you are employed by the State of Florida as a Senior Attorney in the Department of Legal Affairs. In this capacity, your primary duties are to represent the State of Florida in appellate and habeas corpus proceedings in state and federal court. You also are required to litigate extraordinary writs, injunctive proceedings, and other causes of action in various courts.

As such, your position is analogous to an assistant public defender and is distinguishable from an assistant state attorney. See, Op. Div. Elect. 88-40. Assistant state attorneys are statutorily conferred with officer status and empowered to exercise a portion of the sovereign power. See, Section 27.181 (3), Florida Statutes. However, there exists no parallel statutory provisions empowering a senior attorney employed by the Department of Legal Affairs with such status. Therefore, your position is not subject to the Resign-to-Run Law.

SUMMARY

A senior attorney in the Department of Legal Affairs, who is not delegated the authority by the Attorney General to exercise the sovereign power of the State of Florida, is not an officer or subordinate officer within the meaning of the Resign-to-Run Law and, therefore, need not resign or

take a leave of absence to run for public office.