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August 1, 2000

INFORMATION ONLY

The Honorable Kurt S. Browning
Pasco County Supervisor of Elections
38053 Live Oak Avenue, Room 212
Dade City, Florida 33523-3892

RE: DE 00-08
Rescinding "leave of
absence" opinions
§ 99.012(5), Fla. Stat.

Dear Mr. Browning:

This is in response to your request for an advisory opinion regarding a number of Division of Elections (Division) opinions that may be affected by a recent amendment to the "resign-to-run" law, section 99.012, Florida Statutes. The Division is authorized to provide advisory opinions pursuant to section 106.023(2), Florida Statutes, when requested by any supervisor of elections.

You have expressed concerns about the continuing viability of any opinions that construe the leave of absence requirement for subordinate officers in section 99.012(5)(b), Florida Statutes. House Bill 295 (ch. 00-274, Laws of Fla.) deleted this section, effective June 14, 2000.

In the past, the Division interpreted section 99.012(5)(b), Florida Statutes, to require a subordinate officer who was *not running* against a person with authority to appoint, employ, promote or otherwise supervise the subordinate officer to take an unpaid leave of absence upon qualifying for office, or in the alternative, submit a letter of resignation. See *Op. Div. Elect. 95-03* (May 5, 1995); *Gonzalez v. Vogel*, 616 So. 2d 473 (Fla. 2d DCA 1993). However, with the recent change, subordinate officers may continue to work in their positions without taking an unpaid leave of absence while they are candidates.

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Bear in mind that section 99.012(5)(a), Florida Statutes, remains in full force and effect. Accordingly, a subordinate officer must resign to run if he or she is running for a public office that is currently held by an individual who has the authority to appoint, employ, promote or otherwise supervise the subordinate officer. For example, a deputy sheriff must resign, effective upon qualifying, if he or she is running against the incumbent sheriff.

For the above reasons, we hereby rescind the list of attached opinions to the extent that they require subordinate officers who are *not running* against a person with authority to appoint, employ, promote or otherwise supervise the subordinate officer to take an unpaid leave of absence upon qualifying for office, or in the alternative, submit a letter of resignation.

Summary

The list of attached Division opinions are hereby rescinded to the extent that they require subordinate officers who are *not running* against a person with authority to appoint, employ, promote or otherwise supervise the subordinate officer to take an unpaid leave of absence upon qualifying for office, or in the alternative, submit a letter of resignation.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Clayton Roberts", with a stylized flourish at the end.

L. Clayton Roberts
Director, Division of Elections

Prepared by:
Emmett Mitchell, IV
Assistant General Counsel

LCR/EMIV/st

Enclosures

LEAVE OF ABSENCE OPINIONS UNDER SECTION 99.012:

General (Resignation as alternative to leave of absence)

95-03
00-05

Police Chief running for Sheriff

84-26 87-18
87-17 88-20

Deputy Sheriff

80-08 84-15
80-10 88-15
80-11 88-22
80-17

Appraisal Supervisor

88-27

Assistant Public Defender

80-18

Assistant State Attorney

80-37 90-12
88-04

Assistant/Deputy Supervisor of Elections

83-12
84-28 84-06

Chief Deputy Property Appraiser

88-18

Chief of School Board, Special Investigative Unit

92-01

City Auditor-Clerk

84-17

City Clerk

80-13

Deputy Clerk of the Circuit Court

88-23

Deputy Property Appraiser

88-16

Florida Highway Patrol

80-05

Investigator for State Attorney

80-21

88-03

Police Captain

84-08

Police Lieutenant

90-19

Police Officer

85-02

80-12

Tax Collector

80-19