

February 1, 2008

Mr. Danny Leeper
Fire Chief, City of Fernandina Beach
c/o Wesley F. White, Esq.
P.O. Box 16254
Fernandina Beach, Florida 32035-3121

RE: DE 08-02
Resign to Run – City Fire Chief running for
County Commission
§ 99.012, Florida Statutes

Dear Chief Leeper:

This letter responds to a request for an advisory opinion, submitted by your attorney on your behalf, regarding your desire to run for county commission. Because you have a question about compliance with Florida's election laws with respect to the applicability of Florida's "resign-to-run" law to your situation, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2007).

You are currently the appointed Fire Chief for the City of Fernandina Beach, Florida. You desire to qualify and run for the County Commission of Nassau County in 2008.

You essentially ask the following question:

Does section 99.012, Florida Statutes (2007), Florida's "resign-to-run" law, require you to resign from your appointed office of City Fire Chief in order to qualify and run for county commissioner?

The short answer is "Yes."

Section 99.012(3)(a), Florida Statutes (2007), commonly referred to as the "resign-to-run" law, states the general prohibition:

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 or she presently holds.

So, ordinarily, a municipal officer must resign his or her present office in order to qualify for another office if the term of the two offices will overlap. Section 99.012(1), Florida Statutes (2007), provides that in regard to a municipal officer, “the term officer means a person, whether elected or appointed, who has the authority to exercise municipal power as provided the State Constitution, state laws, or municipal charter.” Basically, the term officer implies some authority to exercise some portion of the sovereign power, either in making, executing, or administering the law. *State ex rel Clyatt v. Hocker*, 22 So. 721 (Fla. 1887) and *State v. Sheats*, 83 So. 508 (Fla. 1919).

A key determination is whether the fire chief is a “subordinate officer” under the “resign-to-run” law. Section 99.012(1)(b), Florida Statutes (2007), indicates: “With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer.” The Division of Elections has interpreted section 99.012(4), Florida Statutes (2007), as an exemption to the ‘resign-to-run’ law for subordinate officers, deputy sheriffs, and police officers. *Division of Elections Opinion 07-08* (Dec. 5, 2007). By city charter of Fernandina Beach, the city manager is the head of the fire department. Also, the fire chief serves at the pleasure of the city manager. However, City Code Section 46-3 states that “[t]he fire chief of the city fire department shall be responsible for the enforcement of the fire prevention codes adopted [by the city commission] in section 46-1.” Section 633.121, Florida Statutes (2007), provides:

The chiefs of county, municipal, and special-district fire departments; other fire department personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire departments are authorized to enforce this law and all rules prescribed by the State Fire Marshal within their respective jurisdictions. Such personnel acting under the authority of this section shall be deemed to be agents of their respective jurisdictions, not agents of the State Fire Marshal.

Under this statute, you are the agent of the City of Fernandina Beach in enforcing the state fire prevention and control laws in chapter 633, Florida Statutes (2007), as well as the rules prescribed by the State Fire Marshal. As indicated above, a municipal subordinate officer for purposes of the “resign-to-run” law “means a person who has been delegated the authority to exercise municipal power *by an officer*.” (Emphasis supplied.) In the context of chapter 99, Florida Statutes (2007), an “officer” is an elected or appointed “person.” The delegation of authority to you as the fire chief to enforce fire prevention codes does not come from a “person,” but from the city commission via City Code Section 46-3 and the state legislature via section 633.121, Florida Statutes. A legislative body is not a “person.”¹ As the fire chief, you may not have the authority to make laws, but you have been granted authority by the legislative bodies of the state and the city to exercise a portion of the sovereign power of the city in executing or administering the law, that is, fire prevention codes.

¹ See sections 1.01(3) and (8), Florida Statutes (2007) and 1968 *Op. Atty. Gen.* 068-10 (Jan. 10, 1968) (cities are treated as public bodies, body politic or political subdivisions and not as persons).

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For the foregoing reasons, we conclude that under the “resign-to-run” law, a fire chief for a municipality is an “officer,” not a “subordinate officer.”² Therefore, if you desire to run for county commission, section 99.012(3), Florida Statutes (2007), requires you to submit an irrevocable, written resignation at least 10 days prior to the first day of qualifying for county commissioner with the resignation being effective no later than the earlier of the date you would take office, if elected, or the date your successor is required to take office. The resignation must be submitted to the officer or authority which appointed you fire chief with a copy to the Governor and the Department of State.

SUMMARY

A municipal fire chief is an officer under the “resign-to-run” law; therefore, the fire chief must submit an irrevocable, written resignation at least 10 days prior to the first day of qualifying for the office he or she intends to seek.

Sincerely,

Sarah Jane Bradshaw
Interim Director, Division of Elections

Prepared by:
Gary J. Holland
Assistant General Counsel

² Cf. *Division of Elections Opinion 80-22* (July 29, 1980) (A volunteer fire chief of a volunteer fire department who receives no salary and who does not make, execute, or administer the law, but only puts out fires with other volunteer firefighters is not an officer under the “resign-to-run” law).