



## FLORIDA DEPARTMENT *of* STATE

**CHARLIE CRIST**  
Governor

**KURT S. BROWNING**  
Secretary of State

April 16, 2008

Mr. Manny Madruga  
PO Box 4271  
Key West, Florida 33041

RE: DE 08-04  
Resign to Run – Assistant State Attorney  
running for Circuit Court Judge  
§§ 99.012(3) and (4), Florida Statutes

Dear Mr. Madruga:

This letter responds to your request for an advisory opinion regarding your desire to run for circuit judge. 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 an Assistant State Attorney in Monroe County and are a candidate for Circuit Court Judge, 16<sup>th</sup> Judicial Circuit, Group 4. The 16<sup>th</sup> Judicial Circuit consists of Monroe County.

You ask the following question:

Is an Assistant State Attorney required to resign, or take a leave of absence, to qualify and run for Circuit Court Judge?

The short answer is "No."

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

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, an officer must resign his or her present office in order to qualify for another office if the term of that office will overlap with the term of the current office. However, section 99.012(4), Florida Statutes (2007), indicates:

A person who is a *subordinate officer*, deputy sheriff, or police officer *must resign effective upon qualifying pursuant to this chapter if the person is seeking to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.* [*Emphasis supplied.*]

Section 99.012(1)(b), Florida Statutes (2007), defines “subordinate officer” as “a person who has been delegated the authority to exercise the sovereign power of the state by an officer.” In *Division of Elections Opinion* 80-37 (October 31, 1980), *Division of Elections Opinion* 88-04 (February 17, 1988), and *Division of Elections Opinion* 90-12 (March 29, 1990), the Division opined that an assistant state attorney is a subordinate officer or personnel, who must take a leave of absence when running against someone who has the authority to appoint or supervise him or her. Based upon a legislative change that deleted the leave of absence provision in 2000,<sup>1</sup> the Division rescinded these opinions to the extent that prior law required subordinate officers to take an unpaid leave of absence if they did not submit a letter of resignation when running against someone who had the authority to appoint, employ, promote, or otherwise supervise them.<sup>2</sup> However, the underlying conclusion that an assistant state attorney is a subordinate officer remains unchanged.<sup>3</sup>

As reflected in the three opinions previously mentioned, the Division of Elections interpreted prior versions of section 99.012(4) as an exemption from the “resign-to-run” law for three categories of personnel: subordinate officers, deputy sheriffs, and police officers. The legislative bill analysis for the 2000 amendment to the “resign-to-run” law that removed the leave of absence language from the law also recognized that the current wording of the statute contains an exemption for subordinate officers, deputy sheriffs, and police officers. The bill analysis stated:

Section 99.013(5), F.S. (1999) [section 99.012(4), Florida Statutes (2007)], provides an exemption to the resign-to-run law for a subordinate officer, deputy sheriff, or police officer, except that such an officer must resign effective upon qualifying for a public office which is currently held by “an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.”<sup>4</sup>

<sup>1</sup> 2000 Fla. Laws. Ch. 2000-274, § 1.

<sup>2</sup> *Division of Elections Opinion* 00-08 (August 1, 2000).

<sup>3</sup> See also, § 27.181(2), Fla. Stat. (2007): “Each assistant state attorney appointed by a state attorney shall have all the powers and discharge all duties of the state attorney appointing him or her, *under the direction of the state attorney.*” [*Emphasis supplied.*] Furthermore, in *Gonzalez v. Vogel*, 616 So. 2d 473, 475 (Fla. 2DCA 1993), the court stated: “As an assistant state attorney, Vogel was a “subordinate officer.””

<sup>4</sup> Final Analysis, House of Representatives as revised by the Committee on Election Reform, HB 295 (July 19, 2000) at 2.

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Based upon the legislative history of this statutory provision and prior interpretations by the Division of Elections, the Division opines that section 99.012(4), Florida Statutes (2007), continues as an exemption to the "resign-to-run" law for subordinate officers, deputy sheriffs, and police officers. An assistant state attorney is a subordinate officer; therefore, the exemption in section 99.012(4), Florida Statutes (2007), is applicable. An assistant state attorney is required to resign, effective upon qualifying, only if he or she seeks to qualify for the office of state attorney against the incumbent state attorney, who appoints, employs, promotes, or otherwise supervises the assistant state attorney. Because you are a candidate for circuit judge, the "resign-to-run law" does not require you to resign your assistant state attorney position.<sup>5</sup>

For the foregoing reasons, Florida's Election Code does not require you to resign to qualify and run for circuit court judge or to take a leave of absence from your assistant state attorney position during your candidacy for judge.

#### SUMMARY

Under Florida's resign-to-law law, an assistant state attorney need not resign or take a leave of absence to qualify and run for circuit court judge.

Sincerely,

A handwritten signature in black ink, appearing to be "D. Palmer", with a horizontal line extending to the right from the end of the signature.

Donald L. Palmer  
Director, Division of Elections

Prepared by:  
Gary J. Holland  
Assistant General Counsel

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<sup>5</sup> In *Gonzalez v. Vogel*, 616 So. 2d at 475, where Assistant State Attorney Vogel was running for county judge, the court also stated, "[I]t is undisputed that [Vogel] had no legal obligation to resign in order to run for this position."