



INFORMATION ONLY

FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

May 27, 2008

Mr. Eric Eisnaugle
8643 Dover Oaks Court
Orlando, Florida 32836

RE: DE 08-05
Resign to Run – Judicial Nominating
Commission Member running for State
Representative
§§ 99.012(3)(a) and (6)(b), Florida Statutes

Dear Mr. Eisnaugle:

This letter responds to your request for an advisory opinion regarding your desire to run for state representative. 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 a member of the Judicial Nominating Commission for the Ninth Judicial Circuit and are a candidate for a seat in the Florida House of Representatives. You indicate that the Governor appoints members of a judicial nominating commission and its members serve without receiving any salary.

You ask essentially the following question:

Is a member of a Judicial Nominating Commission required to resign to qualify and run for State Representative under Florida's "Resign-to-Run" law (section 99.012, Florida Statutes (2007))?

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:"

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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(6)(b), Florida Statutes (2007), indicates that the "Resign-to-Run" law "does not apply to . . . [p]ersons serving without salary as members of an appointive board or authority." In *Division of Elections Opinion* 84-2 (January 23, 1984), the Division applied this subsection to member of a municipal planning and zoning board, as well as the city's human relations commission, in opining that their members did not have to resign in order to run for city council. The same rationale applies to a member of a judicial nominating commission. A commission is a board or committee empowered to perform certain acts. As a board, the Judicial Nominating Commission falls within the exemption found within section 99.012(6)(b), Florida Statutes (2007).¹

For the foregoing reasons, Florida's Election Code does not require you to resign as a member of the Judicial Nominating Commission for the Ninth Circuit to qualify and run for state representative.

SUMMARY

Under Florida's resign-to-law law, a member of an appointed judicial nominating commission serving without salary need not resign to qualify and run for state representative.

Sincerely,



Donald L. Palmer
Director, Division of Elections

Prepared by:
Gary J. Holland
Assistant General Counsel

¹ Note, also, that this conclusion for a member of a judicial nominating commission to qualify and run for state representative is consistent with the Florida Constitution's provision that provides: "A member of a judicial nominating commission may hold public office other than judicial office." Fla. Const. Art 5, § 20(c)(6).