



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

April 12, 2012

Mrs. Rebecca C. Fleck  
119 Earls Court  
Sebring, Florida 33870

RE: DE 12-04 Resign-to-Run – Assistant  
Superintendent of Curriculum and  
Instruction running for School  
Superintendent – § 99.012, Florida Statutes

Dear Ms. Fleck:

This letter responds to your request for an advisory opinion concerning your desire to qualify and run for Highlands County District School Superintendent. 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 (2011).

You are currently the Assistant Superintendent of Curriculum and Instruction for the Highlands County School District. You are employed under an annual contract with the school board and it is the school board that has the authority to suspend or remove you, but you state that your immediate supervisor is the elected School Superintendent. You desire to qualify and run for the School Superintendent for the Highlands County School District in 2012. The incumbent school superintendent is seeking re-election. You desire to know if section 99.012, Florida Statutes (2011), Florida's "resign-to-run" law, requires you to resign from your position of Assistant Superintendent in order to qualify and run against the incumbent Superintendent.

As applied to your factual situation, the short answer to your inquiry is "no" because you are neither an officer nor a subordinate officer under the "resign-to-run" law.

The key determination under the "resign-to-run" law is whether, as an assistant superintendent, you are an "officer" or "subordinate officer." Section 99.012(3)(a), Florida Statutes (2011), states the general prohibition for an "officer:"



No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds.

The “resign-to-run” law defines an “officer” as “a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state.”<sup>1</sup> The law necessarily distinguishes between an “officer” and an “employee.” In this regard, the Florida Supreme Court has stated:

The term "office" embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract. An employment does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes, perhaps, the most decisive difference between an employment and an office . . . .<sup>2</sup>

While the Florida K-20 Education Code specifically provides that a district school superintendent is an officer of the state system of public K-12 education, the Education Code does not designate an assistant superintendent as an officer; instead, it places assistant superintendents within the category of “administrative personnel.”<sup>3</sup> Also included in this category of administrative personnel are persons serving as deputy and associate superintendents, principals, assistant principals, directors of major instructional and non-instructional areas, career center directors, and others who perform management activities.<sup>4</sup> The statute does not mandate the position of assistant superintendent or prescribe specific duties for assistant superintendents. In particular, as it affects your position, the statute provides that included within “district-based instructional administrators” are personnel such as “assistant, associate, or deputy superintendents” who “often report directly to the school superintendent and supervise other administrative employees” and “who have broad authority for management policies and general school district operations related to the instructional program.”<sup>5</sup> The terms of your annual contract with the school board and the school board’s official job description for your position are consistent with this statutory classification. The contract<sup>6</sup> designates you as an employee and supervisor. The job description grants you broad managerial leadership functions, along with giving you responsibility for directing and supervising the overall activities of planning, developing, coordinating, implementing, and evaluating all curriculum and instructional support programs for K-12 for the Highlands County School District. However, the key gauges in your

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<sup>1</sup> § 99.012(1), Fla. Stat. (2011).

<sup>2</sup> *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919); see *State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

<sup>3</sup> §§ 1012.01(1) and (3), Fla. Stat. (2011).

<sup>4</sup> § 1012.01(3), Fla. Stat.(2011).

<sup>5</sup> § 1012.01(3)(a), Fla. Stat. (2011).

<sup>6</sup> The contract specifically identifies its basis as §1012.33(1)(b), Fla. Stat. (2011), which requires the school district to have a written contract with school principals and supervisors.

situation for “resign-to-run” law purposes are that your specific duties are not conferred or defined by law and your position exists via an annual contract; therefore, you are not an officer for purposes of the “resign-to-run” law. This conclusion is consistent with a 1982 Division opinion that an “Assistant Superintendent of Instruction” was a contractual employee, not an officer.<sup>7</sup>

Not being an officer under the “resign-to-run” law does not end the inquiry whether the “resign-to-run” law applies to your situation. The law further requires a “subordinate officer” to resign “effective upon qualifying ... 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.”<sup>8</sup> It defines “subordinate officer” as “a person who has been delegated the authority to exercise the sovereign power of the state by an officer.”<sup>9</sup> As applied to your situation, the question becomes whether the school superintendent (who is an “officer”) has delegated you any authority to exercise some portion of the sovereign power of the state. If so, then you would be a “subordinate officer.” I can find nowhere in your employment contract, job description, or in statute<sup>10</sup> that the school superintendent has delegated any “sovereign power of the state” to you; therefore, my opinion is that you are not a “subordinate officer” for purposes of Florida’s “resign-to-run” law.<sup>11</sup>

By not being either an officer or subordinate officer, you are not required to resign your present position under the “resign-to-run” law to qualify and run against the incumbent district school

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<sup>7</sup> *Division of Elections Opinion* 82-10 (June 11, 1982); see also *Division of Elections Opinion* 84-24 (July 6, 1984) (A Director of Teacher Placement and Certification for a county school board was not an officer).

<sup>8</sup> § 99.012(4), Fla. Stat. (2011). Based upon the legislative history and prior interpretations of this statutory provision, the Division of Elections views this subsection as an exemption to the “resign-to-run” law for subordinate officers. See, e.g., *Division of Elections Opinion* 07-08 (December 5, 2007) and opinions cited therein. Therefore, unless a subordinate officer seeks to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise the subordinate officer and who has qualified as a candidate for reelection to that office, the exemption is applicable and the subordinate officer need not resign to run for public office.

<sup>9</sup> § 99.012(2), Fla. Stat. (2011).

<sup>10</sup> The statutory duties and responsibilities of a district school superintendent are found in §§ 1001.49, 1001.51, 1001.53, and 1012.27, Fla. Stat. (2011).

<sup>11</sup> *But cf.* *Division of Elections Opinion* 84-21 (July 2, 1984) and *Division of Elections Opinion* 84-25 (July 10, 1984) (These opinions applied the “resign-to-run” law to a county Director of Instruction and Director of Adult and Community Education, respectively. The opinions interpreted an earlier version of the “resign-to-run” law where the law applied to “subordinate personnel,” not “subordinate officers” as specified in the present statute. An assistant superintendent of schools undoubtedly constitutes “subordinate personnel,” but that is not a governing prerequisite for application of the current “resign-to-run” law.)

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superintendent. The conclusions expressed in this opinion, however, are limited to the application of the “resign-to-run” law to your situation; the opinion does not address any personnel policies or rules that the school district may have regarding the political activities of its employees. This office has no authority to interpret laws, rules, or policies that are outside the parameters of the Election Code.

SUMMARY

As applied to your specific position of Assistant Superintendent of Curriculum and Instruction, you are neither an “officer” nor a “subordinate officer” under Florida’s “resign-to-run” law and you have no obligation to resign before qualifying to run against the incumbent school superintendent.

Sincerely,



Dr. Gisela Salas  
Director, Division of Elections