

Senior Management employee running for county office

Number: INFORMAL

Date: April 06, 2000

The Honorable Walter N. Colbath, Jr.
Chief Judge, Fifteenth Judicial Circuit
County Courthouse
West Palm Beach, Florida 33401

Dear Judge Colbath:

You ask whether an individual in a senior management position must take a leave of absence or resign in order to run for an elected county position. Attorney General Butterworth has asked me to respond to your letter.

You have not advised this office of the positions in question. Accordingly, any comments expressed herein must be general in nature. Moreover, any question regarding the applicability of section 99.012, Florida Statutes, Florida's Resign to Run Law, should be directed to the Division of Elections in the Department of State rather than to this office. The division has been authorized by the Legislature to interpret the provision of the Florida Election Code, of which section 99.012 is a part.[1]

Career service employees are prohibited from holding or being a candidate for state political office while in the employment of the state. They may be a candidate for or hold local public office only when authorized by their agency head and approved by the Department of Management Services as involving no interest which conflicts or activity which interferes with their state employment.[2]

No such statutory prohibition exists for senior management employees. Employees in the Senior Management Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.[3] Thus, such issues would appear to be left to the discretion of the agency head. In some cases, however, the provisions of the federal Hatch Act may be applicable.[4]

I trust that the above informal comments may be of some assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] See section 106.23(2), Florida Statutes.

[2] See section 110.233(4), Florida Statutes.

[3] See section 110.403, Florida Statutes.

[4] See 5 U.S.C. s. 1501 *et seq.*, specifically 5 U.S.C. s. 1502(a)(3) which, subject to certain exceptions, provides that a state or local officer or employee may not be a candidate for elective office. *And see* 5 U.S.C. s. 1501(4) defining "State or local officer or employee" for purposes of the Hatch Act as an individual employed by a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency, but does not include:

"(a) an individual who exercises no functions in connection with that activity; or

(b) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization."