Public Officers and Employees, group insurance

Number: INFORMAL

Date: August 05, 2010

Mr. John C. Wolfe
City Attorney
Office of the City Attorney
City of St. Petersburg
Post Office Box 2842
St. Petersburg, Florida 33731-2842

Dear Mr. Wolfe:

As City Attorney for the City of St. Petersburg and on behalf of the Mayor of the City of St. Petersburg, you have asked for assistance in determining whether a voluntary AFLAC supplemental insurance plan offered to city employees would be a "group insurance plan" within the scope of section 112.0801, Florida Statutes. While this office is authorized to provide legal advice and opinions on questions of state law, we do not have the authority to resolve mixed questions of law and fact. Thus, this office has no authority to review the terms of an insurance plan offered by a private company to determine its characterization within the scope of a state statute. However, despite the limitations of our authority, I offer the following informal comments in an effort to provide you with some general direction on this issue.

Section 112.08(2), Florida Statutes, authorizes every local governmental unit, including municipalities, "to provide and pay out of its available funds for all or part of the premium for life, health, accident, hospitalization, legal expense, or annuity insurance, or all or any kinds of such insurance, for the officers and employees of the local governmental unit . . . and, to that end, to enter into contracts with insurance companies or professional administrators to provide such insurance."

Section 112.0801, Florida Statutes, provides for the participation of retired governmental employees in agency group insurance plans offered to current officers and employees, as follows:

"(1) Any state agency, county, municipality, special district, community college, or district school board which provides life, health, accident, hospitalization, or annuity insurance, or all of any kinds of such insurance, for its officers and employees and their dependents upon a group insurance plan or self-insurance plan shall allow all former personnel who have retired prior to October 1, 1987, as well as those who retire on or after such date, and their eligible dependents, the option of continuing to participate in such group insurance plan or self-insurance plan. Retirees and their eligible dependents shall be offered the same health and hospitalization insurance coverage as is offered to active employees at a premium cost of no more than the premium cost applicable to active employees. For the retired employees and their eligible dependents, the cost of any such continued participation in any type of plan or any of the cost thereof may be paid by the employer or by the retired employees. To determine health and

hospitalization plan costs, the employer shall commingle the claims experience of the retiree group with the claims experience of the active employees; and, for other types of coverage, the employer may commingle the claims experience of the retiree group with the claims experience of active employees. Retirees covered under Medicare may be experience-rated separately from the retirees not covered by Medicare and from active employees, provided that the total premium does not exceed that of the active group and coverage is basically the same as for the active group.
(2) For purposes of this section, 'retiree' means any officer or employee who retires under a state retirement system or a state optional annuity or retirement program or is placed on disability retirement and who begins receiving retirement benefits immediately after retirement from employment. In addition to these requirements, any officer or employee who retires under the Public Employee Optional Retirement Program established under part II of chapter 121 shall be considered a 'retired officer or employee' or 'retiree' as used in this section if he or she:
(a) Meets the age and service requirements to qualify for normal retirement as set forth in s. 121.021(29); or
(b) Has attained the age specified by s. 72(t)(2)(A)(i) of the Internal Revenue Code and has 6 years of creditable service."

You have asked whether voluntary AFLAC supplemental insurance plan offered to city employees would be a "group insurance plan" subject to the requirements of section 112.0801, Florida Statutes. You have described the AFLAC plan as one in which the municipality offers the AFLAC insurance as part of the benefits package offered to employees, the portable AFLAC insurance policy would be paid 100% by the employee policy holder through pre-tax payroll deductions collected and remitted to AFLAC by the municipality, and the municipality would publicize the availability of the plans and facilitate communication between AFLAC and the municipality's employees but would not endorse the AFLAC insurance plan.

While the term "group insurance plan" is not defined for purposes of section 112.0801, Florida Statutes, various statutory sections dealing with insurance and other legal resources may provide some guidance. Part VII, Chapter 627, Florida Statutes, relating to group, blanket, and franchise health insurance policies, provides a definition of "group health insurance" for purposes of that part. Section 627.652(1), Florida Statutes, states that group health insurance is "that form of health insurance covering groups of persons under a master group health insurance policy issued to any one of the groups listed in ss. 627.653-627.656." The groups which may be covered include employee groups;[1] labor union, association, and small employer health alliance groups;[2] debtor groups;[3] teacher and student groups;[4] and other additional groups covered under section 627.656.

A more general definition of "group insurance" may be found in Florida Jurisprudence:

"Generally speaking, group insurance is the coverage of a number of individuals comprising a group, by means of a single or blanket policy, thereby effecting economies which frequently enable the insurer to sell its services at lower premium rates than are ordinarily obtainable for the same type of insurance protection on policies sold to individuals."[5]

American Jurisprudence also includes a general definition:

"Generally, group insurance is the coverage of a number of individuals by means of a single, comprehensive or blanket policy. A group insurance policy has been defined as a contract between an insurer and an entity for the benefit of a group of people that has some relationship to that entity. The policies may be issued to an employer, association, or other qualified group. This frequently enables the insurer to sell its services at lower premium rates than are ordinarily obtainable for the same type of insurance protection on policies sold to individuals. Group policies are generally construed as creating a contract of insurance between the employer and the insurer, but for the benefit of the insured employees. Group insurance is not indemnity insurance for the benefit of the employer, but insurance upon the life of the employee for his or her personal benefit and the protection of those depending upon the employee."[6]

Thus, it appears that a "group insurance plan" involves the coverage of a number of individuals by means of a single comprehensive policy. From the information you have submitted to this office, it does not appear that the municipality is contracting with AFLAC to insure a group, but is merely acting as an administrative agent for purposes of making payments on the employees' behalf.

I would also note that the State of Florida offers AFLAC cancer/intensive care protection insurance for state employees as part of our health and benefits package. You may wish to consult with the Department of Management Services regarding any determination that agency has made regarding the nature of AFLAC policies under the terms of section 112.0801, Florida Statutes, as the statute clearly applies both to state and local governmental agencies. The Department of Management Services, Division of State Group Insurance, may be contacted by telephone, toll-free at 1-800-226-3734.

I trust that these informal comments may be helpful to you.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] Section 627.653, Fla. Stat.

[2] Section 627.654, Fla. Stat.

[3] Section 627.655, Fla. Stat.

[4] Section 627.6551, Fla. Stat.

[5] 30A Fla. Jur. 2d *Insurance* s. 1806.

[6] 44A Am. Jur. 2d *Insurance* s. 1828.