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*BOARD CERTIFIED IN LABOR AND EMPLOYMENT LAW
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April 12, 2010

Alex Sink for Governor Campaign
Post Office Box 75590
Tampa, Florida 33675-059

Re: Healthcare Lawsuit

To the Alex Sink for Governor Campaign:

You have requested that we review a memorandum dated January 19, 2010, from Attorney General Bill McCollum to Majority Leader Harry Reid, Speaker Nancy Pelosi, and Minority Leaders Mitch McConnell and John Boehner. The memorandum provides Attorney General McCollum's analysis of the constitutionality of the proposed federal healthcare legislation that was subsequently passed by Congress in March 2010. You have asked whether Attorney General McCollum's act in providing the memorandum to Congressional leadership satisfies the requirements of section 16.52, Florida Statutes. In our opinion, Attorney General McCollum actions did not comply with the statute.

Section 16.52, Florida Statutes states:

(1) In order to provide for independent action and cooperative participation by the state in a program of concerted action among the states, and independent procedure to oppose any existing or proposed federal legislative encroachments upon constitutional state powers, it is hereby made a duty of the Department of Legal Affairs to make a study of federal legislation--existing and proposed--to determine whether such legislation has resulted, or may result, in objectionable or harmful encroachments upon the constitutional integrity of state governments, and with due regard to this state's full contribution to the national war effort, in cooperation with the attorneys general of other states, or alone, to pursue that course best calculated to preserve and safeguard the constitutional state powers of the government of this state. **It shall furnish to each of the several representatives in the Congress from this state, a written statement giving the reasons for any action being**

considered, or about to be taken hereunder at the time; and if possible, shall procure the assistance of such representatives therein and therefor.

(2) It shall be the duty of the Department of Legal Affairs of this state to render opinions to the representatives in Congress from this state, on any question arising within the scope of the subject matter of this act.

(3) In performing the duties imposed upon it under the provisions of this section, the Department of Legal Affairs is hereby authorized to employ therefor the services of the Council of State Governments, a national conference organization, or its successors in name or organization, or any other similar organization, in such manner not inconsistent with its powers and duties, as it may deem desirable; provided, that the cost of such employment, if any, shall be paid from the necessary and regular appropriation of the Department of Legal Affairs.

(Emphasis added).

It is a basic tenet of statutory construction that “where the language of a statute is plain and unambiguous there is no occasion for judicial interpretation.” *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452, 454 (Fla. 1992). Even if a court is convinced that the Legislature meant something not expressed in the language of the statute, “it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.” *Van Pelt v. Hilliard*, 75 Fla. 792, 798-99, 78 So. 693, 694-95 (Fla. 1918). Moreover, “it is a cardinal rule of statutory interpretation that courts should avoid readings that would render part of a statute meaningless.” *Forsythe* at 456. A court should not read “words in a statute as superfluous if a reasonable construction exists that gives effect to all words.” *State v. Bodden*, 877 So. 2d 680, 686 (Fla. 2004).

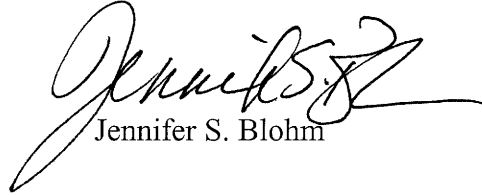
Applying these principles to section 16.52, Florida Statutes, it is our opinion that the plain language of the statute requires the Attorney General to provide a written statement of any actions he or she plans to undertake against federal legislation to the Congressional delegation of Florida and attempt to obtain the delegation’s assistance in the proposed actions. The statute’s language is unambiguous. Providing a memorandum to Congressional leadership from outside the state of Florida and posting the memorandum on the Attorney General’s website does not comply with the plain language of the statute. To find that such actions meet the requirements of the statute would render part of the statute meaningless and would circumvent the intent of the statute which is to provide notice to and obtain the assistance of Florida’s Congressional delegation.

The statute does not place the onus on Florida’s Congressional delegation to seek out what actions the Attorney General may be contemplating. It is the Attorney General’s duty to inform Florida’s Congressional delegation of his or her proposed actions with regards to federal legislation and to seek the delegation’s input and hopefully, assistance in any planned actions.

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In the matter at hand, it is our opinion that Attorney General McCollum's actions in providing a memorandum on the constitutionality of the federal healthcare legislation to non-Florida members of Congress and posting the memorandum on the Attorney General's website did not satisfy the requirements of section 16.52, Florida Statutes. In our view, the words of the statute should not be interpreted as superfluous or meaningless which would occur if Attorney General McCollum's actions were found to be sufficient.

Sincerely yours,



Jennifer S. Blohm