



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>January 7, 2019</p>	<p>No. I19-002 (R18-011)</p> <p>Re: University income pursuant to A.R.S. § 15-1670</p>
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To: John Allen
AZ House of Representatives

Questions Presented

1. Does Arizona Revised Statutes (“A.R.S.”) § 15-1670(G) require the three state universities to pay a percentage of their income earned from licensure and royalty payments and the sale and transfer of intellectual property to the general fund before deducting expenses?
2. If the universities are not in compliance with A.R.S. § 15-1670(G), what recourse exists?

Summary Answer

1. Yes. Arizona Revised Statutes § 15-1670(G) requires the universities to pay a specified percentage of their income from licensure and royalty payments and income from the sale and transfer of intellectual property developed by the university *before* netting expenses. The universities are violating the statute if they are calculating their income from those sources by first deducting expenses and concluding, for example, that they have no income as a result.

2. If a university owes money to the general fund, a plaintiff with standing could sue to compel payment. This opinion expresses no view on whether the circumstance currently exists.

Background

Arizona Revised Statutes § 15-1670(G) provides:

Beginning in fiscal year 2007-2008 and in each subsequent fiscal year for which an appropriation is made pursuant to subsections A, B, C and D of this section, each university shall deposit not later than October 1 with the state treasurer in the state general fund an amount equal to:

1. Twenty percent of the *income* from licensure and royalty payments received by the university during the preceding fiscal year.
2. Twenty-five percent of the *income* received by the university during the preceding fiscal year from the sale or transfer of intellectual property developed by the university.

(Emphasis added.) Although this statute was originally enacted in 2003, except as provided below, there have been no material changes relevant to the questions presented here.¹

In 2017, the Legislature amended A.R.S. § 15-1670 to add two new subsections, H and I, which require the universities to deposit “net income” into the general fund after April 30, 2017. 2017 Ariz. Laws, Ch. 328, § 1. This new provision, however, did not make any substantive changes to A.R.S. § 15-1670(G), nor did it specifically address how to interpret income received before April 30, 2017. Thus, the Legislature’s 2017 amendments do not impact university payments of income from contracts or transactions prior to April 30, 2017.

¹ The statute was initially codified as A.R.S. § 15-1670(D) when it was enacted in 2003. See 2003 Ariz. Laws Ch. 267, § 1. A 2016 amendment renumbered it to A.R.S. § 15-1670(G) but made no substantive changes. 2016 Ariz. Laws Ch. 130, § 2.

Analysis

I. Definition of Income

The opinion request turns on the interpretation of A.R.S. § 15-1670, which governs the Arizona Board of Regents and the three State universities—the University of Arizona, Arizona State University, and Northern Arizona University. The first question is whether A.R.S. § 15-1670 requires the universities to pay a percentage of their income to the general fund *before* netting certain expenses. This is an issue of statutory construction.

The “best and most reliable index of a statute’s meaning is its language.” *Janson on Behalf of Janson v. Christensen*, 167 Ariz. 470, 471 (1991). Where the language is plain and unambiguous, courts must follow the text as written. *Mid Kansas Fed. Sav. & Loan Ass’n of Wichita v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128 (1991); *see also Balestrieri v. Hartford Acc. & Indem. Ins. Co.*, 112 Ariz. 160, 163 (1975).

The Legislature did not supply a definition of “income” in A.R.S. § 15-1670. Absent a specific statutory definition, courts give words their ordinary meaning, and often look to dictionary definitions. *DBT Yuma, L.L.C. v. Yuma Cty. Airport Auth.*, 238 Ariz. 394, 396, ¶ 9 (2015). “Words and phrases shall be construed according to the common and approved use of the language.” A.R.S. § 1-213.

A. **“Income” means all monies received without deducting expenses.**

As discussed below, “income” without further modification means gross income, not net income, in the context of A.R.S. § 15-1670. “Income” is defined as “the value of goods and services received by an individual in a given period of time.” Webster’s New International Dictionary 1143 (1993). Black’s Law Dictionary (10th Ed. 2014) defines income as “[t]he money or other form of payment that one receives, [usually] periodically, from employment, business, investments, royalties, gifts, and the like.” Both definitions focus on the amounts that

one receives, rather than any net profit calculation. In other words, the dictionary definition provides that income is all monies received. This is different from net income, defined as “the balance of gross income remaining after deducting related costs and expenses [usually] for a given period and losses allocable to the period.” Webster’s New International Dictionary 1520 (1993).

Additionally, the language of A.R.S. § 15-1670 as a whole indicates that the Legislature knows how to differentiate between “income” and “net income,” and intended income to mean gross income in this context. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (“The plainness or ambiguity of statutory language is determined by reference to [not only] the language itself, [but also to] the specific context in which that language is used, and the broader context of the statute as a whole.”).

The 2003 version of what is now Subsection G referred only to “income.” The 2017 amendments to add Subsections H and I used “net income” but did not make any changes to “income” in Subsection G. Moreover, A.R.S. § 15-1670 does not authorize any exclusions from income before paying the specified percentages. Therefore, in amending A.R.S. § 15-1670, the 2017 Legislature understood the difference between “income” and “net income” and intended to apply its ordinary meaning, *i.e.*, all monies received without deducting expenses. *See State v. Gonzales*, 206 Ariz. 469, 472, ¶ 10 (Ct. App. 2003) (“[w]hen the legislature has specifically included a term in some places within a statute and excluded it in other places, courts will not read that term into the sections from which it was excluded.”) (citations omitted).

B. Other federal definitions and case law indicate that “income” means all monies received, without deducting expenses.

The federal Bankruptcy Code contains another analogous use of “income.” In confirming Chapter 13 bankruptcy plans, 11 U.S.C. § 101(10A) requires debtors to calculate

their “monthly income.” *In re Harkins*, 491 B.R. 518, 521-22 (Bankr. S.D. Ohio 2013). In *Harkins*, a self-employed debtor sought to reduce his income calculation by deducting his business expenses. *Id.* at 523-24. The court held that deducting expenses was improper, reasoning that although the term “income” was not defined in the Bankruptcy Code, the plain meaning of “average monthly income from all sources” required the debtor to include all gross business receipts in his monthly income calculation. *Id.* at 525, 538-39, 543. In reaching its conclusion that “income” means all gross business receipts, the court considered the “broader context of the [Bankruptcy Code] as a whole.” *Id.* at 525-30. Therefore, the definition of income, the statutory scheme of A.R.S. § 15-1670, and federal law support defining income as all monies received, without deducting any expenses.

II. Remedies

The opinion request also asks whether recourse is available if the universities have not been depositing the required percentage of income into the general fund pursuant to A.R.S. § 15-1670. An investigation into the amount of monies the universities have deposited into the general fund would require a factual investigation.² Assuming, however, that the universities have not been depositing the required percentage of “income” payments each fiscal year pursuant to A.R.S. § 15-1670(G), some recourse may be available, including the commencement of a declaratory judgment action by some person(s) with standing to do so.

² According to the opinion request, the universities have reported significant income from licensure and royalty payments as well as from the sale or transfer of intellectual property, but have transferred no monies to the general fund. Instead, the universities have deducted certain costs and expenses from the amounts received, reducing the total net income to zero. In formulating this opinion, we have not reviewed the deductions claimed by the universities, nor have we examined the precondition in A.R.S. § 15-1670(G) that certain appropriations must be made before the universities have an obligation to remit monies under that statute. We also have not examined whether the Legislature has adjusted appropriations to the universities in preceding years to accomplish the same financial result as if the universities had remitted monies under the statute.

Conclusion

The dictionary definition, the applicable statutory scheme, and analogous federal law indicate that income means all monies received, without deducting any expenses. Consequently, A.R.S. § 15-1670 requires the universities to deposit a percentage of “income,” not “net income,” into the general fund, and they should not apply deductions before calculating the amounts to be paid.

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