



**STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>KRIS MAYES ATTORNEY GENERAL</p> <p>March 29, 2024</p>	<p>No. I24-007 (R23-010)</p> <p>Re: Definitions of terms in A.R.S. § 41-4025(E)</p>
--	---

To: Jeffrey Glover, Colonel
Director
Arizona Department of Public Safety

Joan Serviss
Director
Arizona Department of Housing

Question Presented

Can the terms “owner,” “partner,” “general partner,” “president,” “vice president,” “secretary,” “treasurer,” “manager,” and “managing members” (collectively the “Business Roles”) in A.R.S. § 41-4025(E) be defined by reference to the definitions of these same terms in other parts of the Arizona Revised Statutes?

Summary Answer

Yes, the Business Roles identified in A.R.S. § 41-4025(E) may be defined by reference to the definitions of these terms in other contextually-related sections of the Revised Statutes. As used in A.R.S. § 41-4025(E), the Business Roles reference positions in certain business organizations, a context identical to that in which the terms are defined elsewhere. Under these circumstances, traditional statutory construction principles—along with fundamental logic and

common sense—support the conclusion that the Business Roles have the same meaning in A.R.S. § 41-4025(E) as they do in related parts of the Revised Statutes.

Background

When a state enacts a law authorizing access to federally-held criminal history record information for use in connection with a state agency’s licensing or employment, the Federal Bureau of Investigation (“FBI”) has authority to approve the law before allowing access to the records. *See* Pub. L. 92-544; 28 C.F.R. § 0.85(j); 28 C.F.R. § 50.12.

In 2022, the Arizona Legislature passed H.B. 2165, which is now codified in relevant part as A.R.S. § 41-4025(E). This statute requires certain Department of Housing (“DOH”) licensees to obtain fingerprint clearance cards issued by the Department of Public Safety (“DPS”) as a condition of licensure, as follows:

Before receiving and holding a license issued pursuant to this article, the *owner*, if the applicant is a sole proprietorship, all *partners*, if the applicant is a partnership, the *general partner*, if the applicant is a limited partnership, the *president, vice president, secretary* and *treasurer*, if the applicant is a corporation or other type of association, the *manager* or *managing members*, if the applicant is a limited liability company, the individual, if the applicant is a salesperson, and the qualifying party shall submit a valid fingerprint clearance card issued pursuant to section 41-1758.03. The applicant is responsible for providing the department with a valid fingerprint clearance card.

A.R.S. § 41-4025(E) (emphasis added).

Because processing fingerprint clearance card applications requires access to federal criminal history record information, DPS submitted the law to the FBI for approval. The FBI concluded that A.R.S. § 41-4025(E) does not sufficiently identify the specific categories of licensees who must obtain fingerprint clearance cards because the Business Roles are not defined in Title 41. The FBI advised that an Attorney General opinion that definitions in other statutes

may apply to the Business Roles would resolve its concerns and allow for the approval of H.B. 2165.

On May 31, 2023, DPS Director Jeffrey Glover and DOH Director Joan Serviss jointly submitted to this Office a request under A.R.S. § 41-193(A)(7) for an Attorney General Opinion as to whether definitions outside Title 41 may apply to the Business Roles in A.R.S. § 41-4025(E).

Analysis

When “statutory terms are defined,” Arizona courts will “apply that definition.” *State v. Petrak*, 198 Ariz. 260, 264 ¶ 10 (App. 2000) (internal quotation marks omitted).¹ Here, the Business Roles are statutorily defined, but not within Title 41. *See, e.g.*, A.R.S. § 10-140(38) (defining “president”); A.R.S. § 29-301(8) (defining “partner”).

Because identical terms can appear in disparate contexts throughout the Revised Statutes, definition provisions generally contain the proviso that definitions apply “[i]n this chapter” or “[i]n this title,” *e.g.*, A.R.S. § 29-301 (chapter limitation); A.R.S. § 28-101 (title limitation), implying that the definitions do not necessarily apply outside the chapter or title. But a “statute’s context, subject matter, historical background, effects and consequences, and spirit and purpose” are key to statutory interpretation. *Zamora v. Reinstein*, 185 Ariz. 272, 275 (1996). Courts “construe statutory provisions in light of their place in the statutory scheme . . . so they may be harmonious and consistent.” *State v. Flynt*, 199 Ariz. 92, 94 ¶ 5 (App. 2000) (citation and internal quotation marks omitted). And courts “presume that the legislature knows the existing laws when it enacts or modifies a statute.” *State v. Garza Rodriguez*, 164 Ariz. 107, 111 (1990).

¹ Absent a statutory definition, courts will “interpret statutory terms in accordance with their commonly accepted meanings,” *State v. Petrak*, 198 Ariz. 260, 264 ¶ 10 (App. 2000) (internal quotation marks omitted), and will commonly look to ordinary dictionary definitions. *E.g., W. Valley View, Inc. v. Maricopa Cnty. Sheriff’s Off.*, 216 Ariz. 225, 229 ¶ 16 (App. 2007) (relying on *Black’s Law Dictionary* to define otherwise undefined terms).

When contextually appropriate, courts therefore draw from definitions in disparate parts of the Revised Statutes, notwithstanding language limiting those definitions to a particular title or chapter. *See, e.g., In re Adam P.*, 201 Ariz. 289, 291 ¶¶ 10, 13 (App. 2001) (citing A.R.S. § 28–101 provision defining a “golf cart” as a type of “motor vehicle” in support of conclusion that a golf cart is a “means of transportation” under criminal theft statute); *Matter of Est. of Hoover*, 140 Ariz. 464, 464–68 (App. 1984) (relying on definition of the term “recklessly” in the criminal code to interpret civil provision barring convicted killer from inheriting from victim under certain circumstances); *Daggett v. Jackie Fine Arts, Inc.*, 152 Ariz. 559, 564–65 (App. 1986) (citing A.R.S. § 44-1801(19)’s definition of “security” to interpret A.R.S. § 13-2301(D)’s provision that racketeering includes “the sale of unregistered securities by an unregistered dealer or salesman”); *cf. State v. Simmons*, 238 Ariz. 503, 507 ¶ 16 (App. 2015) (relying on the definitions of “facilitation” and “conspiracy” in A.R.S. §§ 13-1003(A) and 13-1004(A) to define those terms in a separate chapter of the criminal code).

While the definitions in *Simmons* were not limited by chapter, the statute at issue had expressly incorporated certain definitions from outside the chapter without incorporating the definitions of “facilitation” or “conspiracy.” 238 Ariz. at 507 ¶ 16. The court nonetheless observed that “the legislature is not required to specifically incorporate statutory definitions into a statute.” *Id.* Moreover, “if the legislature had intended different meanings for the terms ‘facilitate’ and ‘conspire’ . . . it could have said so.” *Id.* (internal quotation marks omitted).

This same analysis applies with at least equal force here because there is a perfect contextual alignment between the Business Roles defined in the business entity titles and the identical Business Roles referenced in A.R.S. § 41-4025(E). Title 29, for example, governs limited liability companies (“LLCs”) and sets forth the definition of an LLC “manager.” A.R.S. § 29-

3102(13). Section 41-4025(E) does not explicitly incorporate definitions from Title 29, but there is no doubt that the term “manager” in A.R.S. § 41-4025(E) references an *LLC* manager—as opposed to some other type of manager—because the statute expressly provides for the submission of a fingerprint card by “the manager . . . *if the applicant is a limited liability company.*” (Emphasis added.) Statutory construction principles, in combination with fundamental logic and common sense, therefore dictate that an individual who is an Arizona LLC manager as defined in Title 29 is an LLC manager under that same definition for the purposes of A.R.S. § 41-4025(E).

This is true with respect to each of the Business Roles, as follows:²

1. “[T]he **owner**, if the applicant is a sole proprietorship.” A.R.S. § 41-4025(E).

“Sole proprietor means the **owner** of a sole proprietorship.” A.R.S. § 32-701(26). A “sole proprietorship,” in turn, “means a business that is owned by one individual and that does not have a legal distinction between the owner and the business.” *Id.* § 32-701(27).

2. “[A]ll **partners**, if the applicant is a partnership.” A.R.S. § 41-4025(E)

“**Partner** means a limited or general partner.” A.R.S. § 29-301(8). A “[l]imited partner means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.” *Id.* § 29-301(6).

3. “[T]he **general partner**, if the applicant is a limited partnership.” A.R.S. § 41-4025(E).

“**General partner** means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.” A.R.S. § 29-301(5).

² For clarity, emphasis is added and internal quotation marks are omitted in the definitions that follow.

4. “[T]he **president, vice president, secretary and treasurer**, if the applicant is a corporation or other type of association.” A.R.S. § 41-4025(E).

“**President** means that officer designated as the president in the articles of incorporation or bylaws or, if not so designated, that officer authorized in the articles of incorporation, bylaws or otherwise to perform the functions of the chief executive officer, irrespective of the name by which designated.” A.R.S. § 10-140(38).

“**Vice-president** means an officer designated as the vice-president in the articles of incorporation or bylaws or an officer authorized in the articles of incorporation, the bylaws or otherwise to perform the functions of a vice-president, irrespective of the name by which designated.” A.R.S. § 10-140(50).

“**Secretary** means that officer designated as the secretary in the articles of incorporation or bylaws or that officer authorized in the articles of incorporation, the bylaws or otherwise to perform the functions of secretary, irrespective of the name by which designated.” A.R.S. § 10-140(43).

“**Treasurer** means that officer designated as the treasurer in the articles of incorporation or bylaws or that officer authorized in the articles of incorporation or bylaws or otherwise to perform the functions of treasurer, irrespective of the name by which designated.” A.R.S. § 10-140(48).

5. “[T]he **manager or managing members**, if the applicant is a limited liability company.” A.R.S. § 41-4025(E).

“**Manager** means a person that under the [LLC] operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in section 29-3407, subsection C.” A.R.S. § 29-3102(13).

A “[m]ember means a person that both: (a) [h]as become a member of a limited liability company under section 29-3401 or was a member in a company when the company became subject to [chapter 29] under section 29-3110”; and “(b) [h]as not dissociated under section 29-3602.” A.R.S. § 29-3102(15). A “[m]ember-managed limited liability company means a limited liability company that is not a manager-managed limited liability company.” *Id.* § 29-3102(16). By default, “[m]anagement of a limited liability company is reserved to its members unless the articles of organization provide that the company is managed by one or more managers.” A.R.S. § 29-3407(A).

Conclusion

The Business Roles are positions in business organizations that the Revised Statutes define in various titles and then reference in an identical context in A.R.S. § 41-4025(E). The definitions recited above may therefore be applied to these terms in A.R.S. § 41-4025(E).

Kris Mayes
Attorney General