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OPINION	:	No. 04-103
	:	
of	:	July 23, 2004
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THE HONORABLE KEVIN SHELLEY, SECRETARY OF STATE, has requested an opinion on the following question:

May a business that provides services requiring a license, certification, or registration pursuant to the Business and Professions Code conduct its activities as a limited liability company?

CONCLUSION

A business that provides services requiring a license, certification, or registration pursuant to the Business and Professions Code may conduct its activities as a limited liability company if the services rendered require only a nonprofessional, occupational license.

ANALYSIS

The Legislature has enacted a comprehensive statutory scheme, the Beverly-Killea Limited Liability Company Act (Corp. Code, §§ 17000-17655; “LLC Act”)¹ to govern the formation and operation of a limited liability company (“LLC”). In *PacLink Communications Internat., Inc. v. Superior Court* (2001) 90 Cal.App.4th 958, 963, the court quoted from 9 Witkin, Summary of California Law (2001 Supp.) section 43A, page 346, in describing the characteristics of an LLC:

“ ‘A limited liability company is a hybrid business entity formed under the Corporations Code and consisting of at least two ‘members’ [citation] who own membership interests [citation]. The company has a legal existence separate from its members. Its form provides members with limited liability to the same extent enjoyed by corporate shareholders [citation], but permits the members to actively participate in the management and control of the company [citation].’ ”²

While treated like a partnership for income tax purposes, an LLC allows its owners to conduct their business without having personal liability for the obligations of the enterprise. (See § 17101; *Abraham & Sons Enterprises v. Equilon Enterprises* (9th Cir. 2002) 292 F.3d 958, 962; *Forming and Operating Cal. Limited Liability Companies* (Cont. Ed. Bar 1995) § 1.2, pp. 2-3.) In order to form an LLC, an operating agreement must be entered into by the members and articles of organization must be executed and filed with the Secretary of State. (§ 17050.)

We are asked whether a business that provides services requiring a license, certification, or registration pursuant to the Business and Professions Code may conduct its activities as an LLC. We conclude that it may do so if the services rendered require only a nonprofessional, occupational license.

Section 17002 generally authorizes an LLC to engage in “any lawful business activity”:

“Subject to any limitations contained in the articles of organization and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, except the banking business, the

¹ All references hereafter to the Corporations Code are by section number only.

² A limited liability company may now consist of one or more members (§ 17050(a), (b).)

business of issuing policies of insurance and assuming insurance risks, or the trust company business.”

One exception to this general authorization, and the statute critical to our analysis, is section 17375, which states that an LLC has no authority to perform certain “professional services”:

“Nothing in this title shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of Section 13401 and in Section 13401.3, in this state.”

“Section 13401 and . . . Section 13401.3,” referred to in section 17375, are contained in the Moscone-Knox Professional Corporation Act (§§ 13400-13410; “PC Act”). Subdivision (a) of section 13401 provides:

“ ‘Professional services’ means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.”

Section 13401.3 states:

“As used in this part, ‘professional services’ also means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code).”

Accordingly, an LLC may conduct certain businesses subject “to compliance with any other applicable laws” (§ 17002) but in any event has no authority to perform “professional services” (§ 17375) as defined in two statutes (§§ 13401, 13401.3) found in the PC Act.

How are these statutes to be interpreted and applied with respect to services requiring a license, certification, or registration pursuant to the Business and Professions Code? Over 60 occupational activities require such a license, certification, or registration, including barbers, locksmiths, private detectives, alarm companies, structural pest control operators, electronic and appliance repair shops, and automotive repair dealers. (See, e.g., Bus. & Prof. Code, §§ 6980.10, 7065, 7317, 7520, 7592, 8560, 9840, 9884.)

In analyzing the terms of the LLC Act, including its reference to the PC Act, we may apply well recognized principles of statutory construction. “Our role in construing

a statute is to ascertain the Legislature’s intent so as to effectuate the purpose of the law. [Citation]” (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.) “ ‘In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning.’ ” (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.) “ ‘The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.’ ” (*Walnut Creek Manor v. Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 268.)

We must determine the scope of “professional services” as that term is used in sections 13401, 13401.3, and 17375. “[S]tandard dictionaries . . . generally define ‘profession’ as ‘a calling requiring specialized knowledge and often long and intensive academic preparation.’ ” (*Hollingsworth v. Commercial Union Ins. Co.* (1989) 208 Cal.App.3d 800, 806.) Thus, the adjective “professional” is ordinarily defined as “engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency.” (Webster’s 3d New Internat. Dict. (2002), p. 1811.) Similarly, a “professional” is “a person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.” (Black’s Law Dict. (7th ed. 1999), p. 1226.)

In *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, the court concluded that the services performed pursuant to a vehicle salesperson license issued under the Vehicle Code were not “professional services,” but rather were “nonprofessional, occupational” services. The court analyzed the differences between the two as follows:

“ . . . [C]ourts have drawn a clear distinction between professional licenses, such as veterinarians or psychologists, and nonprofessional occupational licenses. In *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894 . . . , this court held that the preponderance of the evidence standard should be used in administrative proceedings to suspend or revoke a food processor’s license. The court noted that a food processor’s license could be obtained without meeting any educational or skill requirements. The only specific requirements for obtaining such a license were that the applicant show ‘character, responsibility, and good faith’ and a sound financial status. [Citation.] In contrast, in order to obtain a professional license, an applicant must ordinarily satisfy extensive educational and training requirements and pass a rigorous state-administered examination. [Citation.]

“A vehicle salesperson’s license is a nonprofessional license. The

license carries no educational, training or testing prerequisites. [Citation.] All of the application criteria concern historical evidence of the applicant’s ‘character, honesty, integrity, and reputation,’ and information regarding prior court judgments and disciplinary actions. [Citation.] . . .” (*Id.* at pp. 318-319.)

Following the reasoning of *Mann*, we find that some services that require a license, certification, or registration pursuant to the Business and Professions Code are “professional services” and others are “nonprofessional services.” To determine whether a particular service is one or the other requires an examination of the educational, training, and testing prerequisites.³

Returning to the language of section 17375, we note that an LLC is not permitted “to render professional services.” An LLC would be permitted to perform “nonprofessional services” without violating this statute. As for section 17375’s reference to “subdivision (a) of Section 13401 and . . . Section 13401.3,” here again these two statutes refer to “professional services” that are performed “pursuant to a license, certification, or registration” Consequently, “nonprofessional services” that require a license, certification, or registration pursuant to the Business and Professions Code would not be covered by the definitions contained in sections 13401 or 13401.3, thus allowing an LLC to perform “nonprofessional services” under the terms of these two statutes.

In so construing the language of sections 13401, 13401.3, and 17375, we harmonize the provisions of the LLC Act and the PC Act. The one refers to the other, and we read the two statutory schemes as a whole. While professional services may not be performed by an LLC, they may be performed by a professional corporation formed under the PC Act. (§§ 13402, 13404.) For example, while attorneys are barred from forming an LLC under the terms of section 17375, they may form a law corporation under the PC Act as authorized by the State Bar Act (see Bus. & Prof. Code, §§ 6160-6172). Such other professionals as doctors, dentists, chiropractors, speech pathologists and audiologists, physical therapists, nurses, psychologists, optometrists, pharmacists, veterinarians, marriage and family counselors, clinical social workers, accountants, architects, and shorthand reporters may form professional corporations under the PC Act. Thus, the authorization contained in the PC Act for the rendering of “professional services” in corporate form

³ Applying the *Mann* test to each licensed activity specified in the Business and Professions Code is beyond the scope of this opinion.

confirms our construction of the LLC Act.⁴

We conclude that a business that provides services requiring a license, certification, or registration pursuant to the Business and Professions Code may conduct its activities as an LLC if the services rendered require only a nonprofessional, occupational license.

⁴ We recognize that for some purposes, the term “professional services” has been broadly construed. (See, e.g., *Amex Assurance Co. v. Allstate Ins. Co.* (2003) 112 Cal.App.4th 1246, 1252 [for purposes of a homeowner’s insurance policy, “the word ‘professional’ is no longer limited to the ‘learned professions,’ but has a broader scope that includes skilled services such as plumbing”]; *Hollingsworth v. Commercial Union Ins. Co.*, *supra*, 208 Cal.App.3d at p. 806 [for purposes of a merchant insurance policy, “ ‘professional’ encompasses a broad range of activities beyond those traditionally considered ‘professions,’ such as medicine, law, or engineering”].) Here, we are construing the term “professional services” only for purposes of the LLC Act and its further reference to the PC Act.