

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1561**

Carvin Buzzell, Jr.,
Appellant,

vs.

Tim Walz Governor of Minnesota, et al.,
Respondents.

**Filed June 14, 2021
Affirmed
Cochran, Judge**

Ramsey County District Court
File No. 62-CV-20-3623

Steven Anderson, Anderson Law Group PLLC, St. Paul, Minnesota (for appellant)

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Considered and decided by Gäitas, Presiding Judge; Larkin, Judge; and
Cochran, Judge.

SYLLABUS

The governor does not “commandeer” property within the meaning of Minn. Stat. § 12.34, subd. 1(2) (2020), of the Minnesota Emergency Management Act of 1996 by issuing executive orders during a peacetime emergency that subject a business owner to operating restrictions.

OPINION

COCHRAN, Judge

This case arises from respondent-governor's exercise of his authority under the Minnesota Emergency Management Act of 1996 (MEMA or the act), Minn. Stat. §§ 12.01-.61 (2020). Pursuant to that authority, the governor issued executive orders in the spring of 2020 to address the COVID-19 pandemic, including orders restricting business operations at bars, restaurants, and other places of public accommodation.

Appellant owns and operates two businesses affected by the executive orders. Appellant brought an action in district court alleging claims arising from the executive orders. Among other claims, appellant alleged that the governor “commandeer[ed]” his property within the meaning of Minn. Stat. § 12.34, subd. 1(2), through issuance of the executive orders, and therefore he is entitled to compensation as an “owner of commandeered property” under Minn. Stat. § 12.34, subd. 2. Ruling on cross-motions by the parties, the district court dismissed all claims and denied appellant’s motion for partial summary judgment as to the commandeering claim. Appellant now challenges the district court’s decision only with respect to his commandeering claim against the governor under Minn. Stat. § 12.34. Because the district court correctly determined that the governor did not “commandeer” appellant’s business property within the meaning of Minn. Stat. § 12.34, and that appellant is therefore not entitled to compensation as an “owner of commandeered property” under the statute, we affirm.

FACTS

The Governor's Executive Orders

Beginning in March 2020, respondent Minnesota Governor Tim Walz issued a series of executive orders aimed at slowing the spread of the COVID-19 virus. This case pertains only to the following executive orders relied on by appellant Carvin Buzzell, Jr., in his complaint, which we refer to collectively as the COVID-19-related executive orders.¹

On March 13, 2020, the governor issued Executive Order 20-01, declaring a peacetime emergency. Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). On March 16, the governor issued Executive Order 20-04. Emerg. Exec. Order No. 20-04, *Providing for Temporary Closure of Bars, Restaurants, & Other Places of Public Accommodation* (Mar. 16, 2020). That executive order temporarily closed various businesses and facilities to the public, including restaurants, bars, and other places offering food or beverage for on-premises consumption. *Id.* Although the order prohibited onsite consumption, it allowed businesses subject to the order to continue offering delivery and take-out services. *Id.* The order stated that any person who willfully violated its mandates would be guilty of a misdemeanor offense. *Id.* The governor extended the restrictions a number of times during the spring of 2020. *See* Emerg. Exec. Order No. 20-48, *Extending & Modifying Stay at Home Order, Continuing Temporary Closure of Bars, Restaurants, &*

¹ The facts set forth are based on Buzzell's complaint. In reviewing the district court's dismissal of a complaint for failure to state a claim, we accept the facts alleged in the complaint as true. *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 594 (Minn. 2021).

Other Places of Public Accommodation, & Allowing Additional Workers in Certain Non-Critical Sectors to Return to Safe Workplaces (Apr. 30, 2020); Emerg. Exec. Order No. 20-56, *Safely Reopening Minnesota’s Economy & Ensuring Safe Non-Work Activities during the COVID-19 Peacetime Emergency* (May 13, 2020) (extending the temporary closure of bars, restaurants, and other places of public accommodation through May 31, 2020).

Beginning in May 2020, the governor began relaxing restrictions on businesses. On May 27, the governor issued Executive Order 20-63, which permitted restaurants and bars to resume outdoor dining, provided they limited outdoor occupancy to 50 people and complied with various safety precautions. Emerg. Exec. Order No. 20-63, *Continuing to Safely Reopen Minnesota’s Economy & Ensure Safe Non-Work Activities during the COVID-19 Peacetime Emergency* (May 27, 2020).

The Present Action

Buzzell owns and operates two businesses: Timber Valley Grille and Catering in Mille Lacs County and Rum River Barn and Vineyards in Morrison County. Timber Valley Grille and Catering is a full-service bar, restaurant, and catering business. Buzzell operates Rum River Barn and Vineyards as a wedding venue. As places of public accommodation, both of Buzzell’s businesses were subject to the COVID-19-related executive orders.

Buzzell commenced this action on June 2, 2020, against the governor and the Minnesota Executive Council. His complaint averred that he had “closed” his businesses in compliance with the COVID-19-related executive orders. He stated that the restrictions

caused his monthly gross revenue at Timber Valley Grille and Catering to decline by 94% and that Rum River Barn and Vineyards had earned no new revenue since the governor declared the peacetime emergency. He asserted that he was “unable to keep current on his monthly costs and [was] in severe risk of losing his business by July 2020.” Buzzell alleged that the defendants had “commandeer[ed]” his businesses within the meaning of Minn. Stat. § 12.34, subd. 1(2), and that he therefore must be compensated under Minn. Stat. § 12.34, subd. 2, as an “owner of commandeered property.” In addition to his commandeering claim, Buzzell alleged that the defendants had “taken” his property pursuant to article I, section 13 of the Minnesota Constitution, and he further asserted a claim under article I, section 8 for “[r]edress of injuries or wrongs,” which was predicated on his commandeering claim.

The governor and the Minnesota Executive Council moved to dismiss all three claims under rule 12.02(e) of the Minnesota Rules of Civil Procedure for failure to state a claim upon which relief can be granted. The Minnesota Executive Council also moved to dismiss on the ground that it is not a legal entity subject to suit. Buzzell moved for partial summary judgment on his commandeering claim.

The district court granted the defendants’ motion to dismiss the complaint and denied Buzzell’s motion for partial summary judgment. The court also dismissed the Minnesota Executive Council as a party to the action, determining that it is not a legal entity subject to suit. The district court concluded that Buzzell had not alleged a “taking” under the Minnesota Constitution because the governor’s executive orders did not deprive Buzzell of all economically beneficial use of his property and, furthermore, the executive

orders could not serve as the basis for a “taking” claim because the orders were aimed at protecting public health and safety. Relevant to this appeal, the district court also rejected as a matter of law Buzzell’s argument that he was entitled to compensation as an “owner of commandeered property” under Minn. Stat. § 12.34, subd. 2. The district court concluded that the term “commandeer” as used in section 12.34 did not encompass the government actions alleged in the complaint. And, because the district court concluded that Buzzell’s commandeering claim failed as a matter of law, it also dismissed his related claim under article 1, section 8 of the Minnesota Constitution and denied his motion for partial summary judgment.

Buzzell now appeals, challenging only the district court’s decision regarding his commandeering claim under section 12.34 against the governor.

ISSUE

Does the governor “commandeer” property within the meaning of Minn. Stat. § 12.34, subd. 1(2), by issuing executive orders during a peacetime emergency that subject a business owner to operating restrictions?

ANALYSIS

This case requires us to interpret section 12.34 of MEMA and the meaning of the term “commandeer” as used in that statute. Before addressing the language of section 12.34 and the specific issue in this case, we provide an overview of MEMA and its purposes as background to our analysis.

The policy of MEMA is to (1) ensure that the state is adequately prepared to deal with natural disasters and other disasters of major size and destructiveness, (2) generally

protect the public peace, health, and safety, and (3) preserve the lives and property of the people of the state. Minn. Stat. § 12.02, subd. 1. To help achieve these goals, the act confers upon the governor certain emergency and disaster powers. *Id.*, subd. 1(2). These powers include the authority to declare a peacetime emergency “when an act of nature . . . endangers life and property and local government resources are inadequate to handle the situation.” Minn. Stat. § 12.31, subd. 2(a). The powers also include the authority to declare a national security emergency. *Id.*, subd. 1. MEMA further grants the governor general authority to control the state’s emergency management and to carry out the provisions of the act. Minn. Stat. § 12.21, subd. 1. And it provides that the governor, in performing his or her duties under the act and to effect its policy and purpose, may “make, amend, and rescind the necessary *orders* and rules to carry out the provisions” of the act. *Id.*, subd. 3(1) (emphasis added). With this background in mind, we turn to the language of section 12.34 and the specific issue before us.

Under section 12.34, subdivision 1(2), of MEMA, the governor may “commandeer, for emergency management purposes” private property. When the governor commandeers a person’s property, section 12.34, subdivision 2, requires the governor to compensate the person for the government’s use of that property. Section 12.34 provides the following, in relevant part:

Subdivision 1. Emergency powers. When necessary to save life, property, or the environment during a national security emergency or during a peacetime emergency, the governor . . . may:

. . . .
(2) *commandeer*, for emergency management purposes as directed by any of the persons described above, any motor

vehicles, tools, appliances, medical supplies, or other personal property and any facilities.

Subd. 2. Compensation. The *owner of commandeered property* must be promptly paid just compensation for its use and all damages done to the property while so used for emergency management purposes. The governor . . . , according to the use of the property, shall make a formal order determining the amount of compensation.

(Emphasis added.)

Buzzell contends that the district court erred by concluding that he failed to state a claim for compensation under section 12.34. Buzzell argues that the governor, through the COVID-19-related executive orders, “commandeer[ed]” his property within the meaning of section 12.34, subdivision 1(2), by limiting his business operations, and therefore he is entitled to compensation as an “owner of commandeered property” under section 12.34, subdivision 2. The governor argues that he did not “commandeer” Buzzell’s property because the term “commandeer,” as used in the statute, does not apply to government restrictions on the use of private property but rather requires direct use of the property by the state. The answer to the question of whether the district court properly concluded that Buzzell failed to state a claim under section 12.34 depends on the meaning of the word “commandeer” as used in section 12.34. The term “commandeer” is not defined in the statute.

“We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted). We also apply a de novo standard of review to issues

involving statutory interpretation. *White Bear Lake Restoration Ass’n ex rel. State v. Minn. Dep’t of Nat. Res.*, 946 N.W.2d 373, 379 (Minn. 2020).

The goal of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” *State by Smart Growth Minneapolis*, 954 N.W.2d at 590 (quotation omitted). “Statutory interpretation begins by assessing whether the statute’s language, on its face, is ambiguous.” *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018) (quotation omitted). A statutory term is ambiguous if it is “subject to more than one reasonable interpretation.” *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019) (quotation omitted). In the absence of statutory definitions, courts “give words their plain and ordinary meaning.” *In re Krogstad*, 958 N.W.2d 331, 334 (Minn. 2021) (quotation omitted). We may consider dictionary definitions to determine the plain and ordinary meaning of a statutory term. *State v. Alarcon*, 932 N.W.2d 641, 646 (Minn. 2019).

The supreme court has cautioned, however, that simply because a term “has more than one meaning does not mean it is ambiguous.” *Krogstad*, 958 N.W.2d at 334 (quotation omitted). Rather, a word’s meaning “depends on how it is being used; only if more than one meaning applies within that context does ambiguity arise.” *Id.* (quotation omitted). We also “consider a statute as a whole to harmonize and give effect to all its parts.” *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 177 (Minn. 2020) (quotation omitted). “When legislative intent is clear from the statute’s plain and unambiguous language, [courts] interpret the statute according to its plain meaning without resorting to other

principles of statutory interpretation.” *Binkley v. Allina Health Sys.*, 877 N.W.2d 547, 550 (Minn. 2016) (quotation omitted).

We begin our statutory interpretation analysis by examining whether the term “commandeer” as used in section 12.34, subdivision 1(2), is ambiguous. Buzzell contends that the term is ambiguous and is best interpreted broadly to apply where the governor restricts the use of private property through executive orders for emergency management purposes. The governor, in contrast, argues that the term is unambiguous and requires direct, involuntary use of private property by the government.² The parties’ disagreement focuses on whether the term “commandeer” requires direct use or whether the government can indirectly “commandeer” property through restrictions on its use.³ We conclude that the word “commandeer” as used in section 12.34, subdivision 1(2), unambiguously requires direct, active use of private property by the government.

Because MEMA does not define “commandeer,” we first consider dictionary definitions of the term to determine its meaning. *The American Heritage Dictionary* defines “commandeer” to mean “[t]o seize for military or police use; confiscate,” “[t]o take arbitrarily or by force,” or “[t]o force into military service.” *The American Heritage Dictionary of the English Language* 370 (5th ed. 2018). Similarly, *Merriam-Webster’s*

² In his brief, the governor offers the phrase “direct and forcible” use of private property. At oral argument, the governor’s counsel clarified that the term “forcible” means “involuntary.”

³ There is no dispute that the COVID-19-related executive orders subjected business owners to involuntary operating restrictions. Accordingly, we need not reach the question of whether the term “commandeer” as used in section 12.34, subdivision 1(2), requires “involuntary” use of property in addition to direct use.

Collegiate Dictionary defines the word “commandeer” as: “to compel to perform military service,” “to seize for military purposes,” or “to take arbitrary or forcible possession of.” *Merriam-Webster’s Collegiate Dictionary* 248 (11th ed. 2014). These definitions suggest that an essential element of the term “commandeer” is *direct, active* use of private property by the government.

The interpretation that commandeering requires the government to directly and actively use the private property in question is consistent with section 12.34 as a whole. First, subdivision 1(2) of section 12.34 identifies the types of property that can be subject to commandeering for emergency management purposes: “motor vehicles, tools, appliances, medical supplies, or other personal property and any facilities.” These are all items that can be physically appropriated and directly deployed by the government as part of an emergency response. In other words, these are all items that can be directly and actively used by the government. Second, subdivision 2 provides that “[t]he owner of commandeered property must be promptly paid just compensation for its *use* and all damages done to the property while so used for emergency management purposes.” Minn. Stat. § 12.34, subd. 2 (emphasis added). This provision requires the government to compensate a property owner for its “use” of commandeered property. And the provision contemplates that commandeered property will be “use[d]” in situations where the property could be damaged. Within the context of subdivision 2, the only reasonable interpretation of “use” is direct, active use. Moreover, subdivision 2 requires compensation to be given for “use” of “commandeered property,” but it does not require the state to undergo an independent determination of whether the property has in fact been “use[d].” *See id.* This

suggests that the government’s direct, active use of the property is a fundamental component of commandeering—that is, for the government to have “commandeer[ed]” a person’s property, it must have directly and actively used that property.

Considering common dictionary definitions and the use of the word “commandeer” in the statute as a whole, it is reasonable to interpret the term “commandeer” as used in section 12.34, subdivision 1(2), to require direct, active use of a person’s private property by the government for emergency management purposes. Such direct, active use would occur, for instance, if the government were to take control of a business owner’s refrigerated trucks to store vials of vaccine for a mobile vaccine site. In contrast, merely placing restrictions on how private parties may use their property does not constitute direct, active use and therefore does not “commandeer” property under this interpretation of the term.

Buzzell suggests that there is another reasonable interpretation of the term “commandeer” as used in section 12.34, subdivision 1(2). He contends that it *is* reasonable to interpret the term “commandeer” to include circumstances where the governor restricts business operations through an executive order for emergency management purposes. He relies not on the dictionary definitions discussed above to support his argument but instead on an alternative definition of “commandeer” found in Oxford’s online dictionary. Oxford’s online dictionary defines “commandeer” as follows:

1. Officially take possession or control of (something), especially for military purposes.
 - 1.1 Take possession of (something) without authority.
 - 1.2 Enlist (someone) to help in a task, typically against the person’s will.

Commandeer, Oxford U. Press, <https://www.lexico.com/en/definition/commandeer> (last visited June 1, 2021). Buzzell relies on the last listed definition—“[e]nlist (someone) to help in a task, typically against the person’s will.” He argues this definition “fits” the context of the statute better than other dictionary definitions, including the first definition of “commandeer” in Oxford’s online dictionary—to “[o]fficially take possession or control of (something).” Interpreting the term “commandeer” to mean to “[e]nlist (someone) to help in a task,” he argues that the governor “enlist[ed]” his help in combatting the COVID-19 pandemic when the governor placed restrictions on the use of his business property through executive orders and thereby “commandeer[ed]” his business property for use by the government. He further argues that the structure of section 12.34 supports his proposed interpretation of “commandeer” because the section lists several “tasks”—saving life, property, or the environment during a peacetime emergency—then confers authority to commandeer. We are not persuaded.

Buzzell’s alternative interpretation of “commandeer” is not reasonable when considered in the context of section 12.34. Foremost, as discussed above, the plain language of section 12.34, subdivision 2, shows that the government must directly and actively “use” the property in question in order for the government’s actions to constitute commandeering. Buzzell’s argument that “commandeer” merely means “[e]nlist (someone) to help in a task” contradicts this plain language and fails to give effect to section 12.34, subdivision 2. *Save Lake Calhoun*, 943 N.W.2d at 177 (explaining that a goal of

statutory interpretation is “to harmonize and give effect to all its parts” (quotation omitted)).⁴

Buzzell also contends that the structure of Minn. Stat. § 9.061 (2020) supports his proposed definition. Section 9.061 governs the Minnesota Executive Council’s authority in an emergency. Subdivision 1 provides that the Minnesota Executive Council may, for instance, “take such measures as are necessary to prevent an impending disaster that threatens to destroy life or property.” Minn. Stat. § 9.061, subd. 1. The subdivision further states:

In these emergencies, the Executive Council may, when necessary, commandeer and use any property, vehicle, means of transportation, means of communication, or public service. The owner of any property taken shall be given a receipt for the property and be paid for its use and or any damages inflicted upon the property while in the service of the Executive Council.

Id. Buzzell contends that because this section “lists several tasks, then confers authority to commandeer,” it supports his proposed “enlist to help in a task” definition. But, just like section 12.34, section 9.061 makes the government’s direct use of the property a fundamental component of commandeering. It similarly refers to “use” and potential “damages” to the property, and it further contemplates that commandeered property has been “taken.” Section 9.061 does not support Buzzell’s interpretation of the word

⁴ We note that Buzzell’s argument that the governor enlisted him to help in a task more closely aligns with the meaning of subdivision 1(1) of section 12.34. Subdivision 1(1) permits the governor to “require any person . . . to perform services for emergency management purposes.” Buzzell, however, does not raise an argument under subdivision 1(1) and that provision does not contain the term “commandeer” or require compensation for services performed. *See* Minn. Stat. § 12.34, subd. 1(1).

“commandeer” but rather supports interpreting “commandeer” to require direct, active use of the property as discussed above.

Lastly, Buzzell argues that *Printz v. United States*, 521 U.S. 898, 117 S. Ct. 2365 (1997), supports his alternative interpretation. We are not persuaded. In *Printz*, the United States Supreme Court invalidated as unconstitutional certain federal statutory provisions that required state and local law enforcement officers to perform background checks on prospective handgun purchasers. 521 U.S. at 902, 117 S. Ct. at 2368. In its analysis, the Court described the provisions and other federal regulatory schemes that compel actions by state actors as “[f]ederal commandeering of state governments.” *Id.* at 925, 117 S. Ct. at 2379. *Printz* did not involve interpretation of the term “commandeer” as used in a statute or otherwise purport to define the term, and it did not involve analogous facts to the present case. *Printz* does not support Buzzell’s alternative interpretation of the term “commandeer” as used in section 12.34, subdivision 1(2).

In sum, the only reasonable interpretation of the term “commandeer” in section 12.34, subdivision 1(2), requires direct, active use of private property by the government for emergency management purposes. The term does not apply in situations in which the governor has placed a restriction on a private party’s own ability to use his or her property. This interpretation is the only interpretation that comports with the language of the statute as a whole.

Having determined that the term “commandeer” as used in section 12.34, subdivision 1(2), requires direct, active use of private property by the government, we next consider whether Buzzell’s complaint sets forth a legally sufficient claim under that statute.

In his complaint, Buzzell does not allege that the governor directly used his property or that the governor authorized any state agency to directly use his property. Instead, Buzzell alleges that the governor “commandeer[ed]” his property within the meaning of section 12.34 through issuance of the COVID-19-related executive orders that restricted his use of his business property. On that basis, he contends that he is entitled to relief as “an owner of commandeered property” under section 12.34, subdivision 2. Because Buzzell does not allege that the governor authorized direct, active use of his property, but instead alleges that the governor limited Buzzell’s own use of his property, Buzzell has not alleged that the governor “commandeer[ed]” his property within the meaning of section 12.34. Buzzell therefore has failed to state a legally sufficient claim for compensation under section 12.34, subdivision 2, as an “owner of commandeered property.”

We recognize that the governor’s COVID-19-related executive orders have imposed a significant burden on many Minnesota business owners. However, MEMA does not provide compensation for a business owner unless the government has, in relevant part, directly and actively used property owned by the business for emergency management purposes. The language of section 12.34 indicates the legislature’s intent to limit the meaning of the term “commandeer,” and it is not our role to expand that definition. *See Beardsley v. Garcia*, 753 N.W.2d 735, 740 (Minn. 2008) (stating that “[t]he prerogative of amending a statute . . . belongs to the legislature, not to th[e] court[s]”).

DECISION

We conclude that the term “commandeer” as used in Minn. Stat. § 12.34, subd. 1(2), requires direct, active use of private property by the government for emergency

management purposes. The term does not apply in circumstances such as this one, where the government places restrictions on a person's own use of private property. For that reason, a business owner subject to operating restrictions under executive orders issued by the governor during a peacetime emergency is not, on that basis, an "owner of commandeered property" entitled to compensation under Minn. Stat. § 12.34, subd. 2. We therefore affirm the district court's dismissal of Buzzell's claim for compensation as an "owner of commandeered property" under Minn. Stat. § 12.34, subd. 2. And, because we conclude that the district court properly dismissed Buzzell's commandeering claim, we likewise affirm the district court's denial of Buzzell's motion for partial summary judgment on the same claim.

Affirmed.