

**OPEN RECORDS AND MEETINGS OPINION
2015-O-01**

January 21, 2015

Ms. Kelly Hilzendager
President, Board of Directors
Circle of Friends Humane Society
4375 N Washington St
Grand Forks, ND 58203-3817

Dear Ms. Hilzendager:

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Steve Wagner, editor of the Grand Forks Herald, asking whether the Circle of Friends Humane Society violated N.D.C.C. § 44-04-19.2 by holding unauthorized executive sessions on September 25 and October 8, 2014.¹

FACTS PRESENTED

The Circle of Friends Humane Society (“Humane Society”) is a non-profit corporation that provides a variety of services to the greater Grand Forks area, including caring and sheltering of abused, neglected, and abandoned animals,² and implements programs to increase the community’s awareness of responsibilities to animals.³ The Humane Society also acts as the city animal impound facility for the city of Grand Forks. The Humane Society receives its funding from a variety of sources, including fundraising, membership dues, donations, and grants.⁴ The Humane Society also receives mill levy

¹ Mr. Wagner included in his request for an opinion the issue of whether the September 23, 2014, executive session was authorized by law. However, Mr. Wagner’s request did not come within the 30 day timeline for this office to review under N.D.C.C. § 44-04-21.1. This office therefore will not advise on the legality of the September 23, 2014, executive session.

² Both Grand Forks city and county officials bring in animals for shelter and care to the Humane Society.

³ Letter from Alvin Boucher, Att’y, Humane Soc’y of Grand Forks, to Sandra DePountis, Asst. Att’y Gen. (Nov. 14, 2014).

⁴ Letter from Alvin Boucher, Att’y, Humane Soc’y of Grand Forks, to Sandra DePountis, Asst. Att’y Gen. (Nov. 14, 2014).

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funds from the City of Grand Forks and receives public funds raised through taxation by Grand Forks County.⁵

The Humane Society's Board of Directors (Board) held an open meeting on September 23, 2014.⁶ During the meeting, the Board went into an executive session to discuss the Humane Society's then executive director's job performance.⁷ During the executive session, the Board voted to terminate the director's employment.⁸ The Board thereafter held an emergency meeting on September 25, 2014.⁹ During the meeting, the Board entered into executive session with its attorney to discuss the Board's actions during the September 23 executive session and issues following the termination of the director.¹⁰

The Board held another meeting on October 8, 2014.¹¹ Prior to the meeting, the Board's president received a letter from Steve Wagner, editor of the Herald.¹² The letter alleged the September 23 and 25 executive sessions violated the state's open meetings law and requested the Board follow the law at its next meeting and conduct the October 8 meeting as an open meeting.¹³ At the October 8, 2014, meeting, the Board once again entered into executive session with its attorney and discussed the legal implications regarding a request for an opinion from the Attorney General's office Mr. Wagner may file based on alleged open meeting violations.¹⁴ The Board also discussed how it would handle unemployment compensation if such a claim would be filed by the former director.

Mr. Wagner claims the Board held improper executive sessions on September 25 and October 8. The Humane Society denies it is a public entity subject to open records law but, regardless, claims that the executive sessions were authorized under N.D.C.C. § 44-04-19.1 as attorney client privilege and N.D.C.C. § 44-04-18.1(3) allowing an

⁵ Id.

⁶ Id.; see also Minutes, Circle of Friends Humane Soc'y Board of Dir. (Sept. 23, 2014).

⁷ Letter from Alvin Boucher, Att'y, Humane Soc'y of Grand Forks, to Sandra DePountis, Asst. Att'y Gen. (Nov. 14, 2014).

⁸ Id.

⁹ Letter from Alvin Boucher, Att'y, Humane Soc'y of Grand Forks, to Sandra DePountis, Asst. Att'y Gen. (Nov. 14, 2014).

¹⁰ Letter from Alvin Boucher, Att'y, Humane Soc'y of Grand Forks, to Sandra DePountis, Asst. Att'y Gen. (Nov. 14, 2014).

¹¹ Id.

¹² See Letter from Steve Wagner, editor, Grand Forks Herald, to Kelly H. Hilzendager, president, Circle of Friends, Humane Soc'y Board of Dir. (Oct. 6, 2014).

¹³ Id.

¹⁴ Letter from Alvin Boucher, Att'y, Humane Soc'y of Grand Forks, to Sandra DePountis, Asst. Att'y Gen. (Nov. 14, 2014).

exemption for information contained in a personnel record of an employee of a public entity that is only subject to open records and meetings law by virtue of receiving public funds.¹⁵

ISSUES

1. Whether the Circle of Friends Humane Society is a public entity subject to open records and meetings law.
2. Whether the executive session held on September 25, 2014, was authorized by law.
3. Whether the executive session held on October 8, 2014, was authorized by law.

ANALYSIS

Issue One

All records and meetings of a public entity are open and accessible to the public unless otherwise specifically provided by law.¹⁶ The definition of “public entity” is not limited to entities traditionally viewed as “governmental.”¹⁷ A private, nonprofit entity like the Humane Society can be a “public entity” if it is supported by public funds or expends public funds¹⁸ or is an agent or agency of a public entity performing a governmental function on behalf of a public entity.¹⁹

Supported by Public Funds Test

The definition of “public entity” includes “[o]rganizations or agencies supported in whole or in part by public funds, or expending public funds.”²⁰ The Humane Society argues it is not supported by public funds because the city and county funds it receives are for services provided at fair market value.²¹

¹⁵ Id.

¹⁶ N.D.C.C. §§ 44-04-18 and 44-04-19; N.D. Const. art. XI, §§ 5, 6.

¹⁷ N.D.A.G. 2004-O-04.

¹⁸ N.D.C.C. § 44-04-17.1(13)(c); see also N.D.C.C. §§ 44-04-17.1(10) (definition of “organization or agency supported in whole or in part by public funds”); and 44-04-17.1(14) (definition of “public funds”).

¹⁹ N.D.C.C. § 44-04-17.1(13)(b) (definition of “public entity” includes “agencies of any political subdivision...to exercise public authority or perform a governmental function”).

²⁰ N.D.C.C. § 44-04-17.1(13)(c).

²¹ Letter from Alvin Boucher, Att’y, Humane Soc’y of Grand Forks, to Sandra DePountis, Asst. Att’y Gen. (Nov. 14, 2014).

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North Dakota open record and meeting laws recognize that organizations are not “supported by public funds” as long as the goods and services provided in exchange for those funds are reasonably identified in an agreement or contract and have a fair market value²² that is equivalent to the amount of public funds it receives.²³ For the fair market value test to be met, there must first be a contract, or some agreement, between the public entity and the organization, that reasonably identifies the goods and services provided in exchange for the public funds.²⁴ In past opinions, this office explained that public funds constitute general support, thus rendering an entity subject to open records and meetings law, if the use of the funds is unrestricted and the entity is given discretion over how the funds are spent.²⁵ The more discretion the organization has over the use of public funds, the more likely it is that the funds are for the entity’s general support, rather than for purchasing goods or services at fair market value.²⁶

Here, the Humane Society receives mill levy funds from the City of Grand Forks pursuant to N.D.C.C. § 40-05-19 for the purpose of constructing, operating, and maintaining animal shelters.²⁷ The Humane Society does not have a contract with the City for specific services to be provided in exchange for the mill levy money; rather, the Humane Society has discretion to decide how the mill levy funds are spent within these

²² If a competitive bid or proposal process is used to award a contract and establish reimbursement rates, the rates resulting from the process are presumed to be for fair market value. N.D.A.G. 2003-O-08.

²³ N.D.C.C. § 44-04-17.1(10) (definition of “organization or agency supported in whole or in part by public funds”); see also N.D.A.G. 2004-O-04 and N.D.A.G. 2003-O-08.

²⁴ N.D.A.G. 2001-O-10;

²⁵ N.D.A.G. 2004-O-04; N.D.A.G. 2003-O-02; N.D.A.G. 99-O-03.

²⁶ This office has issued numerous opinions on this issue. See generally N.D.A.G. 2006-O-14 (funds from the Dept. of Health, state general funds, and county funds for general support; discretion over the fund use); N.D.A.G. 2006-O-04 (grant money for general use and ongoing operating expenses); N.D.A.G. 2006-O-02 (unrestricted money received from the county); N.D.A.G. 2004-O-04 (public funds subsidize and fund ongoing operations); N.D.A.G. 2003-O-10 (state general funds received for general support without specification; discretion over funds); N.D.A.G. 2003-O-08 (funds used for general support; no specific services specified); N.D.A.G. 2001-O-11 (indistinct contract terms); N.D.A.G. 2001-O-10 (vague contract, funds used for general operations).

²⁷ Letter from Alvin Boucher, Att’y, Humane Soc’y of Grand Forks, to Sandra DePountis, Asst. Att’y Gen. (Nov. 14, 2014).

general areas.²⁸ The Humane Society also receives general funds from Grand Forks County raised by the County through taxation.²⁹ The Humane Society does not competitively bid for the funds but rather requests funds from the Grand Forks County Commission for approval and thereafter the entities enter into a Service Agreement.³⁰ The scope of services in the Service Agreement provides, generally, that the County agrees to provide \$13,000 for the Humane Society to operate a facility for the care and shelter of stray and abandoned animals and to provide educational programs and information to the county.³¹ It cannot be ascertained from reading the agreement what specific services the Humane Society will be providing in exchange for the funds.³² The public funding the Humane Society receives is not segregated into a separate account and utilized for specific services, rather the funds are pooled together with other revenue that thereafter fund the entire operations of the Humane Society.³³

The discretion given to the Humane Society to decide how to use the public funds indicates the funds are being provided for general support, rather than as an exchange for services at fair market value. The Humane Society can decide how much of the money will go to paying salaries, building maintenance, education, shelter of animals, or any other operation of the shelter. Grand Forks City and County are funding the ongoing operations of the Humane Society and are therefore “supporting” the

²⁸ Id. This situation is much like that in N.D.A.G. 2003-O-02 where a Senior Center receiving mill levy money from local counties, authorized to provide the funds pursuant to statute, did not have a contract for services. The Center was determined to be subject to open records law because the funds were not found to be in exchange for fair market value of services, but for the general support of the organizations.

²⁹ Letter from Alvin Boucher, Att’y, Humane Soc’y of Grand Forks, to Sandra DePountis, Asst. Att’y Gen. (Nov. 14, 2014).

³⁰ Id.

³¹ The Humane Society was unable to locate the 2014 Service Agreement it currently has with the County, however, it provided the draft Service Agreement it will be entering into for 2015. See Letter from Alvin Boucher, Att’y, Humane Soc’y of Grand Forks, to Sandra DePountis, Asst. Att’y Gen. (Nov. 14, 2014). The scope of services in the 2015 draft agreement provides: “The Society agrees to provide services to the citizens of Grand Forks County through the Society’s organizational programs providing care for stray and abandoned animals in Grand Forks County by providing shelter, managing personnel and facilities available to care for said animals along with educational programs and information to the Greater Grand Forks County area through classroom and service group presentations and participation in community events.” This language is consistent with the 2013 Service Agreement provided by the Humane Society.

³² Id.

³³ If public funds are pooled with other revenue the entity receives and not segregated in a separate account, then all financial records of the entity must be open. N.D.A.G. 2003-O-10; N.D.A.G. 2003-O-02; N.D.A.G. 2001-O-11; N.D.A.G. 99-O-03.

corporation, rather than simply purchasing services at fair market value. The Humane Society expends the public funds where it deems necessary. It is therefore my opinion the Humane Society is supported by public funds with regards to the unrestricted mill levy funds from the City of Grand Forks and the taxation funds appropriated to it by Grand Forks County.³⁴

Agency of Government Test

The definition of “public entity” includes “agencies” of political subdivisions of the state.³⁵ The North Dakota Supreme Court has interpreted “agencies” on two separate occasions to mean a relationship “created by law or contract whereby one party delegates the transaction of some lawful business to another.”³⁶ A non-governmental organization performing a governmental function on behalf of a political subdivision is an “agency” of that subdivision and therefore subject to the open records and meetings law. The agent or agency of government test analyzes the types of services provided and whether the organization is performing a governmental function in place of the public entity rather than providing services to the public entity.³⁷

The State of North Dakota recognizes the need to protect and regulate the humane treatment of animals as a government function.³⁸ State law gives authority to law enforcement officials to seize or take custody of animals believed to be neglected, abused, treated cruelly, or abandoned.³⁹ Law enforcement officials are thereafter charged with the duty to “care for the animal, either directly or through a contractual

³⁴ The situation in this opinion does not involve the mere arms-length funding of an identified project to be performed by a non-governmental organization for the purpose of specific goods or services. Rather, the funding resembles legislative appropriation for general support of an agency which is exactly the type of payment of public funds intended to be addressed by N.D.C.C. § 44-04-17.1(13)(c). Unless the public is allowed access to the records of the organization supported by the funds, there is no way for the public to know specifically how its funds are being used. See N.D.A.G. 2003-O-08; N.D.A.G. 99-O-03.

³⁵ N.D.C.C. § 44-04-17.1(13)(b).

³⁶ Forum Publ'g Co. v. City of Fargo, 391 N.W.2d 169, 172 (N.D. 1986) (private, personnel firm contracted with the city council to market the city's position rather than simply providing services to the city; the firm acted in place of the so an “agent” of a political subdivision and a public entity); Grand Forks Herald Inc. v. Lyons, 101 N.W.2d 543, 546 (N.D. 1960) (“agencies of the state” indicates a relationship whereby the state delegates the transaction of some lawful business to another).

³⁷ N.D.A.G. 2013-O-16.

³⁸ See N.D.C.C. chs. 36-21.1, 36-21.2.

³⁹ N.D.C.C. §§ 36-21.2-06, 36-21.2-08.

arrangement with another.”⁴⁰ Grand Forks County and City law enforcement officials utilize the Humane Society for such purposes.⁴¹ These officials drop the animals off at the Humane Society for care and shelter, a duty the public officials would be responsible for if they did not utilize the organization. The Humane Society is consequently acting in place of public entities in operating a shelter for abandoned, abused, and neglected animals, instead of merely providing a service to the entities. It is therefore my opinion that the Humane Society is an “agency” of the political subdivisions of Grand Forks City and County and a public entity subject to open records and meetings law.

Issue Two

All meetings of the governing body of a public entity must be open to the public unless otherwise specifically provided by law.⁴² A governing body may close a meeting to consider or discuss closed or confidential records and information.⁴³ “The topics discussed or considered during the executive session are limited to those for which an executive session is authorized by law and that have been previously announced” during the open portion of the meeting.⁴⁴

An executive session may be held for “attorney consultations” under N.D.C.C. § 44-04-19.1(2) and (5). This section does not authorize an executive session any time a governing body receives its attorney’s advice.⁴⁵ Rather, in order to close the meeting

⁴⁰ N.D.C.C. §§ 36-21.2-06, 36-21.2-08; see also N.D.C.C. § 43-29-16.1 (allowing licensed veterinarians to turn over abandoned or neglected animals to “the nearest humane society or dog pound in the area”).

⁴¹ Letter from Alvin Boucher, Att’y, Humane Soc’y of Grand Forks, to Sandra DePountis, Asst. Att’y Gen. (Nov. 14, 2014).

⁴² N.D.C.C. § 44-04-19.

⁴³ N.D.C.C. § 44-04-19.2. The Humane Society’s Board of Directors is the “governing body” subject to open meeting laws. See N.D.C.C. § 44-04-17.1(6) (definition of “governing body”).

⁴⁴ N.D.C.C. § 44-04-19.2(2)(d). Although this opinion does not address whether the Humane Society violated open meeting laws by not complying with the procedure of N.D.C.C. § 44-04-19.2(2) for entering executive session, I urge the Board of Directors to review this law. Merely announcing “attorney client privilege” or “attorney consultation” is not enough to enter into executive session because it fails to list the topics to be discussed as required by N.D.C.C. § 44-04-19.2(2)(b). See also N.D.A.G. 2001-O-15. Also, the Board must do a roll call vote to enter into executive session as required by N.D.C.C. §§ 44-04-19.2(2)(a) and 44-04-21(1). The Board should also review what is required to be in the notice and meeting minutes for executive session by N.D.C.C. §§ 44-04-19.2(4); 44-04-20; and 44-04-21.

⁴⁵ N.D.C.C. § 44-04-19.1(5); N.D.A.G. 2004-O-19; N.D.A.G. 2002-O-01.

for attorney consultation, the governing body must be receiving the attorney's advice regarding "pending" or "reasonably predictable" litigation or adversarial administrative proceeding.⁴⁶ There is no basis in the law to close a meeting to discuss "potential" legal consequences or to close a meeting because of a "fear" of litigation or adverse administrative proceeding.⁴⁷ The use of the phrase "reasonably predictable" in N.D.C.C. § 44-04-19.1 requires more than a simple possibility of litigation – the litigation by or against the governing body must be "realistic and tangible."⁴⁸ The line between a routine conversation with an entity's attorney and "attorney consultation" under N.D.C.C. § 44-04-19.1 is drawn at the point where the public entity's bargaining or litigation position would be adversely affected if the discussion occurred in an open meeting.⁴⁹

The Humane Society argues the executive session entered into on September 25, 2014, was authorized because of "attorney-client privilege" and to discuss personnel records made exempt under the provisions of N.D.C.C. § 44-04-18.1(3).

For most public entities, personnel records are generally not exempt or confidential.⁵⁰ There is an exception, however, in N.D.C.C. § 44-04-18.1(3) for public entities that are subject to open records and meetings law only because they are supported by public funds. For this type of public entity, nonconfidential information contained in a personnel record of an employee is exempt.⁵¹ However, as provided above, the Humane Society is a public entity not only because it is supported by public funds, but also because it is an agency of political subdivisions. The Humane Society cannot therefore claim this exception to open records and meetings law and its personnel records are open to the public unless otherwise specifically provided by law.⁵²

Similarly, there is no general "attorney-client privilege" protection under the open records and meetings law. There is an exception, however, for public entities subject to these laws only because they are supported by public funds, in which case, the open records and meetings law may not be "construed to waive any attorney-client privilege...regarding matters that do not pertain to public business."⁵³ Again, because the Humane Society is also an agency of a political subdivisions, it cannot utilize this exception.

⁴⁶ N.D.C.C. § 44-04-19.1(5).

⁴⁷ N.D.A.G. 2014-O-09; N.D.A.G. 2014-O-08; N.D.A.G. 2009-O-14; N.D.A.G. 2003-O-14.

⁴⁸ See fn. 47.

⁴⁹ N.D.A.G. 2004-O-19; N.D.A.G. 2002-O-01.

⁵⁰ See N.D.A.G. 2013-O-16; N.D.A.G. 2011-O-10; N.D.A.G. 2010-O-13; N.D.A.G. 2008-O-02

⁵¹ N.D.C.C. § 44-04-18.1(3).

⁵² See N.D.A.G. 2013-O-16.

⁵³ N.D.C.C. § 44-04-19.1(10).

The September 25, 2014, executive session was recorded in compliance with N.D.C.C. § 44-04-19.2(5). A review of the recording reveals that during the executive session, the Board briefly discussed with its attorney, Mr. Boucher, the termination of the executive director, including discussions on what basis an at-will employee may be terminated in the State of North Dakota and the proper procedure for termination under employment law.

The Board argues that such discussions were proper in executive session claiming there was a “real and palpable threat of employment/wrongful termination litigation” from the former executive director. Attorney Boucher admits, however, that no lawsuit was threatened by the former director at the time of the September 25, 2014, meeting.⁵⁴ As previously explained, the mere fear of litigation following termination is not enough to rise to the level of “reasonably predictable litigation.”⁵⁵

Furthermore, the overview of employment law Attorney Boucher provided to the Board was also not within the scope of “attorney consultation.” This office has explained in past opinions that discussing the termination process is not proper for an executive session because the public has a right to hear the deliberations and reasoning of the public entity for termination of an employee.⁵⁶ It is also recognized that receiving information from an attorney on the process and procedure for a lawsuit and appeal, or a general explanation of employment law, is not suitable for an executive session because such discussions do not adversely affect the public entity’s litigation position.⁵⁷ Instead of discussing legal theories, mental impressions, or strategies related to pending or reasonably predictable litigation, the Board merely received information on applicable employment law. Such conversations do not meet the required threshold for “attorney consultation.”

The primary discussion during the September 25, 2014, executive session was about whether and to what extent the Humane Society was a public entity subject to open meeting laws and consequently, whether the executive session held on September 23,

⁵⁴ Id. Attorney Boucher explains that a former board member, who resigned following the director’s termination, contacted the Board and requested a recording of the September 23, 2014, executive session. The former Board member is an attorney who the board believed to be on the former director’s “side.” I do not find this simple request to review a recording to rise to the level of a “real and tangible” threat of litigation that would justify an executive session for “attorney consultation.”

⁵⁵ See N.D.A.G. 2003-O-14 (“The simple fact a public entity has fired someone may create a fear of litigation, but that fact alone does not create a reasonably predictable threat of litigation or adversarial administrative proceeding.”).

⁵⁶ N.D.A.G. 2014-O-09.

⁵⁷ N.D.A.G. 2004-O-19.

2014, was authorized by law. Nothing in the discussion regarding the application of the open records and meetings law to the Humane Society revealed any exempt or confidential information and these matters should have been held in the open meeting.⁵⁸

Finally, during the September 25, 2014, executive session, the Board discussed how the Humane Society will deal with issues arising from the termination of its executive director and issues relating to general administration of the organization.⁵⁹ There is no exception for such administrative discussions under the open meetings law.⁶⁰

The September 25, 2014, executive session was not authorized under open meetings law. At the time of the executive session, there is no evidence to substantiate that there was any pending or reasonably predictable litigation regarding the topics discussed during the executive session. The Board of Directors discussed a variety of issues plaguing the Humane Society, including several following the termination of its executive director. There is no exception under open meetings law for such personnel and administrative discussions. It is therefore my opinion that the Humane Society violated open meetings law when it held an illegal executive session on September 25, 2014.

Issue Three

The Board held another executive session during its October 8, 2014, meeting. The recording reveals that during the executive session, the Board and Attorney Boucher again discussed whether the September 23 executive session was authorized by law. The discussion came about because of inquiries from the Grand Forks Herald. The Humane Society discussed the repercussions of violating open meetings law and received advice from its attorney on whether to release the September 23 recording of the executive session, along with several documents requested by the Herald.

⁵⁸ By law, the public has the right to know the legal authority for a public entity to enter into an executive session before closing the public meeting. N.D.C.C. § 44-04-19.2(2). Such an analysis should therefore be done in the open so the public knows why such an executive session is authorized by law.

⁵⁹ The Board discussed how to handle the ongoing and future operations of the Humane Society, hiring of a new executive director, future duties and operations of the shelter, banking and auditing practices, policies for handling remaining staff at the shelter, how to run public meetings, how to generally comply with open meetings requirements, and how to handle press and public inquiries. At one point, Attorney Boucher mentioned the Board had gone off topic and was straying from the purpose of the executive session, but such conversations still continued throughout the session.

⁶⁰ Again, no confidential or exempt information was discussed.

The Humane Society claims these discussions were authorized because it believed the Herald would request an Attorney General's opinion pursuant to N.D.C.C. § 44-04-21.1 on whether the Humane Society's executive sessions on September 23 and September 25 violated open meetings law. The Humane Society claims it was therefore receiving advice from its attorney regarding a reasonably predictable "adversarial administrative proceeding" and the executive session was authorized under N.D.C.C. § 44-04-19.1(5) as "attorney consultation."

Attorney General opinions issued under N.D.C.C. § 44-04-21.1 are not "proceedings." Under N.D.C.C. § 44-04-21.1, there is no adversarial proceeding, hearing, or trial. Rather, the Attorney General is statutorily obligated to base opinions on the facts given by a public entity and, based on those facts, determine whether a violation of open meetings or records law took place.⁶¹

Additionally, during the October 8 executive session, the Board discussed general legal procedures regarding unemployment compensation and how it would handle a request for such compensation, should such a claim from the former director be filed. However, no claim had yet been filed so there was no threat of any litigation or any "reasonably predictable litigation" that would justify an executive session for "attorney consultation."⁶²

It is my opinion that the discussions during the October 8, 2014, executive session did not fall within the definition of "attorney consultation" or any other exception to open meetings law and it was therefore an unauthorized executive session.

CONCLUSIONS

1. The Circle of Friends Humane Society is a public entity subject to open records and meetings law because it is supported by public funds and acts as an agent of Grand Forks City and Grand Forks County.
2. The executive session the Board of Directors of the Circle of Friends Humane Society held on September 25, 2014, was unauthorized by law.
3. The executive session the Board of Directors of the Circle of Friends Humane Society held on October 8, 2014, was unauthorized by law.

⁶¹ N.D.C.C. § 44-04-21.1.

⁶² See N.D.C.C. § 44-04-19.1(6).

STEPS NEEDED TO REMEDY VIOLATIONS

The Circle of Friends Humane Society must disclose the recording of the September 25 and October 8 executive sessions to Steve Wagner, at no charge, and any member of the public upon request.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.⁶³ It may also result in personal liability for the person or persons responsible for the noncompliance.⁶⁴

Sincerely,

Wayne Stenehjem
Attorney General

sld/cn

cc: Steve Wagner, Grand Forks Herald (via email only)

⁶³ N.D.C.C. § 44-04-21.1(2).

⁶⁴ Id.