



Susan Thixton <susan@truthaboutpetfood.com>

NC Open Meetings law violation complaint

1 message

Susan Thixton <susan@truthaboutpetfood.com>

Mon, Jan 6, 2020 at 11:03 AM

To: steve.troxler@ncagr.gov

Cc: anita.macmullan@ncagr.gov

Dear Mr. Troxler,

This email is to serve as a complaint to violations of the North Carolina Open Meetings law and potential knowing and intentional violations of North Carolina Open Public Meetings law should North Carolina Department of Agriculture participate in any manner in any future Association of American Feed Control Officials (AAFCO) meeting. This email also serves as notification of potential Freedom of Information Act/Sunshine Act violations of North Carolina Commercial Feed law.

AAFCO – the Association of American Feed Control Officials – is a not for profit 501 (c) (5) entity providing services to governmental agencies including, but not limited to, FDA and North Carolina Department of Agriculture. In public record, FDA stated in April 2019 (FDA's Final Response Letter Docket ID: FDA-2016-P-3578 Citizen Petition filed by Association for Truth in Pet Food): "AAFCO is an association of state and federal agencies". AAFCO provides evidence of their service to government within the "Purpose" statement of various AAFCO Committees. Some examples are:

- "committees for effective educational approaches in support of regulators"
- "development of uniform enforcement policies"
- "develop science- and risk-based regulations. Such regulations would support the implementation of effective inspection and compliance strategies..."

Evidence of North Carolina Department of Agriculture participation in AAFCO as official state business is found in North Carolina Commercial Feed law which states: "Rules and regulations. (a) The Board is authorized to promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this Article and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this Article. In the interest of uniformity the Board shall by regulation adopt, unless it determines that they are inconsistent with the provisions of this Article or are not appropriate to conditions which exist in this State, the following: (1) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization."

Further North Carolina Department of Agriculture representative George Ferguson serves on the AAFCO Board of Directors, serves on AAFCO's Education and Training Committee, serves on AAFCO's Enforcement Issues Committee, serves on AAFCO's Feed Labeling Committee, serves on AAFCO's Ingredient Definitions Committee, serves as Board Liaison for AAFCO's Laboratory Methods and Services Committee, serves on AAFCO's Model Bills and Regulations Committee, serves on AAFCO's Pet Food Committee, serves as Board Liaison on AAFCO's Proficiency Testing Program Committee, and serves as an AAFCO Investigator for Non-Protein Nitrogen Products. North Carolina Department of Agriculture representative Miriam Johnson serves on AAFCO's Feed Labeling Committee. North Carolina Department of Agriculture representative Mark Glover serves on AAFCO's Inspection and Sampling Committee. North Carolina Department of Agriculture representative Teresa Grant serves as APHL Liaison on AAFCO's Laboratory Methods and Services Committee, serves as Vice Chair for Chemistry on AAFCO's Quality Assurance Subcommittee, and serves as APHL Liaison on AAFCO's Proficiency Testing Program Committee.

The North Carolina Open Meetings law states:

"Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function.

"Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for

the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body."

In November 2019, the AAFCO Board of Directors - "*as directed by the board of directors*" (which includes North Carolina Department of Agriculture employee George Ferguson) - closed meetings ("*restricted access*") to Association for Truth in Pet Food, TruthaboutPetFood.com, myself (Susan Thixton), a veterinarian, and multiple pet owners. This action put the North Carolina Department of Agriculture in violation of Open Meetings laws and, as such, the Department can no longer participate in any future AAFCO meeting without being subject to punitive judgement.

North Carolina Department of Agriculture participation in any AAFCO meeting (either attending in person or participating via phone conference) could be considered an intentional/knowing violation of federal and state Open Meeting laws (in part) due to:

- Federal or state law does not provide opportunity to close a meeting to a select few individuals;
- No public written copy of a vote to close the meeting has been publicly provided;
- No General Counsel or chief legal officer of any agency participating in AAFCO meetings has provided certification that the meeting may be closed to the public;
- Fees are charged for admission to meetings that government agency officials participate as part of their official duties preventing public observation;
- Work product from government employee members of AAFCO are not published in public record and are denied in FOIA requests;
- Pet food/animal feed labeling regulations and legal definitions are not published in public record and are denied in FOIA requests prohibiting the public from access.

As AAFCO Board of Directors – including North Carolina Department of Agriculture employee George Ferguson – took action to close meetings without abiding by the federal and state legal requirements to close a meeting, violations of Open Meeting laws have been already been committed. Because AAFCO "*members*" consist solely of state and federal government employees who participate as part of their official duties, any future government employee participating in AAFCO in any manner would be in violation of state and federal open meeting laws and Sunshine Act laws. Therefore, the only remedy is North Carolina Department of Agriculture must withdraw from participation in AAFCO until AAFCO meets all legal requirements of state and federal Open Meeting/Sunshine Act laws.

We ask you to promptly reply to this email stating if North Carolina Department of Agriculture intends to participate in upcoming AAFCO meetings.

Susan Thixton

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Susan Thixton
Pet Food Consumer Advocate
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