



Susan Thixton <susan@truthaboutpetfood.com>

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## violations of ND Open Meeting Law complaint

1 message

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**Susan Thixton** <susan@truthaboutpetfood.com>  
To: ndda@nd.gov

Mon, Jan 6, 2020 at 11:28 AM

Dear Commissioner Goehring,

Copied: Wayne Stenehjem, Attorney General

This email is to serve as a complaint to violations of the North Dakota Open Meeting Law and potential knowing and intentional violations of the North Dakota Open Meeting law should North Dakota 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 Dakota 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 Dakota 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 Dakota Department of Agriculture participation in AAFCO as official state business: North Dakota Department of Agriculture representative Dave Phillips served as Director of AAFCO in 2019. Mr. Phillips also serves as Vice Chair of AAFCO's Feed Labeling Committee, and member of AAFCO's Ingredient Definitions Committee.

Further, North Dakota Department of Agriculture representative Dave Phillips serves on the AAFCO Board of Directors, serves as Vice-Chair of AAFCO's Feed Labeling Committee, and serves on AAFCO's Ingredient Definitions Committee.

North Dakota administers the official definitions of feed ingredients and official feed terms written by the collective government agency members of AAFCO (further evidence of AAFCO's service to North Dakota), but your agency does not provide those definitions and terms as part of public record due to AAFCO's action to copyright protect shared work product of government agency members. However, there remains Attorney General's Office conclusions that *"the fact that material received by a state agency may be copyrighted does not preclude the material from constituting a public record."*

The North Dakota Open Meetings manual states:

*"Open meeting provisions are found in both the North Dakota Constitution and the North Dakota Century Code: Unless otherwise provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public."*

*"The definition of "public business" is broad and includes "all matters that relate or may foreseeably relate in any way to ... [t]he performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or ... [t]he public entity's use of public funds."*

In November 2019, the AAFCO Board of Directors - *"as directed by the board of directors"* (which includes North Dakota Department of Agriculture representative Dave Phillips) - 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 Dakota Department of Agriculture in violation of Open Door laws and, as such, the Department can no longer participate in any future AAFCO meeting without being subject to punitive judgement.

North Dakota 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 Dakota Department of Agriculture representative Dave Phillips – 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 Dakota 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 Dakota Department of Agriculture intends to participate in upcoming AAFCO meetings.

Susan Thixton

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