

**LETTER OPINION  
2016-L-01**

July 26, 2016

The Honorable Ray Holmberg  
State Senator  
621 High Plains Court  
Grand Forks, ND 58201-7717

Dear Senator Holmberg:

Thank you for asking whether the Circle of Friends Humane Society can require a vote of its patron members for an election of the organization's Board of Directors by signed ballot, or whether such an action requires a recorded roll call vote. It is my opinion that North Dakota Century Code § 44-04-21(1), requiring a recorded roll call vote for any nonprocedural matters during a public meeting, is applicable only to a governing body, or committee thereof, of a public entity, and does not apply to a vote of the members of a nonprofit corporation. It is further my opinion that N.D.C.C. ch. 10-33 allows members of nonprofit corporations to vote by signed ballots.

**ANALYSIS**

During its 2016 Annual Meeting, the Circle of Friends Humane Society's (Humane Society) qualified members voted by signed ballot to elect new directors.<sup>1</sup> According to the Humane Society by-laws, the Board of Directors are elected at the annual meeting by members eligible to vote; that is, a member who has paid his or her dues and is over 18 years of age.<sup>2</sup>

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<sup>1</sup> The Board of Directors has control of and is responsible for the "management of the affairs and property of" the Humane Society. By-Laws, Circle of Friends Humane Soc'y, Art. V, section 4.

<sup>2</sup> By-Laws, Circle of Friends Humane Soc'y, Art. III, section 1 (voting members are those members who are 18 years of age or older) and section 5 ("The privilege of voting is effective immediately upon the Society's receipt of dues and membership application form."); Art. IV, section 1 ("The annual meeting of this Society for the election of directors and the transaction of any other business shall be held in January of each year."); and Art. V, section 3 ("Directors shall be elected by a plurality of the votes cast by ballot at the Annual Meeting.").

This office recognized that the Humane Society, a nonprofit corporation, is subject to the open record and meetings law because it is supported by public funds and acts as an agent of Grand Forks City and County in its operation of a shelter for abandoned, abused, and neglected animals.<sup>3</sup> The open meetings law requires that all nonprocedural votes taken by the members of the governing body of a public entity must be recorded roll call votes, with the votes of each member being made public at the open meeting.<sup>4</sup> The definition of “meeting,” under the open meetings law, include “a formal or informal gathering...of [a] quorum of the members of the governing body of a public entity regarding public business.”<sup>5</sup> A governing body is defined as “the multimember body responsible for making a collective decision on behalf of a public entity.”<sup>6</sup> A governing body also includes any “group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.”<sup>7</sup> The voting requirements under the open meetings law therefore only apply to votes taken at a meeting of a governing body of a public entity.

The Board of Directors is the “governing body” that is required to vote in compliance with N.D.C.C. § 44-04-21(1) because it is the “multimember body responsible for making a collective decision on behalf of”<sup>8</sup> the Humane Society. The Board of Directors did not form a committee by delegating authority, rather, the right to vote for directors is provided to anyone who meets the criteria of becoming a member, paying dues, and reaching the age of 18.<sup>9</sup> Therefore, because the vote taken at the Annual Meeting for the election of the Board of Directors was a vote of the members, and not a “governing body” or committee thereof, N.D.C.C. § 44-04-21(1) requiring open, roll call voting, does not apply.

You also ask whether the law allows members of nonprofit corporations to vote by signed ballots. Laws applicable to all nonprofit corporations in North Dakota are found in N.D.C.C. ch. 10-33, and several sections in this chapter address voting by members of a nonprofit corporation. Section 10-33-71, N.D.C.C., provides that “[u]nless the articles or bylaws provide otherwise, each member with voting rights is entitled to one vote on each matter voted on by the members.” The Humane Society’s By-Laws state that directors will

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<sup>3</sup> N.D.A.G. 2015-O-01.

<sup>4</sup> N.D.C.C. § 44-04-21(1).

<sup>5</sup> N.D.C.C. § 44-04-17.1(9)(a)(1).

<sup>6</sup> N.D.C.C. § 44-04-17.1(6).

<sup>7</sup> *Id.* Such groups are generally referred to as “committees” that have the same requirements under open meetings law as the full governing body. See N.D.A.G. 2016-O-05.

<sup>8</sup> N.D.C.C. § 44-04-17.1(6) (definition of “governing body”).

<sup>9</sup> The eligible members were voting on electing the governing body of the public entity, much like a general election of the public for a County Commission or City Council.

be elected by votes cast by ballot of eligible members at the Annual Meeting.<sup>10</sup> Section 10-33-01, N.D.C.C., defines “vote” as “authorization by written action,” and defines “written action” to include a “written record signed by all of the persons required to take the action.”<sup>11</sup> Section 10-33-72(2), N.D.C.C., specifically authorizes members to take action by voice or ballot.<sup>12</sup> This chapter therefore recognizes that votes by members of a nonprofit corporation can be by signed ballots.

In conclusion, it is my opinion that the Humane Society was authorized by law to allow its voting members to submit a signed ballot vote for election of the Board of Directors during its Annual Meeting.

Sincerely,

Wayne Stenehjem  
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>13</sup>

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<sup>10</sup> By-Laws, Circle of Friends Humane Soc’y, Art. V, section 3.

<sup>11</sup> N.D.C.C. § 10-33-01(37) (definition of “vote”) and (38) (definition of “written action”).

<sup>12</sup> See also N.D.C.C. § 10-33-74 (receiving member action by ballot) and N.D.C.C. § 10-33-78 (outlining how nonprofit corporations can accept voting by matching the signature on the vote to the members of the corporation).

<sup>13</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).