



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Michael Martin, DVM
State Veterinarian

February 23, 2023

Sarah Terry
President
Ashe Humane Society
P. O. Box 1776
West Jefferson, NC 28694

NOTICE of WARNING and NOTICE of VIOLATION

Re: Violation of Title 02 N.C. Administrative Code (“NCAC”) Chapter 52J, Section .0201(j)

AWS-WL-2023-2

Animal Shelter: Ashe Humane Society Animal Shelter
Registration No. 379

Dear Ms. Terry:

On June 13, 2022, December 12, 2022, and January 30, 2023, Animal Health Technician Lindsey Harris (“Inspector Harris”) from the Animal Welfare Section (“AWS”) of the North Carolina Department of Agriculture and Consumer Services (“NCDA&CS”) attempted to conduct a facility inspection of the Ashe Humane Society (“the shelter”). On all 3 occasions, no one was present at the facility during normal business hours. During the June 2022, and December 2022 attempts, Inspector Harris called the phone number provided, but no one answered. During the December 2022 attempt, Inspector Harris left the facility and returned later the same day, but again, no one was available at the facility. On the January 2023, attempt, a person answered the phone but stated that no one was available to meet the Inspector at the facility.

Pursuant to the North Carolina Animal Welfare Act and the rules promulgated thereunder, “All areas of a facility are subject to review or inspection by North Carolina Department of Agriculture and Consumer Services employees during normal business hours (8:00 a.m. through 5:30 p.m. Monday through Friday)” [02 NCAC 52J .0201(j)].

Therefore, AWS finds that this animal shelter is in violation of 02 NCAC 52J .0201(j).

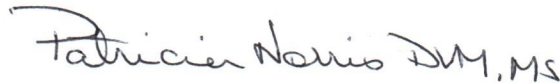
This Warning Letter and Notice of Deficiency serves as written notice indicating in which respects the shelter has failed to satisfy the requirements for the holding of a registration as an animal shelter. The shelter must have at least one “Approved” facility compliance inspection in the 12 months prior to the July 1st renewal date for the shelter to be eligible to renew its registration. A review of AWS records

shows that the shelter has not received an "Approved" facility compliance inspection because of the failure of the shelter to be accessible during normal business hours on 3 separate dates. To be clear, should the facility continue to be inaccessible during normal business hours for inspection, the shelter will not receive an "Approved" inspection by July 1, 2023, the shelter will not be able to be registered as required by NCGS § 19A-26 and will need to cease operation by July 1, 2023.

In addition, if the shelter continues to be inaccessible during business hours and thereby preventing AWS personnel access to the shelter from this date forward, this repeated violation of 02 NCAC 52J .0201(j) will be considered a willful disregard or violation of the North Carolina Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation of the North Carolina Animal Welfare Act and the rules issued pursuant thereto may result in suspension or revocation of your facility's license pursuant to NCGS § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation pursuant to N. C. General Statute § 19A-40.

Your immediate compliance with the N.C. Animal Welfare Act is required.

Sincerely,



Patricia Norris, DVM, MS
Director, Animal Welfare Section
Veterinary Division, NCDA&CS

cc: Dr. Michael Martin, State Veterinarian
Christina L. Waggett, Assistant Commissioner, NCDA&CS
Tina Hlabse, General Counsel, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

Appendix

REFERENCED STATUTES AND REGULATIONS

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

02 NCAC 52J .0201 GENERAL

(j) All areas of a facility are subject to review or inspection by North Carolina Department of Agriculture and Consumer Services employees during normal business hours (8:00 a.m. through 5:30 p.m. Monday through Friday).

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.