

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF A PETITION	:	
FOR AN ADMINISTRATIVE	:	FINAL DECISION
INJUNCTION INVOLVING	:	AND ORDER
	:	LS0707241UNL
DODGE COUNTY FRIENDS	:	
OF ANIMALS, INC.,	:	
RESPONDENT.	:	

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Division of Enforcement Case No. 04UNL042

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 8th day of August, 2008.

Celia M. Jackson, Secretary  
Department of Regulation and Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF A PETITION FOR :  
AN ADMINISTRATIVE INJUNCTION :  
INVOLVING :

PROPOSED DECISION  
AND ORDER

DODGE COUNTY FRIENDS, :  
OF ANIMALS, INC., :  
RESPONDENT. :

LS-0707241-UNL

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Division of Enforcement Case File No. 04 UNL 042

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Licensing

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PROCEDURAL HISTORY

On July 24, 2007, the Complainant, Division of Enforcement, filed a Petition for an Injunction against Dodge County Friends of Animals (respondent) alleging unregistered practice. On September 5, 2007, an amended petition was filed. Specifically the petition alleges that since August 1, 1999, the respondent has solicited and received charitable donations without being registered with the Department of Regulation and Licensing (department). A hearing was held on the Petition on November 15, 2007. The respondent was represented by attorney William Pharis Horton. The complainant was represented by Claudia Miran Berry.

Based on the record in this case, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter the Following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The respondent is located at W7458 County Hwy I, Juneau, Wisconsin 53039.
2. The respondent was first registered by the department as a charitable organization in the state of Wisconsin (registration number 800-725) on July 24, 1979. That registration expired on August 1, 1999, and has not been renewed.
3. The respondent did not receive any donations in years 2001 and 2002.
4. The respondent provided the department with its accounting records for years 2002, 2003 and 2004. In years 2002 and 2003 the respondent received donations of \$160.00 and \$200.00 respectively. The respondent received \$3,130 in donations in 2004.
5. Joanne Hartzheim is an officer of respondent. Joanne Hartzheim received \$4,000.00 in wages from the respondent in 2004.
6. The respondent did not receive any donations in years 2005, 2006 and 2007.

7. The respondent is a charitable organization as defined in Wis. Stats., s. 440.40 (1), Stats.

## CONCLUSIONS OF LAW

1. The department is the legal authority responsible for issuing and controlling credentials for charitable organizations, under Wis. Stats., s. 440.21 and Subchapter III of Chapter 440.

2. The complainant did not meet its burden to show that the respondent was in violation of the charitable organization registration laws in years 1999, 2000, 2001, 2002, 2003, 2005, 2006 and 2007.

3. The respondent, by engaging in the conduct set out in paragraph 5, above, violated the charitable organization registration laws under Wis. Stats., s. 440.42(1)(a) and (5)(a) 3.

## ORDER

THEREFORE, IT IS ORDERED that the Petition for an Injunction against Dodge County Friends of Animals, Inc., is DENIED.

## APPLICABLE LAW

**Wis. Stats., § 440.21 Enforcement of laws requiring credential (1)** The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under [chs. 440 to 480](#).

**(2)** If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under [chs. 440 to 480](#), the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

**Wis. Stat., § 440.41 Definitions. In this subchapter:**

**(8)** "Solicit" means to request, directly or indirectly, a contribution and to state or imply that the contribution will be used for a charitable purpose or will benefit a charitable organization.

**440.42 Regulation of charitable organizations (1) Annual registration requirement.** (a) Except as provided in [sub. \(5\)](#), no charitable organization may solicit in this state or have contributions solicited in this state on its behalf unless it is registered with the department under this subsection.

**(5) Exemptions from registration.** (a) The following are not required to register under [sub. \(1\)](#):

3. Except as provided in [par. \(b\)](#) and in rules promulgated under [sub. \(8\)](#), a charitable organization which does not intend to raise or receive contributions in excess of \$5,000 during a fiscal year, if all of its functions, including solicitation, are performed by persons who are unpaid for their services and if no part of its assets or income inures to the benefit of, or is paid to, any officer or member of the charitable organization.

## OPINION

Wisconsin law states that no charitable organization may solicit donations in this state unless it is registered with the department. An exception to that requirement is that an organization may solicit donations and not register if it receives less than \$5,000 in donations in a calendar year and it does not pay anyone for their work on its behalf. So, if in any year an organization pays an officer for services rendered, regardless of how much money it receives in donations, or, if the organization receives more than \$5,000, in donations, the organization has to be registered. Wis. Stats., s. 440.42(1)(a) and (5)(a) 3. Therefore to determine if there was a violation in any year, two questions need to be asked. The questions are: 1.

Did the organization receive more than \$5,000? and, 2. Did the organization pay anyone for services rendered? If either of the questions is answered yes, the organization was required to be registered.

The complainant asserts that from August 1, 1999, to the date of the hearing, November 15, 2007, the respondent solicited and accepted charitable donations without being registered with the department in violation of state law. However, the complainant did not introduce evidence to show that the respondent was required to have been registered in any of those years other than 2004. I will address the years from 1999 to 2007 in order in the following paragraphs.

The complainant introduced evidence that the respondent received more than \$10,000 in donations in calendar year 1999. The evidence was a June 24, 2004 report written by a department employee based upon accountings the respondent provided the department. Exh 1. Unfortunately the actual accountings were not provided as part of the evidence. It was crucial to review the actual accountings because the respondent was registered as a charitable organization until August 1, 1999. The report did not identify how much of the \$10,000 was received while the respondent was registered as a charitable organization and when it was not. As a result, I could not use the report as evidence in this matter.

The complainant did not introduce any evidence showing the amount of donations the respondent received in 2000 and 2001. Nor did the complainant introduce evidence showing that the respondent paid wages to anyone in those years. There was, therefore, no evidence introduced to support the assertion that the respondent should have been registered in years 2000 and 2001.

The accounts that the complainant introduced indicate that the respondent received \$160 in donations in 2002 and \$200 in donations in 2003. Those amounts are well below the \$5,000 figure needed to require registration. Those accounts did not show that the respondent paid any wages in those years. Exh 3. Again there was no evidence introduced by the complainant to support the assertion that the respondent should have been registered in years 2002 and 2003.

The complainant produced evidence that the respondent received \$3,130 in 2004, which is less than the amount, \$5,000 that requires registration. Exhs. 2 and 3. The complainant did show that the respondent paid Joan Hartzheim, an officer of the organization, \$4,000 in wages in 2004. Therefore, because the respondent paid wages to an officer, it should have been registered in 2004.

The complainant did not submit any evidence to show the amount, if any, of donations the respondent received in 2005, 2006 and 2007. Nor did the complainant introduce any evidence showing that the respondent paid wages to anyone in those years.

The complainant introduced copies of two newspaper articles published in 2007 as evidence that the respondent needed to be registered because it had solicited donations. Exh. 5. I read the articles and did not see any evidence of solicitation. Even if the respondent had been soliciting donations in those articles it would not have mattered because solicitation alone does not require a charitable organization to be registered. Wis. Stats., s. 440.42 (1) (a). To establish a violation of the registration requirement the complainant needed to show that the respondent either received more than \$5,000 in donations or that it paid wages to someone. In fact, the evidence introduced by the complainant showed that neither of those factors occurred.

The only year in which the respondent was in violation of the registration requirement was 2004. The respondent was not in violation of the law for years 1999, 2000, 2001, 2003, 2005, 2006 and 2007. The complainant is asking for an injunction against the respondent but did not establish that the respondent is currently in violation or that it is likely that the respondent will violate the registration laws in the coming years. The finding that the respondent should have been registered in 2004 but in no other year, does not support the issuance of an injunction in 2008. Therefore, the complainant's petition for an injunction is denied.

Dated this \_\_\_\_\_ day of July, 2008

Respectfully Submitted

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Peggy E. Wichmann  
Administrative Law Judge