

Memorandum

DATE: April 29, 2010
TO: Dog Sellers Advisory Committee
FROM: Attorney Cheryl Daniels
SUBJECT: Questions about foster relationships and licensing under s. 173.41

There were some additional questions that were raised after our meeting last Wednesday concerning the issue of dog fostering and implications for licensing under the definitions in s. 173.41(1), Wis. Stats.

As I stated in my other memo on dog breeder/dog seller licensing issues, the specific fact situation will control the possibility of licensing and the possibility that a premise might be open for inspection. Unfortunately, the exemption listed under s. 173.41(2)(f), Stats., for an individual providing foster care isn't really helpful because the definitions of who is to be licensed already places that person outside of who should be licensed.

Here again are some examples to illustrate how different specific fact situations may or may not lead to the need for licensing:

1. Does the foster person care for more than 25 dogs and then sells or distributes them and is not an actual non-profit shelter (hasn't taken the steps under Wisconsin law to be nonprofit association or corporation)?

Then the individual would be licensed as a dog dealer under s. 173.41(1)(e), Stats.

2. Does the foster person care for more than 25 dogs, runs a nonprofit under Wisconsin statutes and then sells or distributes the dogs?

Then the nonprofit is licensed as a shelter under s. 173.41(1)(b), Stats.

3. Does the foster person have care and control of less than 25 dogs in a year (doesn't matter if they are an individual or have a nonprofit under Wisconsin statutes) and are responsible to sell or distribute the dogs?

Then they are not licensed under s. 173.41, Stats., because they don't meet the 25 dog minimum.

4. Does the foster person care for any number of dogs in a year by agreement with a nonprofit shelter, but the shelter maintains the legal control of the dogs?

Then the foster person does not need to be licensed, even if they have over 25 dogs coming through in a year. This is because, similar to the person who manages care under agreement for a dog breeder, this person is not a licensee but their premise is a secondary premise of the nonprofit and may be subject to inspection. However, as with the breeder situation, the responsibility for meeting the requirements of the statute and rules is on the licensee, in this case, the shelter. Violations and corrections of them are the responsibility of the shelter.