

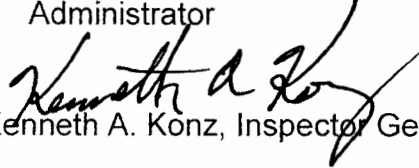


Corporation
for Public
Broadcasting

Office of Inspector General

December 5, 2006

To: Westwood Smithers, Jr., Senior Vice President & General Counsel
Gregory Schnirring, Vice President, Radio
Brian Sickora, Vice President Systems Development & Station Grants
Administrator

From: 
Kenneth A. Konz, Inspector General

Subject: Inquiry as to Whether KBBF-FM Violated Public Broadcasting Act
Restrictions on Disclosure of Contributor or Donor Lists and Use
for Political Purposes, Report No. ISR703-701

Based on Corporation for Public Broadcasting (CPB) management concerns, we conducted an inquiry into a possible violation of the Public Broadcasting Act of 1967 (the Broadcasting Act). As background, applicants for CPB radio community service grants (CSG), public broadcasting licensees are required to submit a Certification of Eligibility (Certification) in which the station(s) or licensee answer affirmatively or negatively a series of questions demonstrating whether they meet or exceed certain criteria including requirements of the Public Broadcasting Act of 1967 (the Broadcasting Act).

KBBF-FM, a community public broadcasting station in Santa Rosa, California, submitted its Fiscal Year 2007 CSG Certification on September 29, 2006, with all questions marked in the affirmative. However, the Station Manager, who signed as the Head of the Grantee, added the following comment to the Certification:

During election time, we have allow [sic] our
candidates to use a mailing house to send
information to our members.

As a result of that comment, CPB officials were concerned that KBBF-FM might be supplying a list of membership or donor names to a mailing service to transmit campaign literature or information in connection with federal, state or local elections, which could have violated section 396(k)(12)(A) of the Broadcasting Act [47 U.S.C. §

396(k)(12)(A)]. In addition, since section 396(k)(12)(b) of the Broadcasting Act also prohibits disclosure of “contributor or donor names. . .to any nonaffiliated third party” without meeting certain notice requirements to such contributors, who are to be given the opportunity to block disclosure, the CPB needed more information on the nature of these transactions and the relationship between the parties. The matter was referred to us by the CPB General Counsel for consideration.

CONCLUSION

Compliance with Statutory Requirements

Based on our inquiry, KBBF-FM appears to be in full compliance with the Broadcasting Act’s prohibition against permitting use of address lists for political purposes and restrictions against dissemination of donor names, addresses and other identifying criteria to “non-affiliated third parties.” The mailings were between members of KBBF-FM and were directly related to membership concerns on such matters as station governance and elections of members to the Board of Directors. By providing for blind mailings, steps were taken to protect the privacy of address lists. Since mailing house served as an agent for KBBF-FM they could reasonably be considered to be affiliated with the station.

RESULTS OF INQUIRY

For the reasons stated in this memorandum, we conclude that KBBF-FM’s use of an address list for mailing information to its members appears to be permissible under the Act. Since use of the mailing lists is restricted to only members authorized by the Board of Directors and is disclosed only to the KBBF-FM’s contractor for purposes related to that membership, the KBBF-FM procedure appears to be in full compliance with the Broadcasting Act.

KBBF-FM’s comments on the Certification, which appeared to indicate that its address lists were being used in a political context, were based on a misunderstanding of question 10 on the Certification form, which asked them to affirm that membership or donor names were never transferred to, sold, or exchanged with candidates for public office. The submitted comment referred only to elections of Board members by station members to the Bilingual Broadcasting Foundation, Inc. (BBFI) Board, which is also the governing board of KBBF-FM. Our discussions with stations officials disclosed that the station never used its membership or donor lists for outside elections but only for matters directly related to member concerns. Further, the member address lists are comprised only of donors who have applied for membership and made a donation at or above a designated level and, as a result, have qualified for membership.

BBFI utilized the services of a mailing house as a method to comply with a California law requiring nonprofit corporations to allow members to have full access to

membership lists to enable them to mail information or materials to members related to corporate concerns unless an alternative procedure was provided accomplishing the same results. Under this procedure, if a member demonstrates to the BBFI Board a need to make a mailing to members related to membership concerns, his name is submitted to the mailing house as being authorized to submit mailings to all members on the membership list it holds. The member submitting material to be mailed is not given the members' identities and does not see the membership list, held by the mailing house, which charges him or her for the mailing service.

Based on our discussion with officials and documentation provided, only thirteen members have been authorized to make mailings under this procedure, but it has been utilized only once apart from mailings directly related to board elections, referred to in the Certification comment. The latter mailing was a complaint regarding the elections and involved issues of governance. All mailings made to date were therefore related to station concerns and were sent only by or to persons affiliated with the station in accordance with Broadcasting Act requirements. While California law may permit disclosure of membership or donor lists that could conflict with the Broadcasting Act, KBBF-FM's alternate procedure appears to reduce that possibility by preventing requesting members from having direct access to the mailing lists.

Clarification of Certification Comment

KBBF-FM is a community-based, non-commercial, Spanish language radio station operating in Santa Rosa, licensed by BBFI, a California nonprofit corporation. The Counsel for the Foundation informed us that both BBFI and KBBF-FM "does not and has not provided its membership list or access to the list to persons or organizations not affiliated with the station" in accordance with a "long-standing" policy. The Station Manager and Vice President confirmed that although they receive many requests for the address lists, with guidance from their attorney, they are sensitive to the Communications Act requirements.

The comment relating to use of address lists submitted with the Certification was referring to elections to the non-profit BBFI Board, which is also the Board governing KBBF-FM, and not national, state or local political elections. The reference to "our candidates" was to Board members and the "information" was related to the station elections and issues directly related to Board policies on station issues and governance.

Use and Access of Member Address Lists

We were told that the Board contracted with a mailing service because, as a small station, they did not have the staff or resources to send informational mail to their members as required by state law. Further, the address list used does not contain all of the donors or contributors, only members. KBBF's attorney has informed us that "the membership list is distinct and separate from records relating to donors, and a list of donors or contributors is never provided to members or other persons, the only

exception being to Directors upon specific request, again pursuant to state law.” To become a member of the station, the person has to submit a membership application, along with a minimum donation.

KBBF also was attempting to initiate a mailing procedure that would both comply with a California statute giving broad access rights and meet the Broadcasting Act’s restrictions on such access. California’s non-profit law requires that non-profit corporations allow members to have access to corporate mailing lists, including names, addresses and voting rights for purposes that are reasonably related to the person’s interests as a member. Members may inspect and copy the entire membership list upon written demand stating the purpose for which the inspection rights are requested and/or obtain for a reasonable charge, an alphabetized list of all members voting in the most recent election. The corporation can only deny direct access if it reasonably believes the list is to be used for other purposes unrelated to his membership interest or if it has provided an alternative that “reasonably achieves the proper purpose set forth in the demand.” Cal. Corp. Code § 6330 (2006).

BBFI initiated its contract with a mailing house to handle member mailings in August, 2006, apparently to provide an alternative to direct member mailing list inspection rights provided by the California statute that would be more protective of the privacy of the address lists than those specifically provided by the state law. Under this procedure, BBFI receives requests from individuals who want to be authorized to make mailings to persons on the member address lists to determine if they state an interest related to membership concerns. If the request is deemed appropriate, BBFI gives the requesting member’s name to a mailing house and authorizes it to make a blind mailing on his behalf to the members. They follow this procedure for candidates in Board elections to send information on their qualifications, since all Board members and candidates are required to be members of the Corporation. These were the elections referred to in the Certification comment.

The mailing house, Ad-Vantage Marketing, maintains a list of persons authorized to send mailings to members of the station, which currently consists of 13 members. BBFI’s attorney informed us that, according to Ad-Vantage Marketing, only two mailings have been made since this procedure was instituted, one related to the election and another from an authorized member sending a complaint related to how the election was conducted.

Instructions concerning the mailings were sent to the mailing house through an e-mail communication from the BBFI’s counsel with copies sent to KBBF-FM officials. There was no formal contract with Ad-Vantage Marketing, though in response to our request for documentation, BBFI’s counsel agreed that a memorandum of understanding formally setting forth the procedure would be desirable and promised to develop one for future use.

Contents of the Mailing

We examined the contents of the mail sent to members on October 9, 2006, the only mailing not directly connected with facilitating or sending information on the BFFI Board election. It was sent by a KBBF-FM member representing an organization identified as "Voices Crossing Borders" to the other members and was directly related to station concerns. A cover letter complained that the Board held a closed meeting concerning a possible sale of the station. He also submitted an enclosure complaining about the manner in which KBBF-FM elections had been conducted.

The cover letter also complained about the blind mailing procedure employed by the station. The organization asked members to send them their home and e-mail addresses "so we can avoid having to use an expensive mailing service provided to us by the Board of Directors." The content of this letter shows that it was from a station member to all other members and contained information and comments directly related to KBBF-FM that would be of interest and concern to its members and was sent only to other members. The member who prepared the mailing did not have direct access to the address list, which was held by the mailing house under a contract with KBBF-FM and its controlling organization, BFFI.

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Alan Gregory Wonderwheel, Counsel for WBBFM

METHODOLOGY AND SCOPE OF REVIEW

After examination of the Certification, we interviewed the Vice President of KBBF-FM, who had signed the Certification as the Licensee Official and the Station Manager, who signed as the Head of Grantee. We also conferred with the KBBF-FM's legal counsel. Because their explanation for the certification comment seemed reasonable and would not violate the Broadcasting Act, we requested documentation and did not feel a site visit necessary.

In response to our request, they submitted documents substantiating their explanation of the mailing in question and the station policy relating to it including a copy of the letter mailed to members, instructions sent electronically to the mailing house and a written statement clarifying the comment included with the Certification. We examined their mailing practices in light of the Broadcasting Act's restrictions and California statutory requirements concerning inspection rights of non-profit corporations' membership mailing lists. We made no conclusions relating to the California statute but merely used it as a reference to explain the station's practices.