

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

March 30, 2012

IN REPLY REFER TO:

Marshall Miles
Tri-State Public Communications, Inc.
WHDD-FM
67 Main Street
Sharon, CT 06069

Dear Mr. Miles:

This is with respect to a December 5, 2011, complaint against Station WHDD-FM, filed by Diane Goncalves, Assistant Superintendent for Region 1 Schools in Falls Village, CT. She contends that, on several occasions you endorsed specific candidates running for public office on-air and, at other times, you targeted specific members of the Region 1 Board of Education for criticism. She alleges that this is in violation of Section 399 of the Communications Act of 1934, as amended (47 U.S.C. §399).¹

On January 13, 2012, you filed an opposition to Ms. Goncalves' complaint, in which you state that, following a U.S. Supreme Court decision in *FCC v. League of Women Voters of California et al.*, 468 U.S. 364 (1982), the restriction set out in Section 399 has been limited to the endorsement or opposition of candidates by the station itself. In this case, you contend that your endorsement stated at both its beginning and end that it was your personal opinion and not that of the management, underwriters, staff, or WHDD-FM. You point to a staff decision in *Walker & Salveter*, 32 R.R. 2d 839 (Broadcast Bureau, 1975), where the statements of a station's general manager that were given with the caveat that they were his personal opinion, and not that of the station, were considered not to be an editorial of the station.

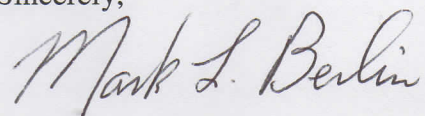
In response, while Ms. Goncalves does not deny that the endorsements included a statement that they were your personal opinion, she states that this disclaimer was only at the end of the editorials. Additionally, she submits a copy of the station's most recent ownership report, in which the station's only officers are you and your two appointees. She therefore concludes that your involvement and air presence are tantamount to you being the spokesman for the station.

At the outset, Ms. Goncalves' contention the station criticized various members of the Region 1 Board of Education on the air is not prohibited by any law or policy. In *Accuracy in Media*, 45 F.C.C.2d 297, 302 (Broadcast Bureau, 1973), we concluded that it would be an unnecessarily broad construction of Section 399 to prevent all personal expression of views on public issues by employees of a noncommercial educational broadcast station. We also believe that your endorsement of certain school board candidates on the air was permissible – as long as you clearly indicated that that it was your personal opinion and not that of the station. Section 399

¹ Section 399 provides: "No noncommercial educational broadcasting station may support or oppose any candidate for public office."

applies only to formal station support or opposition of a candidate for public office, and you should take care in the future that your personal views over the air continue to be clearly labeled as such.

Sincerely,

A handwritten signature in cursive script that reads "Mark L. Berlin". The signature is written in dark ink and is positioned above the typed name.

Mark L. Berlin
Policy Division (Political Office)
Media Bureau

cc: Diane Goncalves