

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**Findings and Order in the Matter of the Complaint of Steven Timmer
Regarding the King Banaian and KYCR Radio**

Summary of the Complaint and Response

On August 5, 2010, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Steven Timmer regarding King Banaian (“Respondent”), a candidate for the House of Representatives in District 15B. Mr. Banaian’s principal campaign committee registered with the Board as the “King Banaian for House” committee (“the Committee”).

The Complaint

The allegations of the complaint may be summarized as follows:

An organization named Salem Communications owns two radio stations in Minnesota. One broadcasts on AM 1280 and goes by the call letters WWTC, and carries the trade name “The Patriot”. The other broadcasts on AM 1570 and goes by the call letters KYCR.

King Banaian had a weekly radio program on WWTC named The King Banaian show. At some point the program moved to KYCR where it continues to be produced and aired.

The King Banaian Show is broadcast live on Saturday mornings and is repeated on Sundays in a recorded version. It is also available online in a version that may be played on demand. After he became a candidate for the House of Representatives, Mr. Banaian continued to host his radio program.

KYCR includes on its website this statement regarding The King Banaian Show:

King Banaian is an economist and a professor who forecasts the central Minnesota economy and has consulted governments in several foreign countries. The show looks at economic and financial news and business trends, explaining economics and political economy for the investor, the entrepreneur, and those just interested in economics with a bit of political insight. Guests include authors, economists and business leaders.

For a portion of the time that King Banaian had his show on WWTC, his co-host was Michael Brodkorb, who is now Deputy Chair of the Republican Party of Minnesota.

Mitch Berg, described as “a conservative blogger”, has a radio program on WWTC. On his blog, Mr. Berg promotes The King Banaian Show.

King Banaian has been listed as a guest on the shows of other hosts on WWTC. On August 2, 2010, he was listed to appear on “The Ed Morrissey Show” with Teresa Collett, [the Republican party candidate for congress in the fourth congressional district]. Mr. Banaian was also listed to appear on the Morrissey show June 24, 2010.

Mr. Banaian has his own blog and on it mentions his candidacy and includes a display ad for The Northern Alliance Radio Network and AM1570, which is identified as "Twin Cities Business Radio".

Based on his allegations, Mr. Timmer believes the following violations of statute have occurred:

- (1) a prohibited corporate contribution from the radio station owner to the King Banaian for House committee in the form of free radio air time;
- (2) the failure to report contributions from the radio station owner to the King Banaian for House committee
- (3) violations of the limits on contributions that may be accepted by a candidate's principal campaign committee.

The Response of King Banaian

Mr. Banaian's response, received on September 1, 2010, may be summarized as follows:

Mr. Banaian broadcast on WWTC until September, 2009, after which he moved to KYCR. He hosts a two-hour program on Saturday mornings which is replayed on Sunday evenings. The show is ongoing.

The King Banaian Show is predicated on Mr. Banaian's career as a PhD economist who has taught for more than 25 years, written over 40 professional articles and countless popular pieces, and consulted extensively. He is employed by St. Cloud State University and has reached the level of full professor with tenure there.

The radio program is designed to use his professional skills rather than any political skills. Its purpose is to provide economic analysis, including economic policy analysis. The show touches on policy issues, but not electoral politics, and in no way on his state house race. The format of AM 1570 is business news talk.

Mr. Banaian states that to the best of his knowledge, since he announced his candidacy on March 17, 2010, he has not mentioned it, nor has anyone else affiliated with the show mentioned it during a broadcast.

The transmitter for KYCR is located in Golden Valley, MN and transmits with a daytime signal of 2800 watts and a nighttime signal of 300 watts. According to information from *www.radio-locator.com*, the signal does not reach the district in which Mr. Banaian is running for office. Friends of Mr. Banaian indicate that they cannot receive the on-air signal in the district.

The program is available on the KYCR radio station's website for listening on demand. However, it is not advertised by the station and Mr. Banaian believes that listeners to the web broadcast are primarily regular listeners who miss the live program or replay broadcasts.

Mr. Banaian has been a guest on the Northern Alliance show which is broadcast on WWTC and hosted by Ed Morrissey and Mitch Berg.

The "Ed Morrissey Show" is not a broadcast show but is a webcast. It does not appear regularly on WWTC nor is it available there for on-demand listening.

Mr. Morrissey did guest-host a national program on WWTC which had Mr. Banaian as a guest.

The Response of Salem Communications Corporation

Salem Communications Corporation (“Salem”) responded to the Board request for information on September 28, 2010. Salem’s response may be summarized as follows:

Salem is the parent company of Common Ground Broadcasting, which is the licensee of radio station KYCR. King Banaian began broadcasting a radio program on a sister company, WWTC, in early 2006. In August of 2006, Mr. Banaian became the sole host of a different program on WWTC and in October, 2009, that program was moved to KYCR and re-named The King Banaian Show.

The decision to have Mr. Banaian host these radio programs was not made for the purpose of influencing Mr. Banaian’s election. In fact, when Mr. Banaian started hosting more than six years ago and started hosting his own program four years ago, long before Mr. Banaian began his campaign for the House of Representatives.

The KYCR signal does not reach people in Mr. Banaian’s district. Salem provided its own signal map, different from the one provided by Mr. Banaian, but still demonstrating that the signal would not reach Mr. Banaian’s district.

Mr. Banaian’s program consists of news and opinion about business and economic issues, as the format of KYCR is business news programming, not political news/talk programming.

KYCR is a commercial radio station. The station airs commercial messages during breaks in The King Banaian Show, although no sponsors have purchased commercials specifically to run during that program. Salem or its subsidiary generated income as a result of these commercials. Mr. Banaian was not paid to host his program.

Board Analysis

Complainant believes that the actions complained of constitute prohibited corporate contributions under Minnesota Statutes Section 211B.15. He also alleges that whether prohibited or not, the provision by KYCR of radio air time resulted in a contribution to the Committee which should have been reported on the Committee’s pre-primary-election report. Finally, Complainant alleges that the contributions result in violations of the limit a principal campaign committee may accept from a single entity.

Complainant urges that Advisory Opinion 365, issued by the Board on February 22, 2005, should provide guidance in this decision.

Advisory Opinions are advisory only; they are not binding on requesters or others similarly situated. They are binding on the Board when used as a defense asserted by the requester in a subsequent action related to the facts of the opinion. Nevertheless, the Board recognizes that advisory opinions are used to provide guidance on the topics they address. However, Complainant’s reliance on Advisory Opinion 365 to provide support for his position in this matter is misplaced.

In Advisory Opinion 365, the requester was a political party unit producing a cable television program. However, unlike the present matter, the party unit in Advisory Opinion 365 specified that the purpose of the program was political; that is, the purpose was to influence the nomination or election of the candidates involved. In the present investigation, the Respondent denies that the purpose of The King Banaian Show is to influence the election of King Banaian.

For guidance in the present matter, Advisory Opinion 394 is more relevant. In that matter, the Governor was contemplating lending his voice, image, and reputation to nonprofit organizations by doing public service announcements that would be publicly broadcast. The question arose as to whether the producers of the announcements would be making a campaign contribution to the governor in the form of production and broadcast costs. The board concluded that they would not constitute contributions because the broadcasts were not being produced for the purpose of influencing the election of the Governor.

Board staff has listened to four hours of The King Banaian Show, representing some of the most recent broadcasts available on the KYCR website for on demand listening. None of the broadcasts mentioned Mr. Banaian's candidacy or discussed political issues.

Board staff examined the website www.radio-locator.com to verify the data that Mr. Banaian submitted and found the data to be consistent and the website to appear to be reliable. Salem Communications provided its own analysis of its signal confirming that it does not reach Mr. Banaian's district.

For the purposes of analysis, the Board will adopt Complainant's position and assume that Salem Communications provided services of value to King Banaian. In fact, the opposite may be true since King Banaian was a volunteer host with significant credentials and the radio station's owners profited from commercials run during breaks in his program.

Services provided by Salem Communications would be a recognizable and reportable transaction if those services constitute an "approved expenditure" under Minnesota Statutes Chapter 10A. An "approved expenditure" is an expenditure made by a third party for the benefit of a candidate with the approval of the candidate. Minn. Stat. §10A.01, Subd. 4. An approved expenditure constitutes both an in-kind contribution to the candidate's principal campaign committee and an in-kind expenditure by the committee.

An approved expenditure is a specific type of "expenditure". Thus, before a transaction will be considered to be an approved expenditure, it must fall within the definition of an expenditure.

Minnesota Statutes, Section 10A.01, Subd. 9, defines "Campaign expenditure" or "expenditure" as a payment or purchase "made or incurred for the purpose of influencing the nomination or election of a candidate . . .". This statute clearly requires the existence of a specific purpose before a transaction is an expenditure for campaign finance purposes.

The program under consideration was ongoing prior to Mr. Banaian's announcement that he would run for office. The program is aimed at discussion of economic issues. Although it discusses policy related to economics, it has not discussed Mr. Banaian's candidacy for the House of Representatives.

The program's broadcast signal does not reach the geographic area in which Mr. Banaian is running for office. While the online on-demand archive is available to anyone, there is no

evidence that Salem Communications or anyone else has promoted the archive to voters in Mr. Banaian's district.

The fact that Mr. Banaian may have appeared as a guest on broadcasts on WWTC, a political talk radio station, does not provide support for the proposition that Salem Communications made a political contribution to the King Banaian Committee. Minnesota Statutes Section , Subd. 11(c) provides that a contribution does not include "the publishing or broadcasting of news items or editorial comments by the news media". This exception is broadly interpreted in favor of allowing public discourse related to political campaigns. The fact that a candidate interview may have an effect on the candidate's election is not sufficient to remove the interview from the news media exception.

The Board recognizes that any positive public exposure may have some effect on an individual's chance of being elected. However, this possible collateral effect under the facts presented is not sufficient bring the broadcasts described by Complainant within the scope of expenditures that are considered to be for the purpose of influencing the nomination or election of Mr. Banaian.

Based on the information provided in the Complaint and the Response, and through the Board's investigation, the Board makes the following:

Findings Concerning Probable Cause

1. There is no probable cause to believe that Salem Communications or KYCR Radio made a contribution to the King Banaian for House principal campaign committee by producing or broadcasting the King Banaian Show or other shows during which Mr. Banaian was interviewed.

Based on the above Findings, the Board issues the following:

Order

1. The Complaint of Steven Timmer regarding King Banaian, KYCR Radio and Salem Communications is dismissed.
2. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes, section 10A.02, Subdivision 11.

Dated: October 5, 2010



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS.

. . .

Subd. 4. **Approved expenditure.** "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to that candidate.

. . .

Subd. 9. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

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