

WRVU Friends & Family
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June 3, 2011

Office of the Board of Trust
Vanderbilt University
305 Kirkland Hall
Nashville, TN 37240

Chancellor Nicholas Zeppos
211 Kirkland Hall
Nashville, TN 37240

Re: Potential Sale of WRVU's FCC Broadcast License

Dear Board of Trust and Chancellor Zeppos:

We write on behalf of WRVU Friends & Family, a recently-formed non-profit organization committed to preserving WRVU 91.1 FM and assisting in the station's continued development as a valuable educational resource for Vanderbilt students.

As current and former WRVU staff members and alumni opposed to the sale of the station's FCC broadcast license, we write to urge you to reconsider the position that Vanderbilt University has no appropriate role in deciding whether to sell the license.¹ The sale of WRVU's broadcast license would contravene a fundamental purpose of Vanderbilt Student Communications, Inc. ("VSC"), as articulated in its corporate charter and bylaws. As a result, and in light of the University's membership in VSC, as well as Tennessee law applicable to nonprofit corporations, consummation of a sale is outside the scope of the VSC board's unilateral authority. As explained below, it is our position that the University has the power, and indeed responsibility, to ensure that VSC's board does not exceed its authority under the charter and bylaws by selling the license, thereby effectively shutting down WRVU and undermining a core purpose for which VSC was founded.

¹ The administration's position has been expressed in a letter to Ms. Tracy Bates and in an October 22, 2010 article in *The Hustler*.

Despite the administration's apparent view that the University and VSC are completely distinct, Vanderbilt is a member of VSC. Article VII, Section 1 of the VSC bylaws provides that "[t]he membership of [Vanderbilt Student Communications, Inc.] shall initially consist of [Vanderbilt] University, which shall act through its Board of Trust when in session and through its Chancellor when the Board of Trust is not in session." Article VII, Section 2 provides that additional members may be admitted to the corporation; however, we are unaware of any additional members having been admitted, and there is no record of any such admissions in VSC's public file maintained by the Tennessee Secretary of State. Accordingly, it appears that Vanderbilt University is the sole member of VSC.

As a nonprofit corporation organized under Tennessee law, VSC is subject to the Tennessee Nonprofit Corporation Act. In particular, Tenn. Code Ann. § 48-62-102 provides, in pertinent part:

(a)(1) A [nonprofit] corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will) other than in the usual and regular course of its activities, on the terms and conditions and for the consideration determined by the corporation's board, if the proposed transaction is authorized by subsection (b).

* * *

(b) Unless chapters 51 – 68 of this title, the charter, bylaws, or the board of directors or members (acting pursuant to subsection (d)) require a greater vote or voting by class, the proposed transaction to be authorized *must be approved*:

(1) By the board;

(2) *By the members* by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by the charter authorized by § 48-60-301 for an amendment to the charter or bylaws.

(emphases added). This statute clearly requires member approval of a transaction resulting in the disposition of "substantially all" of a nonprofit corporation's property outside the normal course of the corporation's activities.

The sale of WRVU's broadcast license would necessarily fall outside the normal course of VSC's usual and regular activities; indeed, VSC is not in the business of buying and selling broadcast licenses. Accordingly, the pivotal issue as to the applicability of Tenn. Code Ann. § 48-62-102 is whether the sale of the broadcast license would constitute a disposition of "substantially all" of VSC's property. Although Tennessee courts have yet to construe the term

“substantially all” as employed in § 48-62-102, Delaware courts, to which Tennessee courts routinely look for guidance on corporate law matters,² have interpreted the term as requiring both a quantitative and a qualitative inquiry into the effect of an asset sale. *See, e.g., Hollinger Inc. v. Hollinger Int’l, Inc.*, 858 A.2d 342, 377-79 (Del. Ch. 2004) (discussing cases); *Gimbel v. The Signal Cos., Inc.*, 316 A.2d 599, 605-07 (Del Ch. 1974) (“If the sale is of assets quantitatively vital to the operation of the corporation and is out of the ordinary and substantially affects the existence and purpose of the corporation, then it is beyond the power of the Board of Directors.”). The governing principle behind the phrase “substantially all” is succinctly stated in Fletcher:

The purpose of the consent statutes is to protect the shareholders [or members] from fundamental change, or more specifically to protect the shareholders [or members] *from the destruction of the means to accomplish the purposes or objects for which the corporation was incorporated and actually performs.*

6A Fletcher Cyclopedia Corporations (2005) § 2949.20.10 (emphasis added). Thus, a disposition of “substantially all” of the property of a nonprofit corporation occurs where the sale of an asset negates the ability of the corporation to carry out one of its core purposes. *See also id.* at § 2949.40 (“The pertinent inquiry to be made [under the “substantially all” test] is whether the corporation can *meaningfully* continue the corporate enterprise in light of the sale.”) (emphasis added).

From a quantitative standpoint, Professor Mark Wollaeger, chairman of the VSC board, is on record stating that the broadcast license is VSC’s only asset of substantial value.³ Arguably, the plain language of the pertinent statute is implicated by this fact alone. *See, e.g., Katz v. Bregman*, 431 A.2d 1274 (Del. Ch. 1981) (sale of assets constituting 51% of total asset value held to be subject to stockholder approval as a sale of “substantially all” the corporation’s assets). Qualitatively, sale of the license would contravene one of VSC’s core purposes as set forth in its charter and bylaws. VSC’s corporate charter, executed on September 20, 1967, states that VSC was constituted “for the purpose of the operation, publication and dissemination of student communication media at Vanderbilt University, including but not limited to . . . radio station WRVU.” Appendix A to VSC’s bylaws, which articulates the corporation’s operational policies, echoes the core mission stated in the charter:

[VSC] exists to provide the students and other members of the Vanderbilt community specific services and outcomes, . . . [including] the provision of realistic opportunities for students to learn and gain competency in specialized mass communications skills ranging from writing, editing, computer-aided design and production, advertising creation, sales and accounting, to television and *radio production, program conception, and on-air participation*

² *See, e.g., Sanford v. Waugh & Co. Inc.*, 2010 Tenn. LEXIS 1151 (Tenn. December 17, 2010).

³ This statement was made at a recorded information session held for interested parties on September 19, 2010 at Saratt Student Center.

(emphasis added). Accordingly, the sale of WRVU's broadcast license would permanently do away with a fundamental mission of VSC as established at the corporation's inception – the provision of educational radio broadcasting opportunities to Vanderbilt students. Some might argue that the "migration" of WRVU onto the internet would provide functionally equivalent opportunities. As has been discussed at length in the ongoing debate over WRVU's license, however, an online-only format would radically change WRVU's listenership and connection to the local community and thus would not be an acceptable substitute for the experience gained producing actual radio broadcasts. For the foregoing reasons, we submit that the sale of the license would constitute a disposition of "substantially all" the property of VSC, and therefore the University's approval is required for such a transaction pursuant to Tenn. Code. Ann. § 48-62-102.

We further submit that the University should withhold such approval. The VSC board should not be allowed to shed one of the core functions of VSC in the absence of an overwhelmingly compelling reason to do so. Without belaboring the many reasons to oppose a sale, as expressed in prior correspondence to your office as well as in other public fora, sale of the license would effectively destroy WRVU and the hard work of hundreds of students over several decades. WRVU was and is an integral part of our educational experiences at Vanderbilt, and thus we are vehemently opposed to the effacement of this rich legacy in the service of financially supporting other media favored by the current VSC board. Furthermore, WRVU has an average listenership of 30,000 unique listeners per week and thus serves as a vital connection between the University and Nashville and surrounding communities.⁴ In sum, the sale of WRVU's broadcast license would be an irrevocable, tragic loss for the University, its students past, present, and future, and the community of listeners and supporters. Accordingly, we fervently believe the University should exercise its authority to prohibit a sale.

We would very much appreciate the opportunity to discuss these issues further at your convenience. We believe that an open, transparent dialogue with all concerned parties is in everyone's best interests.

Sincerely,

WRVU Friends & Family



Sharon M. Scott, President

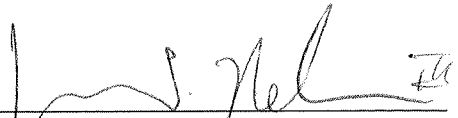
MA, VU A&S '96

DJ 1992-1996, WRVU General Manager '95-'96,

Local Music Director '94-'95, Training Director

'93-'94, VSC Voting Member '95-'96

⁴ As reported by the *New York Times* on December 5, 2010.



Joseph P. Helm, III, Secretary
J.D., VU A&S '92, WRVU DJ '88-'92, WRVU
General Manager '90 - '91, VSC Voting Member
'90 - '91

WRVU Friends & Family Board of Directors 2011-2013

Jeremy Benjamin, J.D., M.A., VU A&S '95
WRVU Program Director/Music Director '94-'95,
WRVU DJ '90-'91; '92-'95

Adrian M. Biltoft, P.E., LEED AP, VU ENG '97
WRVU DJ '93-'97, WRVU General Manager '96-'97,
WRVU Business Manager '95,
VSC Voting Member '96-'97

J. Scott Cardone, M.D., VU A&S '83
WRVU DJ '79-'83, WRVU Program Director '82-'83

M. Scott Cardone, VU A&S expected '13
WRVU DJ '09-Present, WRVU Historian '10-'11,
Program Director '11-'12

Myka Carroll, MILS, VU A&S '97
WRVU DJ '94-'97, WRVU Office Manager '96-'97,
Training Director '95, Promotions Director '95

Steve Greer
WRVU DJ '05- Present

Molly Hall, VU Law expected '13
WRVU DJ '10-Present

Phil A. Lepanto, VU A&S '95
WRVU DJ '91-'95, WRVU News Director '94-'95;
Interhall President '93-'94;
'95 15-Year Reunion Attendance Committee Chair

Chris Nochowicz
WRVU DJ '08-Present

Melissa Rymer, VU Peabody '08
WRVU DJ '06-Present, WRVU Promotions Director '07-'08

Ron Slomowicz, VU ENG '95
WRVU DJ '92-Present, PSA Director '92-'93, Assistant Business Manager '93-'94,
Training Director '94, Business Manager '94-'95,
VSC Voting Member '94-'95

Justin St. P. Walsh, Ph.D., FAAR, RPA, VU A&S '97
WRVU DJ '93-'97, WRVU Web Manager '95-'97

Tee Jack Wongananda, VU A&S '97
WRVU DJ '93-'99, WRVU Office Manager '94-'95,
WRVU Local Music Director '95-'97

cc: John J. Griffin, Jr., Esq.
Chris Carroll, Director of Student Media, Vanderbilt Student Communications, Inc.