

1 matters for both the city and the EDB, the Shamrock Economic  
2 Development Board and that was just one of the duties.

3 Q. (By Mr. Ray) But you weren't -- they didn't  
4 own the license on KRMN?

5 MS. SWITZER: Your Honor, that --

6 THE COURT: That's -- that's outside the voir  
7 dire to test his qualifications. Have you finished your --  
8 your --

9 MR. RAY: No.

10 THE COURT: I don't mean your cross  
11 examination, but have you finished your voir dire to  
12 determine his qualifications?

13 MR. RAY: We haven't.

14 THE COURT: All right. Go right ahead, but  
15 let's don't -- let's remember that what we're doing now is  
16 determining --

17 Q. (By Mr. Ray) You have -- you have never held  
18 yourself out as a communication legal specialist, have you?

19 A. When I was with Communication Properties I was  
20 considered one of the few FCC attorneys outside of  
21 Washington. Now they have them in Washington.

22 Q. You were considered that by whom?

23 A. By other people in the industry. In fact, I  
24 was trained --

25 MR. RAY: We object to that, Your Honor, as

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1 hearsay.

2 THE COURT: Overruled.

3 MR. RAY: We don't have any of those folks  
4 here.

5 Q. (By Mr. Ray) You -- you did not have any  
6 special training other than what you had done in the general  
7 practice of law and in working for a corporation down in  
8 Austin with the FCC rules and regulations?

9 A. I had to learn the FCC rules and regulations  
10 and I went to seminars and things like that at the time to be  
11 familiar with them. And also, I basically had on-the-job  
12 training with other lawyers from Washington in that area.

13 Q. When did you work for this corporation in  
14 Austin?

15 A. Okay. I worked for this Communication  
16 Properties until I moved up here in August of 1979.

17 Q. Okay. So whatever work you did with the FCC  
18 with that corporation was done before 1979 and since 1979 you  
19 have primarily been the City of Shamrock's attorney, isn't  
20 that true?

21 A. Not exactly. Let me just clarify it. I  
22 didn't become the City of Shamrock's attorney I think until  
23 '83 or '84. I was in the private practice of law. If you're  
24 getting to the fact that I wasn't engaged in FCC law after  
25 that time, that would be correct. I've been in general

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1 practice in Shamrock.

2 Q. Whatever practice that you happened to have in  
3 Shamrock --

4 A. Yeah.

5 Q. -- is as city attorney?

6 A. That would be correct.

7 Q. All right.

8 MR. RAY: That's all we have on voir dire, but  
9 we submit that that does not establish his expertise as an  
10 FCC attorney.

11 THE COURT: Counsel, I'm going to carry your  
12 objection along and if we get into something that I think is  
13 outside the area of expertise of his, I'll consider the  
14 objection again and you should feel free to renew your  
15 objection if you care to.

16 MR. RAY: Thank you, Your Honor.

17 THE COURT: I -- I just don't know what the  
18 questions are going to be and I can't gage whether it will be  
19 -- it will require particular expertise.

20 MR. RAY: All right. Thank you.

21 THE COURT: Yes. We'll proceed.

22 MS. SWITZER: Thank you, Your Honor.

23 DIRECT EXAMINATION (CONTINUED)

24 BY MS. SWITZER:

25 Q. Now, after you came back -- you came to

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UNIDENTIFIED JUROR: Judge, can we turn up the volume?

THE COURT: Yes.

UNIDENTIFIED JUROR: We're still having trouble hearing him.

Q. (By Ms. Switzer) Mr. Fling, what was the make-up of Turbo Radio Limited Partnership on March the 8th of 1999?

MR. RAY: Your Honor, unless she links up 1999 with the date that they're alleging this incident took place, we're going to object to it.

THE COURT: All right. I -- when I find a basis to rule on that, I will.

A. On March 8th of 1999 I believe the partnership was made up of a general partner, James Turvaville and several limited partners, Steven Emmert, Roger S. Taylor, Cecil Pierce, James H. Hill, Bobbye C. Hill, Lyman G. Benson, David L. Stewart and Benny G. Parks. And they were the original general partners and limited partners in the partnership agreement dated February 29th, 1996 and I think they were still the make-up in 1999, in March.

Q. (By Ms. Switzer) All right. Now, did the make-up of Turbo Radio Limited Partnership change after March the 8th of 1999?

A. Yes.

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1 Q. And how did you go about making this change?  
2 Or did you -- let me -- let me rephrase. Did you assist  
3 Turbo Radio Limited Partnership in making a change as to its  
4 make-up?

5 A. Yes.

6 Q. And what did you do in order to change Turbo  
7 Radio Limited Partnership?

8 A. We -- I had to contact Mr. Turvaville and  
9 basically --

10 MR. RAY: We object to the question that again  
11 calls for a long drawn out narrative explanation.

12 THE COURT: Overruled. Proceed.

13 A. I contacted Mr. Turvaville because the boys  
14 from New Jersey who were Shamrock Broadcasting, Inc. wanted  
15 to become general partners --

16 MR. RAY: Objection, hearsay.

17 A. -- and we had to substitute one for the other.

18 THE COURT: Overruled.

19 MR. RAY: Objection, hearsay.

20 THE COURT: Overruled.

21 MR. RAY: Note our exception.

22 THE COURT: It's noted.

23 A. And in order to do that the -- we had to amend  
24 the certificate of limited partnership at the Secretary of  
25 State's office, and that was done.

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1 Q. (By Ms. Switzer) Okay. Did you prepare this  
2 amendment of certificate for Turbo Radio Limited Partnership?

3 A. Yes, I did.

4 Q. And when did -- when was that document  
5 executed?

6 A. The amendment was actually executed on March  
7 9th, 1999, it was signed by James Turvaville and the -- all  
8 of the limited partners and Shamrock Broadcasting of Texas,  
9 Inc. and it was filed with the Secretary of State on April  
10 9th -- April 5th, 1999.

11 Q. Now, what did you say the purpose of this  
12 amendment was?

13 A. To exchange one general partner for the other.  
14 Turvaville was the general partner, Shamrock Broadcasting  
15 became the general partner and there was money to exchange  
16 hands. It was basically a transfer of control.

17 Q. Is it required to do that? Is it required to  
18 file --

19 MR. RAY: Objection. Is what required? The  
20 question is speculative when it says is it required.

21 MS. SWITZER: Your Honor, he is -- he is an  
22 attorney. He practices law. He knows what's required to be  
23 filed with the Secretary of State. It's not a leading  
24 question. I'm just asking him based on his training and  
25 experience as an attorney, are you required to file the

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1 amendments with the Secretary of State.

2 THE COURT: You've now asked a proper  
3 question. Overruled. Proceed.

4 MR. RAY: All right.

5 A. Yes.

6 MS. SWITZER: Thank you. May I approach?

7 THE COURT: Yes.

8 Q. (By Ms. Switzer) I show you what's been marked  
9 as State's Exhibit Number 1. Would you please examine that  
10 document.

11 A. That's the document I was referring to.  
12 That's the amendment to the certificate of Turbo Radio  
13 Limited Partnership.

14 Q. Did you prepare State's Exhibit 1?

15 A. Yes, I did.

16 Q. Were you present when State's Exhibit 1 was  
17 signed?

18 A. Yes.

19 Q. Is State's Exhibit 1 an accurate copy of the  
20 original document?

21 A. Yes.

22 Q. Where is the original document?

23 A. Secretary of State's office.

24 MS. SWITZER: At this time, Your Honor, we'd  
25 offer State's Exhibit 1 into evidence, tender to defense

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1 counsel for any objections.

2 MR. RAY: We object to the entry of this  
3 document on the grounds that there's no basis for the entry  
4 of it since it is not shown to be relevant to the FCC  
5 ownership of the radio station and what the Secretary of  
6 State does has nothing to do with the FCC.

7 THE COURT: Overruled.

8 MR. RAY: Note our exception.

9 THE COURT: It's admitted into evidence.

10 MS. SWITZER: Thank you, Your Honor.

11 Approach, sir?

12 Q. (By Ms. Switzer) Looking at State's Exhibit 1,  
13 which is the amendments; is that correct?

14 A. Yes.

15 Q. Who all signed those amendments?

16 A. It was signed by Shamrock --

17 MR. RAY: I object to that, the instrument  
18 would speak for itself. The Court's admitted it.

19 MS. SWITZER: I'm sorry, Your Honor, I didn't  
20 understand what he said.

21 THE COURT: He said the instrument would speak  
22 for itself. That's a general objection. Overruled.

23 MS. SWITZER: Thank you, Your Honor.

24 A. Shamrock Broadcasting of Texas, Inc. and by  
25 its president, Steven R. Emmert, limited partner, Roger S.

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1 Taylor, limited partner. There's an attest here on the  
2 secretary for the Shamrock Broadcasting, Inc., that's Jimmy  
3 Donchez, Cecil Pierce, James H. Hill, limited partner, Bobbye  
4 C. Hill, limited partner, Lyman G. Benson, limited partner,  
5 David L. Stewart, limited partner --

6 COURT REPORTER: Please slow down, Mr. Fling.

7 THE COURT: Wait. Wait.

8 WITNESS: I'm sorry, Toni.

9 COURT REPORTER: Please, slow down.

10 THE COURT: 225 words, gusts up to 400.

11 WITNESS: I'm sorry, when I start reading.

12 Where are we at?

13 A. Lyman G. Benson, limited partner, David L.  
14 Stewart, limited partner, Bennie G. Parks, limited partner  
15 and then it was agreed to by James A. Turvaville, outgoing  
16 general partner.

17 Q. (By Ms. Switzer) Now, was that properly filed  
18 with the Secretary of State?

19 A. Yes.

20 Q. Is that a public document?

21 A. Yes.

22 Q. Anybody can access that information at any  
23 time; is that correct?

24 A. Yes.

25 Q. Did you prepare an FCC 316?

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A. Yes, I did.

MS. SWITZER: May I approach, Your Honor?

THE COURT: You may.

Q. (By Ms. Switzer) I show you what's been marked as State's Exhibit 2. And ask if you would please examine that document.

A. Yes.

Q. Do you recognize that document?

A. Yes, I did. When I say prepared it, I reviewed it actually. I think one of the boys at the radio station license holder John P. actually printed it out, that's his handwriting.

Q. You say John P. you mean John --

A. Palumbo. Palumbo.

Q. And he is part of the Shamrock Broadcasting?

A. Yes.

Q. He's a general partner with them?

A. Yeah, he was their engineer and also he held a FCC license.

Q. So you reviewed that as their attorney; is that correct?

A. Yes, I did.

Q. And did you -- is -- is State's Exhibit 2 an accurate copy of the original?

A. Yes.

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1 Q. Do you know where the original document is?

2 A. At our communications commission.

3 Q. Is -- is State's Exhibit 2 a public document?

4 A. Yes.

5 MS. SWITZER: At this time, Your Honor, we  
6 would offer State's Exhibit 2 into evidence and tender to  
7 defense counsel for any objections.

8 MR. RAY: We object to the introduction of  
9 this document and ask permission from the Court to take the  
10 witness on voir dire.

11 THE COURT: Okay.

12 VOIR DIRE EXAMINATION

13 BY MR. RAY:

14 Q. Looking at State's Exhibit 2 there, you state  
15 that that is a public document. You're not trying to tell  
16 the jury that that document was filed and accepted by the  
17 FCC, are you?

18 A. I didn't say that. It's a public document  
19 because it goes in the public file of the radio station when  
20 you make the application and it's sent to the FCC. Now --

21 Q. But really that -- what's sent to them for the  
22 purpose of having them transfer the radio license to Shamrock  
23 Broadcasting, Inc., wasn't it?

24 A. No. It -- it was sent to them to show the  
25 change of control from Turvaville as being general partner to

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1 Shamrock Broadcasting of Texas as general partner. That was  
2 all. That did not change the license, the license was in  
3 Turbo Radio Limited Partnership.

4 Q. Now, the -- you did -- you are aware, are you  
5 not, that the FCC refused to --

6 MS. SWITZER: Your Honor, I'm going to object  
7 to this question --

8 A. -- be kept on the grounds --

9 MS. SWITZER: -- as being outside the scope --

10 THE COURT: Wait. Wait just a minute.

11 MS. SWITZER: -- of voir dire.

12 THE COURT: Wait just a minute. We were in  
13 two conversations and then we were in three when I added  
14 mine. Your objection is what?

15 MS. SWITZER: Your Honor, he's asking  
16 questions that are outside the proper scope of voir dire on  
17 this witness as far as this document is concerned. He's  
18 attempting to cross examine this witness during voir dire.

19 THE COURT: That is sustained.

20 MS. SWITZER: Thank you, Your Honor.

21 THE COURT: You can address that question when  
22 you are making your case or in cross examination.

23 MR. RAY: Okay.

24 Q. (By Mr. Ray) When you said that this was a  
25 public document, what you're saying then is that the FCC

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1 keeps this on file in their records?

2 A. Yes.

3 Q. Okay.

4 THE COURT: Okay.

5 MR. RAY: We have no objection to its --

6 THE COURT: All right. It's admitted.

7 MR. RAY: -- introduction on that basis.

8 THE COURT: Number 2 is admitted.

9 MS. SWITZER: Thank you, Your Honor.

10 DIRECT EXAMINATION (CONTINUED)

11 BY MS. SWITZER:

12 Q. Mr. Fling, what is that document, form FCC  
13 316?

14 A. The FCC form 316 was an application for  
15 consent to assignment of the broadcast station construction  
16 permit and/or license to transfer the control of the  
17 corporation --

18 WITNESS: Sorry, Toni

19 A. -- holding broadcast station construction,  
20 permit or license that's the title of the form. It's  
21 basically, as I understand it, used to transfer a station  
22 license if there's been a change of control as in this  
23 situation.

24 Q. (By Ms. Switzer) Now, --

25 A. And I'll --

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1 Q. Let me -- so you don't -- we don't get a  
2 narrative objection, Mr. Fling, let me ask you this question.  
3 That FCC form, does it transfer the license or does it merely  
4 notify the FCC that something has changed within the license  
5 holder?

6 A. It just merely notifies the FCC that something  
7 has changed as regards to the license holder, basically a  
8 change in control of ownership.

9 Q. So the license is held in what name?

10 A. Turbo Radio Limited Partnership.

11 Q. Okay. Does that document change the name from  
12 Turbo Radio Limited Partnership to anything else?

13 A. No.

14 MS. SWITZER: May I approach, Your Honor?

15 THE COURT: You may.

16 Q. (By Ms. Switzer) I show you what's been marked  
17 as State's Exhibit Number 3. Before -- let me -- let me ask  
18 you this question right quick though. Now that application,  
19 that form 316, that was submitted to the Federal  
20 Communications Commission; is that correct?

21 A. Yes.

22 Q. At some point in time, was there something  
23 else done with that document? Was it transferred to somebody  
24 else or was it dismissed? What happened to that document?

25 A. Well, as I understand it, because once this

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1 was filed I basically was out of the picture. But as I  
2 understand it, and Mr. Ray just showed me a statement showing  
3 that this had been dismissed because he said it was on the  
4 wrong form.

5 Q. Okay. So basically it's a wrong form  
6 situation?

7 A. That's what -- that's what -- what I just saw.

8 Q. But you don't have any personal knowledge of  
9 that, do you?

10 A. At one point I may have been on the internet  
11 and looked and seen that it had been dismissed for being on  
12 the wrong form. At the time when all of that occurred, I was  
13 not aware of it at all, in fact, I was not aware of it until  
14 much, much later, years.

15 Q. As a matter of fact, contained in State's  
16 Exhibit Number 2 is documentation where it was sent or  
17 forwarded to another department; isn't that correct?

18 A. That is correct.

19 Q. And basically it says because it was sent to  
20 the wrong place?

21 MR. RAY: Objection, leading.

22 THE COURT: Sustained.

23 Q. (By Ms. Switzer) Tell me what it says,  
24 Mr. Fling. That would be contained within those documents I  
25 think probably the third or fourth page back.

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