



NEWS

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FOR IMMEDIATE RELEASE
August 24, 1999

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FLORIDA CRIMINAL CONVICTION IN UNLICENSED RADIO CASE UPHELD BY U.S. COURT OF APPEALS

Attached is an August 19, 1999, press release of the United States Attorney for the Middle District of Florida announcing that United States Court of Appeals for the Eleventh Circuit has upheld the February 1998 criminal conviction in Tampa, Florida, of Arthur Kobres on 14 counts of engaging in unlicensed radio broadcasting.

Attached also is the Opinion of the U.S. Court of Appeals in this case.

- FCC -

Report No. GN 99-6

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Reply to: **Tampa, FL**

August 19, 1999

PRESS RELEASE

Tampa – A Florida man's convictions for operating a radio station without a license will stand according to the United States Court of Appeals for the Eleventh Circuit. In an unpublished opinion issued on August 12, 1999, the Eleventh Circuit Court affirmed the convictions of Arthur "Lonnie" Kobres, age 54, of Lutz, on 14 counts of engaging in unlicensed radio broadcasting, in violation of Title 47, United States Code, Sections 301 and 501.

Mr. Kobres was convicted in February of 1998 by a federal jury in United States District Court in Tampa, Florida, after continuing to broadcast short-wave radio programming on 96.7 MHz from November of 1995 through September of 1997, despite repeated warnings from the Federal Communications Commission that his actions were illegal and that he must obtain a license for his broadcasts under the Federal Communications Act, and despite the government's seizure of his radio equipment in 1996. The United States again seized Mr. Kobres's broadcasting equipment upon his arrest in 1997, and successfully concluded a civil action in which Mr. Kobres's equipment was forfeited to the United States, pursuant to Title 47, United States Code, Section 510. Mr. Kobres was sentenced to serve thirty-six months of probation, six

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months' of home detention, and ordered to pay a fine of \$7500. The Eleventh Circuit Court held that Mr. Kobres's convictions depended on a valid criminal statute, rejecting Mr. Kobres's arguments that his convictions must be overturned because they depended on the validity of unenforceable FCC forms and regulations. The case was the first criminal case of its kind brought under the statute in many years.

This case was investigated by officials of the Federal Communications Commission Office in Tampa. The criminal matter was prosecuted by Assistant United States Attorneys' Ronald Tenpas, the forfeiture actions were prosecuted by Assistant United States Attorneys Patricia Kerwin and Patricia A. Willing, and the appeal was prosecuted by Assistant United States Attorneys Karen Cox, and Kathy J.M. Peluso, all of the Tampa Division of the United States Attorney's Office.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 98-2999

D. C. Docket No. 97-470-CR-T-25B

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 12 1999

THOMAS K. KAHN
CLERK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTHUR KOBRES,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(August 12, 1999)

Before EDMONDSON and BLACK, Circuit Judges, and PAUL*, Senior District Judge.

PER CURIAM:

* Honorable Maurice M. Paul, Senior U.S. District Judge for the Northern District of Florida,
sitting by designation.

Appellant Arthur Kobres appeals his convictions on 14 counts of engaging in unlicensed radio broadcasting, in violation of 47 U.S.C. §§ 301 and 501. Kobres contends his convictions depend on the validity of unenforceable Federal Communications Commission (FCC) regulations and forms. Specifically, he argues 47 C.F.R. §§ 73.3511, 73.3512, 73.5313, and 73.5314 are unenforceable under the public protection provision in the Paperwork Reduction Act, 44 U.S.C. § 3512, and the FCC's official application forms are rules under the Administrative Procedure Act, 5 U.S.C. § 552(a)(1), which must be published to be enforceable. We conclude Appellant's convictions depend on 47 U.S.C. § 301, rather than any regulation or form, and therefore affirm his convictions.

I. BACKGROUND

On February 29, 1995 Kobres began to broadcast short-wave radio programming over an amplifier at a low wattage level on 96.7 MHZ. He steadily increased the wattage of his broadcasts until they reached a range of 10 miles. Although Kobres had experience with radio broadcasting and had obtained various FCC licenses, he mistakenly believed the Federal Communications Act (the Communications Act) did not require a license for intrastate communications because

he had read a previous version of the statute which did not cover intra-state communications.²

The FCC received a complaint in late 1995 and observed Kobres' broadcasts on October 31, November 1, November 3, November 6, and November 7, 1995. On November 3, FCC engineers approached Kobres and informed him he must obtain a license for his broadcasts under the Communications Act. The FCC subsequently sent a letter to Kobres confirming he was required to obtain a license under the Communications Act and violations would be subject to criminal penalties. The FCC subsequently observed broadcasts on January 11 and February 16, 1996. On March 7, 1996, the Government filed a civil forfeiture action and seized Kobres' radio equipment. Kobres continued broadcasting despite the FCC's warnings and actions. In the Spring of 1996, Kobres' broadcasts interfered with a local television station broadcast signal. The FCC also continued to observe broadcasts at the increased signal strength. On November 19, 1997, the Government seized Kobres' radio equipment and instituted the present action.

² In 1982, Congress amended the Communications Act to cover transmissions from one place in any State to another place in the same State. Federal Communications Act, Title I, §§ 107, 111(b), 96 Stat. 1091, 1093 (1982) (current version at 47 U.S.C. § 301).

II. ANALYSIS

Whether Kobres' convictions depend on the validity of FCC regulations or forms is a question of law reviewed de novo. *United States v. Hooshmand*, 931 F.2d 725, 737 (11th Cir. 1991).

Duties created by statute and not conditioned on any regulation or form cannot be abrogated by the Paperwork Reduction Act (PRA) or the Administrative Procedure Act (APA). See *United States v. Neff*, 954 F.2d 698, 699 (11th Cir. 1992) (concluding the PRA cannot abrogate a duty found in a statute); *United States v. Hicks*, 947 F.2d 1356, 1360 (11th Cir. 1991) (concluding the APA cannot abrogate a duty found in a statute). Accordingly, we need not address Kobres' argument if we conclude his duty to obtain a license is found in a statute rather than in a regulation or form. Kobres was convicted of violating 47 U.S.C. § 301 which provides:

No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State . . . to another place in the same State . . . except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

The plain language of this statutory section imposes a duty on anyone who broadcasts from one place in a state to another place in the same state to obtain a

broadcast license. Because Kobres' duty to obtain a license is found in a statute rather than in a regulation or form, we affirm his convictions.³

AFFIRMED.

³ Kobres now contends his duty to obtain a license is found in 47 U.S.C. § 308(b), which provides that applications for station licenses shall contain such information "as the Commission by regulation may prescribe." Kobres confuses the requirements for obtaining a station license with the general duty to obtain a license found in § 301. Section 308(b) does not abrogate the general duty to obtain a license by stating the Commission may promulgate regulations. Section 308(b), in fact, complements § 301 by explaining the Commission may promulgate regulations to enforce the duty found in § 301.