University of Richmond Law Review

Volume 13 | Issue 3 Article 6

1979

When Is It in the "Public Interest" to Authorize a New Bank?

David Parcell

WHEN IS IT IN THE "PUBLIC INTEREST" TO AUTHORIZE A NEW BANK?

*David Parcell**

A 1977 article in this *Review*[1] noted certain amendments to Virginia's Banking Act which introduced and defined the term "public interest" as the standard to be applied by the Virginia State Corporation Commission (hereinafter Commission) in regulating the expansion of the state-chartered banks and savings and loan associations in Virginia.[2] That article summarized certain principles the Commission and the Virginia Supreme Court had applied under the former tests ("public need" and "public convenience and necessity"), and pointed out facts the Commission had considered significant in deciding those cases.

The earlier article left unanswered one question: whether the changes in the statutory standard would result in a new approach to chartering and branching? We suggested that such would not be the case. This article supplements our earlier work, and describes the initial efforts by the Commission and the Virginia Supreme Court to interpret the "public interest" concept.

I. THE NEW STANDARD

In all cases where it is called upon to determine whether a new bank or savings and loan association should be authorized, or whether such institutions should be allowed to establish branches, the Commission is now directed by law to grant the authority requested if it ascertains:

---

* B.A., Virginia Polytechnic Institute & State University, 1969; M.A., 1970. Vice President, Technical Associated, Inc., Consulting Economists, Richmond, Virginia, 1970.

The author thanks Mr. William F. Schutt, General Attorney for the State Corporation Commission, for his comments and suggestions. The opinions stated are those solely of the author.

1. Parcell & Rodgers, *The "Public Interest" and Bank and Savings and Loan Expansion In Virginia*, 11 U. RICH. L. REV. 561 (1977).

2. The Comptroller of the Currency and the Federal Home Loan Bank Board play similar roles in the regulation of the expansion of National banks and Federal savings and loan associations, respectively.

> That, in its opinion, the public interest will be served by banking facilities or additional banking facilities, as the case may be, in the community where the bank is proposed. The addition of such facilities shall be deemed in the public interest if, based on all relevant evidence and information, advantages such as, but not limited to, increased competition, additional convenience, or gains in efficiency outweigh possible adverse effects such as, but not limited to, diminished or unfair competition, undue concentration of resources, conflicts of interest, or unsafe or unsound practices.[3]

The public interest test has applied to applications for new banks and savings and loans since June, 1976, and later it was adopted by the legislature for use in connection with bank branch applications and savings and loan branches.[4]

II. The Commission and the Court React

When the Commission granted the application of the State Bank of the Alleghenies to begin business in Covington,[5] and that decision was appealed to the Virginia Supreme Court,[6] the stage was set for the Commission to reveal the effect of the statutory change in the process of considering a case for a new bank.[7] The Commission did not waste its first opportunity to interpret the public interest standard and comment on the effect of its adoption. In its order approving the establishment of the State Bank of the Alleghenies, the Commission stated:

> Although the public interest test, and the accompanying definition, clarify the concept the standard seeks to express (helpfully, erasing the connotation of essentiality implied by the term need), we doubt that the test is much different in substance. Many, if not all, the elements listed in the full sentence added to the sub-section were intuitively considered, when pertinent, in administering the former

3. Va. Code Ann. § 6.1-13 (Cum. Supp. 1978). *See also* Va. Code Ann. §§ 6.1-39, 6.1-195.47, and 6.1-195.48 (Cum. Supp. 1978).

4. *See* Parcell & Rodgers, *supra* note 1, at 561 n.2. The 1978 session of the General Assembly amended sections 6.1-39 and 6.1-195.48 to include the term "public interest."

5. State Bank of the Alleghenies, S.C.C. Case No. 19887 (1978).

6. Covington National Bank v. State Bank of the Alleghenies, ___ Va. ___, 249 S.E.2d 163 (1978).

7. The Commission is required by Va. Code Ann. § 12.1-39 (Repl. Vol. 1978) to state the reasons for its decision only when an appeal from one of its orders or judgments is taken.

> standard. Emphasis has been placed on applying the new standard from the public's point of view.[8]

The Commission thus expressed its view that the new test would not alter much the way it considered bank cases. It noted in passing that the legislature had given emphasis to approaching the issues in such cases from the point of view of the public, the Commission's traditional vantage point. Also, the Commission remarked approvingly that eliminating the term "need" might forestall use of that word by existing institutions in their efforts to argue that they already fulfill the needs of the public, though such a defense had been weakened by the *Schoolfield*[9] (branch) and *Culpeper*[10] (bank) decisions.

In reviewing the case on appeal, the court endorsed the Commission's conclusion as to the effect of the change in standard:

> The Commission concluded, and we agree, that the test which it is required to apply under the amended statute is not substantially different from that required prior to the amendment. It points to the elements listed in the full sentence added to the subsection which, the Commission said, it had intuitively considered, when pertinent, in administering the former standard. It noted that the General Assembly placed emphasis on applying the new standard from the public's point of view.[11]

Affirmation of the Commission's "no substantial change" position by the court had this significance: it preserved intact the body of case law already collected in the State Corporation Commission's opinions and in the court's decisions. Although the holdings in *State Bank of the Alleghenies* have specific application only to bank cases, it is unlikely that a different result would occur when the public interest test is applied in a branch banking case.

---

8. State Bank of the Alleghenies, S.C.C. Case No. 19887, slip op. at 11-12 (1978).

9. Schoolfield Bank & Trust Co., S.C.C. Case No. 18015, [1974] Va. S.C.C. Rep. 36, 39; and, Security Bank & Trust Co. v. Schoolfield Bank & Trust Co., 208 Va. 458, 158 S.E.2d 743 (1968).

10. New Bank of Culpeper, S.C.C. Case No. 19224, [1974] Va. S.C.C. Rep. 133, 136-38; and, Second National Bank v. New Bank of Culpeper, 215 Va. 132, 210 S.E.2d 136 (1974).

11. 249 S.E.2d at 167.

That the Commission is the trier of facts in these cases was also reaffirmed:

> Arguably, directing that additional facilities be deemed in the public interest when advantages outweigh adverse effects limits the Commission's discretion to some degree. However, close analysis of the whole sub-section reveals several areas in which the Commission must continue to use informed, and necessarily subjective, judgment. It must decide which of the factors enumerated have relevance to the fact situation at hand. It must consider the relative importance of the several factors in the context of a given case. At least with respect to adverse effects listed, the Commission must judge the likelihood, if any, that such effects will occur, and, where necessary, estimate the degree of their severity.
>
> Under the new test the Commission must receive all relevant evidence and information concerning the general economy of a given area and the financial institutions which serve that particular market. It remains the trier of the facts thus assembled, weighing the evidence as it bears upon the overall statutory standard and its component elements.[12]

The Commission here seems to imply that the new standard might give it even more leeway in evaluating the evidence submitted. Indeed, the language quoted might lay the ground work for the Commission's taking judicial or official notice of facts outside the record created at its hearing.

On appeal, the Supreme Court acknowledged the Commission's fact-finding role:

> In the final analysis, when the State Corporation Commission determines that the public interest will be served by an additional banking facility in a community, it is saying that there is a need for such a facility, and that all things considered, the operations of a new bank, the increased competition it will generate, and the additional service and convenience it will provide the public outweigh any adverse effect the new bank might have on existing institutions and on the area involved.
>
> It is the State Corporation Commission, and not this Court, that is charged by statute with the responsibility of finding the facts. . . .

12. State Bank of the Alleghenies, S.C.C. Case No. 19887, slip op. at 12 (1978).

> A presumption of correctness attaches to its action, and we cannot say that its determination is contrary to the evidence or without evidence to support it.[13]

Accordingly, the decision in the *Covington National Bank* case re-establishes the principle that the responsibility for determining whether the public interest will be served rests with the State Corporation Commission, the Supreme Court evincing a reluctance to disturb the Commission's determination.

III. Conclusion

Recent amendments to the laws related to bank and savings and loan chartering and branching signify no substantial change in the approach that the State Corporation Commission and the Virginia Supreme Court will take toward cases involving the expansion of Virginia's financial institutions.

---

13. 249 S.E.2d at 167.