

TUESDAY, JANUARY 13, 2009
9:00 A.M.

NO. 1

#24911

FIRST NATIONAL BANK OF
FT. PIERRE,
Intervener and Appellant,
vs.

SOUTH DAKOTA STATE BANKING
COMMISSION, DEPARTMENT OF
COMMERCE AND REGULATION,
DIVISION OF BANKING AND
DAKOTA PRAIRIE BANK,
Appellees.

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(FOR APPELLEE DAKOTA
PRAIRIE BANK)

The Honorable James W. Anderson
Sixth Judicial Circuit
Hughes County

(CIV 08-03)

II. LEGAL ISSUES

I. Whether substantial rights of the Appellant, First National Bank of Ft. Pierre has been prejudiced in the administrative findings, inferences, conclusions, decisions and pre-hearing matter and whether such are:

- a. Violation of constitutional and statutory provisions;
- b. An error of law;
- c. Clearly erroneous in light of the entire evidence of the record;
and/or
- d. Arbitrary, capricious, and abuse of discretion and clearly and
unwarranted exercise of discretion.

Trial Court. Held in the negative.

S.D.C.L. § 1-26-36

Barnes v. Spearfish School District No. 40-2, 2006 S.D. 108 ¶7, 725 N.W.2d 226;
2006 W.L. 3445597

Boehrns v. South Dakota Board of Pardons and Paroles, 205 S.D. 49, ¶3, 697
N.W.11

Independent Trust Company, LLC v. South Dakota State Banking Commission,
2005 SD 52, ¶5, 696 N.W.2d 539

Valley State Bank of Canton v. Farmers State Bank of Canton, 213 N.W.2d 459
(S.D. 1973)

II. Whether the Banking Commission, contrary to the evidence, expert witness testimony and the law, acted arbitrary, capricious and abuse of discretion in determining the following:

- a. That Dakota Prairie Bank established by a preponderance of the evidence a public need for the proposed branch bank to be located in Ft. Pierre, South Dakota;
- b. The ability of the community of Ft. Pierre, South Dakota, to support the proposed branch bank when considering:
 1. Competition offered by existing banks;
 2. The banking history of the community;
 3. The opportunities for profitable employment of bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the business and the industries of the community, with particular regard to the stability, diversification and size;
 4. Such other factors and circumstances bearing upon the proposed branch bank in its relation to the community and in the opinion of the directors of the commission that may be relevant.

Trial Court. Held in the negative.

S.D.C.L. § 51A-3-9

S.D.C.L. § 51A-3-11

In re Valley State Bank, 87 S.D. 614, 213 N.W.2d 459 (1973)

In re Farmers State Bank of Viborg, 466 N.W.2d 159, (S.D. 1991)

Dakota Savings & Loan, 81 S.D. at 68-73, 131 N.W.2d at 71-74

Wall v. Fenner, 76 N.W.2d 722 (S.D. 1956)

In re American State Bank, Pierre, 254 N.W.2d 151 (S.D. 1977)

Matter of Application of American State Bank, Pierre, South Dakota for a Bank, 254 N.W.2d 151 (S.D. 1977)

In the Matter of the Application of Southern Hills Bank of Edgemont, to Move its Main Office, 339 N.W.2d 310 (S.D. 1982)

- III. Whether the Banking Commission, contrary to the evidence, expert witness testimony, and the law abused their discretion in approving the application of Dakota Prairie Bank to establish a bank branch in Ft. Pierre, South Dakota.

Trial Court. Held in the negative.

S.D.C.L. § 51A-7-4

In re Farmers State Bank, 466 N.W.2d 158, 159 (S.D. 1991)

In re Berkeley Savings & Loan Ass'n, 279 A.2d 718, 722 (N.J. Super. Ct. App.

Div. 1971)