

## II. LEGAL ISSUES

- I. Whether the Banking Commission's approval of First Western Bank's application should be reversed

Trial Court. Held in the negative.

SDCL §1-26-37

SDCL §1-26-36

Huber v. Department of Public Safety, 2006 SD 96, 724 N.W.2d 175

- II. Whether the Banking Commission abused its discretion and whether its findings are clearly erroneous, arbitrary, capricious, and unsupported by the evidence.

Trial Court. Held in the negative.

Barnes v. Spearfish School District No. 40-2, 2006 SD 108 --- N.W.2d ----, 2006 WL 3445597

Boehrns v. South Dakota Board of Pardons and Paroles, 2005 SD 49, 697 N.W.2d 11

Lee v. South Dakota Dept. of Health, 411 N.W.2d 108 (S.D. 1987)

Burke v. Butt County, 2002 SD 17, 640 N.W.2d 473

SDCL §1-26-36

- III. Whether the evidence does not support the granting of First Western Bank's application for branch bank under South Dakota case law and SDCL 51A-3-9

Trial Court. Held in the negative.

SDCL §51A-3-9

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

Johnson v. Lennox School District No. 41-4, 2002 SD 89, 649 N.W.2d 617

- IV. Whether the Banking Commission's decision is contrary to South Dakota case law on branch banking

Trial Court: Held in the negative.

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

SDCL §51A-3-9

- V. Whether the failure of the Commission members to recuse themselves leads to an unacceptable risk of actual bias

Trial Court: Held in the negative.

Hanig v. City of Winner, 2005 SD 10, 692 N.W.2d 202

- VI. Whether First Western Bank has failed to satisfy the requirements of SDCL 51A-3-9 of its application to establish a branch bank

Trial Court: Held in the negative.

SDCL §51A-3-9

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

In the Matter of the 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)

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