

NORTHWESTERN Banker Newsletter

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Court Action on Denial of Charter

In a decision without precedent, the U.S. Fourth Circuit Court of Appeals has ordered a trial de novo in District Court on whether the Comptroller of the Currency's denial of a national bank charter application was "capricious or an abuse of discretion."

Apparently, if the court finds that it was, it could order the Comptroller to charter the proposed bank. According to banking lawyers, such a court ordered charter would be the first of its kind. It previously has been assumed that a decision to charter a new national bank is committed to the sole discretion of the Comptroller.

The Comptroller's Office is expected to ask the Appeals Court to reconsider its decision. If that fails, it probably will seek review by the U.S. Supreme Court.

The Appeals Court said it was remanding the case for trial in district court, rather than "to the Comptroller for further consideration," since the Comptroller had "twice inadequately and inarticulately resolved" the charter applicants' "presentation . . ."

"The charter aspirants will open the trial with proof of their application and compliance with the statutory inquiries, and proffer of any other relevant evidence," the Appeals Court instructed. "Testimony may then be adduced by the Comptroller of intervenors manifesting opposition, if any, to the new bank.

"Thereupon, the District Judge will determine, upon a statement of his findings of fact and conclusions of law,

whether the appellants have shown by a preponderance of evidence that the Comptroller's ruling is capricious or an abuse of discretion . . ."

The Comptroller has always argued that a decision to charter a new national bank is committed to his sole discretion and, according to banking lawyers, such a court ordered charter would be the first of its kind.

The case involves an application by a F. W. Pitts and ten others to organize a new First National Bank of Hartsville, South Carolina. The application was originally rejected by the Comptroller on

April 15, 1968, and again on reconsideration on July 29, 1969. The application was originally filed in August, 1967.

According to the Appeals Court, the "soul of the Comptroller's decision," as stated in letters to the applicants' attorney, was that he was "unable to reach a favorable conclusion as to the need factor."

The organizers brought suit in the U.S. District Court for the District of South Carolina, Florence Division, alleging that the need of a community for a new banking facility was not a proper consideration for the Comptroller in passing on and rejecting their applica-

(Continued on back page)



PICTURE OF THE WEEK — After nearly 75 years of doing business at 401 Cedar Avenue, The Fourth Northwestern National Bank of Minneapolis recently completed its move to an all new facility at 2600 East Franklin Avenue. Shown cutting the ribbon at open house ceremonies are, left to right: **Henry Rutledge**, chmn. & chief exec. off., Northwest Bancorporation; **Debbie Kay Wolinski**, Aquatennial "Queen of the Lakes"; **Colleen M. Dunn**, Miss Century 2; **John A. Moorhead**, chmn. & chief exec. off., Northwestern Natl. Bank, and **Wendell L. Olson**, pres., Fourth Northwestern Natl. The new bank has triple its former space, five drive-in tellers, two walk-up tellers and nine teller windows inside. Mr. Olson said the grand opening brought 6,000 visitors and 300 new accounts.

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Prime Rate to 5½ Per Cent

The past two weeks have seen a move by major Eastern banks to up their prime interest rate to 5½ per cent.

The Mellon National Bank & Trust Co., Pittsburg, was the first to hike its prime rate, and was followed closely by Bankers Trust Co., Chemical Bank, Irving Trust Co. and First National City Bank, all of New York. The rate at these banks had been fluctuating between 5-1/4 and 5-3/8 per cent.

The Federal Reserve Bank of New York released market interest rate figures that indicate more banks will soon follow in raising prime rates.

Analysts and money market specialists recently have been predicting that within the next six months, the prime rate would rise to 5-3/4 or 6 per cent.

IOWA NEWS

ALBIA: Funeral services were held recently for Mrs. J. E. King, wife of the president of Peoples National Bank. Survivors include Mr. King and his son, Jim, vice president of the bank.

AVOCA: The Avoca State Bank will celebrate its 100th anniversary with an open house on Thursday and Friday, August 3 and 4.

BOONE: A forestry field day will be held near here on Thursday, August 3, sponsored by the forestry subcommittee of the Iowa Bankers Association in cooperation with Ed Grafton, extension for-

ester, Iowa State University. To register for the field day, a \$3.00 remittance should be mailed to the Iowa Bankers Association, 630 Liberty Building, Des Moines, Iowa 50309.

BOONE: The election of Charles E. Ertzinger as vice president at the Citizens National Bank has been announced by President George Taylor. Mr. Ertzinger has been farm service representative at the First National Bank of Clinton since 1968.

DES MOINES: The Iowa-Des Moines National Bank has filed an application to establish a branch office near 83rd and Douglas in Urbandale.

ELMA: Controlling interest in the Peoples Savings Bank has been purchased by A. M. Saylor, who also owns the Cresco State Bank, Cresco, and serves as chairman and president of the Cresco State Bank and the First National Bank of Hampton. Reed J. Elwood, president of the Peoples Savings Bank, will continue in that capacity.

KALONA: The appointment of Gene L. Johnson as president and director of the Kalona Savings Bank has been announced. He had been an examiner for the Iowa State Department of Banking since 1957.

OELWEIN: The story in last week's issue reporting sale of the First National Bank controlling stock was incorrect. The controlling interest in the bank has been purchased by a local group represented by Louis H. Mulder, H. Jay Pinch and Harry E. Young, all of Oelwein. Mr. Pinch is president of the bank and Mr. Mulder and Mr. Young are directors. No officer changes are planned. The controlling interest was purchased from Carl Pohlrad, president of the Marquette National Bank, Minneapolis.

OTTUMWA: Gerald G. Retzlaff has been named loan officer in the farm service department at the Union Bank and Trust Company. He had taught vocational agriculture since he graduated from Iowa State University in 1966.

SIOUX CITY: Controlling interest in the Toy National Bank has been sold by the Toy family to J. William Van Dyke and his son, John W. Van Dyke, Jr. Mr. Van Dyke, sr., is a grandson of James F. Toy, founder of the bank, and is presently chairman of the board. His son is a vice president of the bank.

WATERLOO: The board of directors of the Peoples Bank & Trust Co. has elected Dan M. Wheeler an assistant cashier of the bank. He has been with the bank since 1971 as manager of the Kimball Ave. branch office.

NEBRASKA NEWS

FAIRBURY: The Fairbury State Bank will hold a public open house in its new building July 31 through August 2, according to President W. H. Else. An invitational open house will be held for area bankers July 30. August 1 is the bank's thirty-sixth anniversary.

KEARNEY: Mrs. Betty Walline has been promoted to assistant vice president at the Platte Valley State Bank & Trust Co. She will head the women's banking center.

MINNESOTA NEWS

COTTAGE GROVE: Donald G. Nordlie has been named president and director of the Park Grove National Bank. Mr. Nordlie had been vice president of the bank since it opened in 1970.

LAKE CITY: Roy Wittenborg recently retired from the Lake City Bank after 53 years of service. He was an assistant vice president.

MINNEAPOLIS: Michael A. Kaju and Robert M. Adams were named vice presidents, and Michael Derck was promoted to trust operations officer at the National City Bank.

It was also announced that Bernard J. Malusky, president of the Farmers Union Grain Terminal Association, St. Paul, has been elected to the board of directors.



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MOUND: The election of Frank W. Hanuch as president and director of the State Bank of Mound has been announced. Mr. Hanuch was formerly vice president of the Chicago Lake State Bank, Minneapolis.

ST. PAUL: Malcolm W. McDonald, vice president of the First National Bank, has been elected a director of the Bankers' Association for Foreign Trade, Washington, D.C.

ST. PAUL: An application for a new national bank in Maplewood has been filed by five St. Paul men, including four officers of Mid America Bancorporation. David A. Shern, president of Mid America and one of the applicants, said that Mid America will make application to purchase the bank if the charter is granted. Proposed capital structure is \$1,500,000.

ILLINOIS NEWS

CHICAGO: John A. Nevell, supervisor of administration in the Central National Bank's international division, has been named assistant cashier, according to Chairman Frank E. Bauder.

CHICAGO: The promotion of James A. Cooke to vice president at the Seaway National Bank was announced by Harold R. Algar, president of the bank. It was also announced that Garland W. Cox, Kenneth W. Moore, and Donald R. Wills were elected assistant cashiers.

CHICAGO: Directors of the Harris Trust & Savings Bank have authorized the transfer of \$10 million from undivided profits to surplus. The bank's legal lending limit is increased by the transfer from \$16.5 million to \$18 million.

GLENDALE HEIGHTS: The new First Security Bank will hold a grand opening Friday and Saturday, July 28 and 29.

MONTGOMERY: It was announced that Frank T. Fox has been elected cashier at the new Bank of Montgomery, scheduled

to open in August. He was formerly assistant cashier at the St. Charles National Bank, St. Charles.

ROCKFORD: The appointment of George W. McKinney as assistant vice president and manager of the travel department of the Illinois National Bank & Trust Co. was announced by Robert P. Kline, president. Mr. McKinney has served in a similar capacity with the Beverly Bancorporation for the past eleven years.

NORTH DAKOTA NEWS

MADDOCK: Ralph H. Leet has joined the Farmers State Bank as vice president and cashier. Mr. Leet was a loan officer and real estate appraiser in the North Dakota Farmers Home Administration office for the past nine years.

WYOMING NEWS

CASPER: Funeral services were held recently for Elbert Howe, 49, a prominent local businessman. He was a founder and director of both the Western National Bank of Casper and the First National Bank of Douglas. He was electrocuted while attempting to locate the source of a power shortage on a ranch northwest of here.

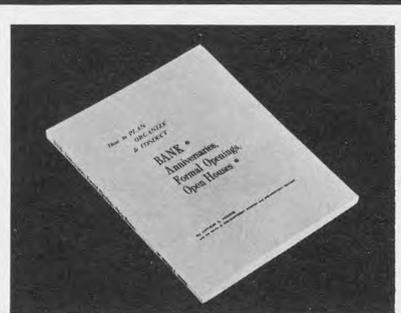
CASPER: Directors of Wyoming Bancorporation have filed an application with the state examiner to establish a state bank here to be known as the Bank of Wyoming. Proposed capital structure is \$500,000.

SOUTH DAKOTA NEWS

SIOUX FALLS: Charles D. Rogness has been promoted to senior vice president and manager of the Union Bank & Trust Co., according to an announcement by John T. Vucurevich, president and chairman. Frank E. Duffy, former manager of the bank, has joined the staff of The United National Corp.

COLORADO NEWS

DENVER: Richard C. Kennedy, administrative vice president at the American National Bank, has been named district



HOW TO PLAN, ORGANIZE & CONDUCT BANK ANNIVERSARIES, FORMAL OPENINGS, OPEN HOUSES is the title of a new book just released.

The book actually is a practical "how-to" manual that provides the banker with workable "formulas" for organizing and conducting any type of bank opening. Based on hundreds of successful bank openings, the book presents a systematic planning approach, various checklists of opening-day problems for bankers to consider, as well as several detailed plans (including budget samples) used in actual bank openings and anniversary celebrations.

Profusely illustrated, the book contains 172 pages, size 8½" x 11", sells for \$13.50 and may be obtained from:

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director of the Bank Administration Institute.

DENVER: Mountain Banks Ltd. has purchased 48,900 shares (out of 50,000) in the South Denver National Bank from shareholders.

PUEBLO: Mountain Banks, Ltd. has purchased 148,400 shares (out of 150,000) in the First National Bank from shareholders.

PUEBLO: The Centennial Bank has received approval for Federal Deposit Insurance. Total capitalization of the bank is \$500,000. David J. Snyder is president.

COURT ACTION . . .

(Continued from Page 1)

tion; that they were entitled to a hearing and judgment de novo in court on their application since the Comptroller had not held a hearing; and that the Comptroller's rejection of their application was arbitrary and capricious, wholly without supporting proof.

U.S. District Judge Robert W. Hemphill ruled in favor of the Comptroller. Although he was doubtful of any "statutory language" making the "need of the new bank a proper consideration," Judge Hemphill said he was persuaded by the "long and continued practice of the Comptroller of considering the needs of a community" in passing on charter applications.

Judge Hemphill rejected the applicants' hearing argument on the ground that they had not demanded or re-

quested such a hearing. "Though the plaintiffs did not have a right to a hearing before the Comptroller, they had a right and, if they sought to rely on the absence thereof, an obligation to request such a hearing . . ." Judge Hemphill asserted.

On the final argument, Judge Hemphill declared that, while the applicants' "presented a convincing case in favor of establishment of their bank," he could not "say that the conclusion of the Comptroller is not adequately supported under the substantial evidence rule."

"It is unnecessary, we think, to discuss the separate assignments of error ascribed by the appellants to the District Court," the Appeals Court said in a decision written by Judge Albert V. Bryan. "This is because in itself the ruling of the Comptroller is unacceptable.

Even a cursory reading of the Comptroller's pronouncement here exposes his failure to observe the insistence of the law that the ground of determination be avowed . . .

"Assuming that 'need' is a factor to be considered in chartering a bank, obviously the Comptroller did not explain what was embraced in that concept. Questions immediately arising are, for example, whether the need is that of corporate or individual borrowers, local or non-resident depositors, mercantile or development capital, or the creation of desirable competition.

"Reasonably imaginable are other areas of pertinent consideration, untouched in the Comptroller's communi-

cations. Thus, upon review, we cannot distinguish what specific factors were considered by the Comptroller, nor whether in denying the application he acted within permissible bounds of discretion . . ."

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