216 Va. 788

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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 75-1059

THE SOUTHWEST BANK OF VIRGINIA

Appellant

v.

PEOPLES BANK, INC., formerly The Peoples Bank of Honaker, Inc.

Appellee

APPENDIX

James P. Jones, Esquire
PENN, STUART, ESKRIDGE & JONES
P. O. Box 1135
Bristol, Virginia

Counsel for Appellant

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IN DUPLICATE

BUREAU OF BANKING
STATE CORPORATION COMMISSION
800 BLANTON BUILDING
RICHMOND, VIRGINIA 23219

Pursuant to the provisions of Title 6.1 of the Code of Virginia

The Peoples Bank of Honaker, Inc.
(Name of Applicant)

Honaker, Virginia
(Address)

applies to the State Corporation Commission for authority to establish a branch at

U. S. Rt. 58, Banners Corner, Castlewood, Russell County, Virginia, 24224
(Location of Proposed Branch)

The Proposed Branch is to be known as ~~Peoples Bank, Inc.~~
Castlewood Branch *

There follows a detailed description of the premises to be occupied by the Proposed Branch, including the owner and annual rental if the premises are leased; the cost and vendor if purchased; or the estimated cost, if new construction. (See also Instruction 3.) Applicant has option to purchase from Lewis A. Franklin a lot on the South side of U. S. Rt. 58, Banners Corner, Castlewood, Va., size 186.6 x 162 x 150 x 186.6, for $40,000.00, and proposes to erect thereon a Masonry & Butler Space Grid System 1-story building 50 x 60 ft. in size, consisting of lounge, rest rooms, janitor & utilities room, conference room, 2 offices and drive-up window, lobby 18 x 25 ft. in size, storage room, vault, work room & bookkeeping area, at an estimated cost of $150,000.00.

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The manager of the Proposed Branch will be: Kenneth D. Hart

His previous experience has been: 3 years as officer at main office

His authority in granting loans will be: To make loans up to $15,000.00 without consent of the Loan Committee.

* Application is being filed contemporaneously herewith to amend the Charter of the Applicant by changing its name from "The Peoples Bank of Honaker, Inc.", to "Peoples Bank, Inc."

The estimated earnings and expenses of the Proposed Branch the first twelve and thirty-six months of its operations are:

	First 12 months:	First 36 months:
Operating Earnings		
Interest and discount on loans	$ 82,500.00	$ 204,000.00
Interest on securities	$ 15,000.00	$ 23,000.00
Commissions and service charges	$ 25,000.00	$ 30,000.00
Other operating earnings	$ 1,000.00	$ 1,000.00
TOTAL	$ 113,500.00	$ 258,000.00
Operating Exxpenses		
Interest on deposits	$ 34,500.00	$ 94,500.00
Salaries and wages	$ 19,000.00	$ 22,200.00
Taxes (other than income)	$ 1,520.00	$ 1,780.00
Other operating expenses	$ 22,280.00	$ 34,620.00
TOTAL	$ 77,300.00	$ 153,100.00

Deposit volume for the first twelve months is estimated at $1,650,000.00; and for the first thirty-six months at $2,550,000.00.

The capital of the applicant will be increased as follows prior to the establishment of the Proposed Branch:

No increase presently anticipated

STATE CORPORATION COMMISS.

AT RICHMOND, MAY 14, 1975

APPLICATION OF

PEOPLES BANK, INC.
(formerly THE PEOPLES BANK OF HONAKER, INC.) CASE NO. 19422

For authority to establish a branch bank on the south side of U. S. Highway 58, Banners Corner, Castlewood, Russell County, Virginia, to be known as the Castlewood Branch of Peoples Bank, Inc.

THE APPLICATION herein was heard on May 1, 1975 and taken under advisement. The applicant was represented by T. G. Shufflebarger, its counsel, and the intervener, Southwest Bank of Virginia by James P. Jones, its counsel. The Commission was represented by its counsel.

NOW, ON THIS DAY the Commission having considered the application herein, the report of investigation made by the Commissioner of Banking, and the evidence introduced at the hearing on behalf of the applicant, and the intervener, the Commission is of the opinion and finds: (1) That public convenience and necessity will be served by permitting the applicant to establish a branch office at the location applied for; (2) That the applicant has paid up and unimpaired capital and surplus of more than $50,000; (3) That the proposed branch office is located within the limits of the county in which the parent bank of the applicant is located; and (4) That the application should be granted subject to the conditions hereinafter stated:

IT IS, THEREFORE, ORDERED that Peoples Bank, Inc., (formerly The Peoples Bank of Honaker, Inc.) be authorized to establish a branch office on the south side of U. S. Highway 58, Banners Corner, Castlewood, Russell County, Virginia, to be known as the Castlewood Branch of Peoples Bank, Inc., upon condition that the applicant establish said branch office and open it for business within one year from this date and upon the opening of said branch office it notify the Commissioner of Banking of the date said branch office was opened for business.

ASSIGNMENTS OF ERROR

Now comes the intervener, The Southwest Bank of Virginia, by counsel, and assigns the following error in this matter to the Order of the Commission entered on May 14, 1975:

1. The Commission erred in finding that the public convenience and necessity will be served by permitting the applicant Peoples Bank, Inc., formerly The Peoples Bank of Honaker, Inc., to establish a branch office at the location applied for, in that the evidence showed that there was no such public convenience and necessity and that the establishment of such branch would jeopardize the financial soundness of an already existing bank, all in violation of Section 6.1-39 of the Code of Virginia, 1950, as amended.

2. The Commission erred in deciding the matter in the absence of a quorum of the Commission in violation of Section 12.1-8 of the Code of Virginia, 1950, as amended, in that only one of the members of the Commission heard the entire evidence presented at the hearing held upon the application on May 1, 1975, and no transcript or other record of such hearing was prepared prior to the date of the decision of the Commission in the matter.

SCC-59—6-30-61—10M—(Thick)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
RICHMOND

September 15, 1975

Application of

The Peoples Bank of Honaker, Inc. Case No. 19422

For authority to establish a branch bank on the south side of U. S. Highway 58, Banners Corner, Castlewood, Russell County, Virginia

Opinion, BRADSHAW, Commissioner.

The Peoples Bank, Inc. (then The Peoples Bank of Honaker, Inc.) on July 3, 1974, filed an application for authority to establish a branch on the south side of U. S. Highway 58, at Banners Corner, Castlewood, Russell County, Virginia. By letter dated July 25, 1974, the Southwest Bank of Virginia formally objected to the branch. The Bureau of Banking investigated the application and made its report August 5, 1974. By order of August 13 in Case No. 19422, the Commission set the matter for hearing. A motion to continue the case from November 27 was granted, and the case was finally heard on May 1, 1975.

In the absence of Chairman Harwood, Commissioner Bradshaw presided at the hearing. Commissioner Shannon was present. The sole issue at the hearing was whether, pursuant to §6.1-39 of the Code of

Virginia, public convenience and necessity would be served by establishment of the proposed branch.

The application and its supporting documents, together with the report made by the Bureau of Banking with respect to the application, were incorporated into the record of the case. Testimony and exhibits on behalf of the applicant and the protestant were received.

The application was granted by order of May 14, 1975, endorsed by Commissioners Bradshaw and Shannon.

Russell County is a rural county in the southwest corner of Virginia. Only Wise County lies farther west between the Castlewood district of Russell and the West Virginia border.

According to 1972 employment statistics, agriculture, which employed 1,466 people, primarily in tobacco and dairy farming, is the principal basic industry in Russell County. It is followed by manufacturing (mainly apparel) which employed 1,171 workers. In 1972, although mining accounted for only 786 jobs, Russell County mines still ranked fourth in Virginia in coal output and mining employment. The county's coal production per worker was second best in the State, and its miners were paid the state's highest annual wage.

Despite the fact that population in the county diminished between 1960 and 1972, overall employment increased significantly during that period. The decline in farm and mine employment has been more than

offset by a substantial rise in manufacturing jobs and in supporting industry (i.e., construction, transportation, trade, finance, services, utilities, and government). Studies indicate the foregoing trends will continue. Additional rapid growth in manufacturing employment within the county is anticipated, and supporting employment should flourish as a result of rapidly-rising personal income per capita and increased demands for services by county residents, including the significant number of those who commute to jobs outside Russell County. (Between 1959 and 1969 per capita income here increased 125 percent, a rate of growth significantly faster than that for Virginia or for the nation as a whole.)

The general area to be served by the proposed branch can be described roughly as the western one-third of Russell County, together with the eastern tip of Wise County and a narrow strip of eastern Scott County. Areas of significant population within the general trade area include Nickelsville (Scott), Coeburn (Wise), and Lebanon (Russell), in addition to population centers in the immediate vicinity of the branch.

Banners Corner, applicant's proposed location, is on U. S. Highway 58, a major four-lane thoroughfare connecting Abingdon and Interstate Route 81 to the southeast with St. Paul, Coeburn, Norton, and points west. The name Banners Corner refers both to a business and commercial center and to the residential area surrounding it. Subdivided in 1959, by 1970 its population had grown to 2,300. It was an outgrowth of Old Castlewood, a residential area of some 400 people (1970).

The combined locale is often generally called Castlewood, and it is this business-residential community that is the largest settlement in Russell County.

Besides Castlewood, the primary trade area for a Banners Corner branch would include Morefield-Hamlin (population 400 in 1970), Gravel Lick (450), Sun (150) and Dante (1,150). Dickinsonville also is in the primary trade area, several miles southeast of Banners Corner. Just over two and a half miles north of Banners Corner on Route 58, across the Clinch River in Wise County, is St. Paul (population 948 in 1970), home of the Southwest Bank, protestant herein. Due to its peculiar location at the tip of Wise County, St. Paul, the older trade center in the area, is actually closer than Banners Corner to some populous sectors in the designated primary service area. The two compete for business patronage within the vicinity; Banners Corner is closer to some Castlewood customers, but St. Paul has a greater variety of products and services.

In former years commercial growth at Banners Corner was sporadic. The trade center presently consists of several small businesses: four service stations, two specialty garages, a welding service, an insurance agency, a block manufacturing company, an excavating firm, a few grocery stores, barber and beauty shops, a furniture store, a discount store, a sporting

goods store, and an antique and gift shop. There is a motel with a restaurant, a drive-in movie theater and a drive-in restaurant. Several of the foregoing businesses are located in a small shopping center, to which is being added a new two thousand-foot wing, designed to accommodate six additional businesses. In the surrounding area construction is progressing in at least three housing subdivisions; a trailer park provides additional low-cost living quarters. Castlewood has an independent post office, and Banners Corner is the site of the consolidated high school for the western third of Russell County. Up the highway toward St. Paul are a company manufacturing pick-up truck tops, and a couple of used car lots.

Banners Corner-Castlewood has no banking facility; the subject branch would be its first. St. Paul has the nearest banks: protestant (Southwest Bank), and a branch of First National Exchange Bank. Cleveland, twenty miles to the east has the only banking office in the Castlewood magisterial district, a Bank of Virginia branch. Lebanon, the county seat,is also some twenty miles from Banners Corner; it has branches of the Bank of Virginia and First National Exchange Bank. The only other bank in Russell County is the applicant, Peoples Bank, in Honaker, more than thirty miles east of Banners Corner-Castlewood. Some sixteen miles in a northwest direction, in Wise County, Coeburn

has a banking office; Norton, about ten miles farther on, has two banks, one being a branch of the protestant, Southwest Bank.

Both the applicant (Peoples) and the protestant (Southwest) are young, independent state banks. Peoples opened for business in February, 1972. At the hearing it reported total assets of $9.27 million as of April 16, 1975. Southwest began business about November, 1971, with an initial capitalization of $400,000. Its assets on April 16, 1975, were $4.6 million, up from $3.04 million on April 24, 1974, and $4.147 million on December 31, 1974. Southwest opened a branch in Norton in March, 1975. Testimony in the case indicated that the residents of Banners Corner-Castlewood divide their banking business between the St. Paul banks and those in Lebanon. Apparently, for a majority, the greater distance to Lebanon is offset by a certain loyalty to the older, county-seat institution, now part of the First National Exchange system.

To prove need and convenience applicant relied on the testimony of six credible witnesses, and upon study reports prepared by state and local planners. "Projections and Economic Base Analysis - Russell County", published in September, 1973, by the Division of Planning and Community Affairs, noted the recent increase in manufacturing employment, and forecast continued manufacturing growth, on a broader base

than just apparel, depending on industrial development efforts made during the 1970's. Pointing to the rapidly rising rate of per capita income and the growth of formerly-underdeveloped supporting employment, the study predicted a further increase in trade and service businesses, sustained by the demands of a more affluent county populous.

Though new industry apparently has not located in Castlewood, several witnesses testified that business and population growth there has been substantial in recent years. The community is obviously interested in attracting new business, and it is supported in its enterprise by the "Land Use Plan for the Cumberland Plateau Planning District" published in 1972. That study points to Banners Corner, along Route 58 as a commercial center, and indicates that the surrounding area is a primary growth area, one of only three localities in the four-county district where a combination of favorable factors will support a variety of land uses. As emphasized in the testimony, Banners Corner-Castlewood does have level land where business and residential projects can begin and expand. Such terrain is at a premium; St. Paul itself is running out of land for development (though it recently annexed some 167 acres of Russell County, and is re-routing the Clinch River in an effort to gain space).

Testimony for the applicant indicated widespread support for the subject branch among the business sector and in the community as a whole. E. W. Lindsey, applicant's executive vice-president and cashier, cited the phenomenal growth of several banks in Virginia's coal-producing region. Cross-examination showed that there is no substantial mining activity in the immediate trade area. However, since many Castlewood residents commute to high-paying mining jobs, the inference remained that mining prosperity would have a favorable (if somewhat limited) impact on a Banners Corner branch bank. Additional impetus to business in the area may be expected as a result of leases which are being taken to explore for natural gas over some 2,500 acres in the vicinity.

Stanley Banner, a lifelong resident of Banners Corner, testified for the protestant, Southwest Bank. He characterized St. Paul as the main trade center of the area, and mentioned the river re-routing plan, which (he opined) would enhance its capacity for new business. He stated that most of St. Paul's merchants lived in the Castlewood-Banners Corner area, and that the people he had talked with were "pretty well satisfied" with the two banks in St. Paul (though he acknowledged that some desired

convenient check cashing). Mr. Banner described how St. Paul was separated from Banners Corner along Route 58 by Senator M. M. Long's 600 acre farm which straddles the highway.

James L. Holt, president of the Southwest Bank, described the growth of his institution as "very slow" and "steady", since its founding in late 1971. He was unable to evaluate the success of his five-week old branch in Norton. He recited statistics indicating that many depositors and borrowers at the Southwest Bank have Castlewood post office addresses. He stated that his bank relied on its Castlewood-Banners Corner business, and that a bank at Banners Corner would be a "detriment" to the Southwest Bank.

Public convenience and necessity is always a difficult question of law and fact. According to the cases, more than "mere convenience" must be shown, but less than "absolute necessity" will suffice. A multitude of factual situations can fall within those bounds, and the very concept of public need is often affected by time and place. What was merely convenient a decade ago is sometimes necessary now. Moreover, what demonstrates necessity in a rural setting may differ from that shown in a city. In every case, the primary question is whether a public need exists for the proposed facility.

On that issue we conclude that the evidence submitted on behalf of the applicant shows a situation wherein population growth and business expansion at the Banners Corner location has reached a stage of development that justifies and requires the establishment of a branch banking facility there. Applicant's case is enhanced greatly by the favorable prospects seen for the area by the planning district, which predictions (from an unbiased source) appear justified, even in the face of Mr. Banner's belittling assertions. His testimony can be accepted without material damage to the applicant's case. It does not matter that all, or even most, of the Banners Corner businesses are not new, nor is it important whether St. Paul is the "main trading area" for the vicinity. Both St. Paul and its banks, and Banners Corner and its branch can thrive. The new branch will be a stimulus, not only to its own community, but to the St. Paul-Castlewood banking community.

It is not surprising that protestant has not raised a serious challenge on the primary issue of public need. Southwest's overtures toward a branch of its own at Banners Corner virtually estop a vigorous plea of lack of need from that quarter. They also consider the area a prime banking market, and is not that the reciprocal of need? It is unfortunate,

at least from the point of view of the Southwest Bank, that Virginia branching law has forced it into such an ambivalent position.

Nor is the need we find based on "mere convenience". The Castlewood public requires more than handy check cashing; it demands a quickly accessible depository for funds, a readily available plan to get financing for business and residential and construction needs, and convenient source of consumer loans.

Mr. Holt's testimony raised the issue of a branch of Peoples at Banners Corner jeopardizing the Southwest Bank. But, having raised the question, protestant failed to prove its point. Mr. Holt equivocated, saying the proposed branch would be "a detriment" to his bank. That is the case whenever a competitor enters an existing bank's trade area. The law does not seek to deter competition unreasonably, and when jeopardy is pleaded, it must be shown that a new institution will threaten the soundness of an existing bank, or at least create a risk of serious harm to it.

Mr. Holt's reluctance to shout "jeopardy" is understandable, when one stops to consider that Southwest had grown 50 percent ($3.04 million in assets to $4.6 million) between April, 1974, and April, 1975,

during a period generally considered recessionary. Then, too, it is at least somewhat inconsistent to urge that one's bank is strong enough to branch, then, having established the branch, turn an about-face and argue that the parent bank is too weakly-founded to withstand competition.

Protestant's statistics did indicate a large percentage of business from the Castlewood post office district (which was rather a vaguely defined area). However, no testimony estimated or even guessed how much of that business would be lost to a Banners Corner competitor, so as to endanger the Southwest Bank. Several factors lead us to believe that loss would not be great: (1) the fact that a majority of Southwest's board of directors lives within Castlewood; (2) customer inertia and the absence of any indication that Southwest's customers are dissatisfied, and; (3) the likelihood that customers of Lebanon banks would be more attracted by the convenience aspect of a Banners Corner branch than those people who now bank in nearby St. Paul.

Adequacy of existing bank facilities will not preclude the authorization of a branch where, as here, there has been a showing of public need, and where, as here, such authorization will not jeopardize the soundness of already existing financial institutions. Security Bank v. Schoolfield Bank, 208 Va. 458 (1968). In any event, protestant would need stronger

proof on this issue than Mr. Banner's allowing that those people he talked to "are pretty well satisfied", and Mr. Holt's failing to recall interviewing anyone who was "outright dissatisfied."

Based on the record herein, and for the foregoing reasons, we find that the public need and convenience for a branch banking facility exists in the Banners Corner-Castlewood community where the applicant proposes to locate. We find, in the context of the situation in western Russell County in 1975, that the establishment of such a branch would stimulate the economy of the community which it intends to serve, and that it will not jeopardize the financial soundness of the existing banks in St. Paul. Accordingly, applicant, having complied with all the requirements of §6.1-39 of the Code of Virginia, as amended, is granted authority to establish a branch in Banners Corner, Castlewood, Russell County, Virginia.

SHANNON, Commissioner, concurs.

HARWOOD, Chairman, took no part.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

APPLICATION OF CASE NO. 19422

PEOPLES BANK, INC.
(formerly THE PEOPLES BANK OF HONAKER, INC.)

Transcript of the testimony and other incidents of the above when heard on May 1, 1975 before the Honorable Commissioners of the State Corporation Commission, Richmond, Virginia

SUE TRAYLOR
OFFICIAL COURT REPORTER
STATE CORPORATION COMMISSION
RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

APPLICATION OF CASE NO. 19422

PEOPLES BANK, INC.
(formerly THE PEOPLES BANK OF HONAKER, INC.)

COMMISSIONERS:

Honorable Thomas P. Harwood, Jr., Chairman
(ABSENT)

Honorable Junie L. Bradshaw, Presiding

Honorable Preston C. Shannon

COUNSEL:

William F. Schutt, Esquire,

Counsel to the Commission.

T. G. Shufflebarger, Esquire,

Counsel for the Applicant.

James P. Jones, Esquire,

Counsel for The Southwest Bank of Virginia, Protestant.

NOTE: The hearing called to be heard on May 1, 1975 at 9:46 A.M. o'clock, and begins as follows, viz:

COMMISSIONER BRADSHAW: Just for the record, this proceeding is beginning fifteen minutes early by consent of the parties because of the Commission's tight schedule today.

And, I think we are ready to receive an opening statement from the Applicant's attorney, Mr. Shufflebarger.

I might say that even though Commissioner Harwood is absent he will read this record and participate in the decision.

Mr. Shufflebarger?

MR. SHUFFLEBARGER: May it please the Commission, it is my understanding that all that was submitted with the Application is already a part of the record in this case.

COMMISSIONER BRADSHAW: That's correct.

MR. SHUFFLEBARGER: And, our position is set forth in the statement of facts filed with the Application and supported by the two publications, "Land use plan for the

MR. JONES: That's all.

COMMISSIONER BRADSHAW: Well, I am sorry that Judge Shannon had to leave on the last witness here. It was something that required him to, but as I said in the beginning, since Judge Harwood is absent today all three will review the record and participate in the decision of this case.

And, the Commission will take this matter under advisement and notify the parties just as soon as we can.

Is there anything further?

MR. SCHUTT: May it please the Commission, perhaps you ought to say what you had to say first, because this pertains to another matter.

MR. JONES: Well, I was going to ask if it would be helpful at all to provide the Commission with any counsel thoughts.

COMMISSIONER BRADSHAW: Would you like to do that?

MR. JONES: If Your Honor --

COMMISSIONER BRADSHAW: I think we have got a picture of what the situation is.

CERTIFICATE OF COURT REPORTER

I, Sue Traylor, an Official Court Reporter with the State Corporation Commission, Richmond, Virginia, hereby certify that I was the Court Reporter who took down and had transcribed under my direction the herein matter when heard on May 1, 1975 before The Honorable Commissioners of the State Corporation Commission, Richmond, Virginia.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other incidents of the hearing herein.

Given under my hand this 20th day of August, 1975.

ORIGINAL SIGNED

SUE TRAYLOR, OFFICIAL COURT REPORTER