FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROY W. MEADOWS, HAROLD P. BOHROFEN, JOHN BOHROFEN, MELVIN E. WILES AND FRED WRIGHT,

Appellees,

v.

CECIL W. DUNN, SUPERINTENDENT, DEPARTMENT OF BANKING, STATE OF IOWA,

Appellant.

Filed April 15, 1977

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2-58610

Appeal from the Polk District Court - Gibson C. Holliday, Judge.

Defendant banking superintendent appeals the invalidation of his order denying issuance of a new state bank charter at Grimes, Iowa. - Reversed.

Richard C. Turner, Attorney General of Iowa and Elizabeth A. Nolan, Assistant Attorney General, for Appellant.

Roy W. Meadows, of Whitfield, Musgrave, Selvy, Kelly and Eddy, of Des Moines, for Appellee.

Decided by Donielson, P.J., Snell, Oxberger and Carter, JJ. Allbee, C.J. takes no part.

This is an appeal from a judgment and decree entered by the district court invalidating the defendant-superintendent's order denying issuance of a new state bank charter at Grimes in Polk County, Iowa. We reverse.

The banking superintendent denied application on the grounds that the area was adequately served by the number and proximity of existing bank facilities and that the economic characteristics of the area did not afford reasonable promise of adequate support for the proposed bank. Section 524.305(6) of the 1973 Code controls judicial review of this action. Under this section, the banking superintendent's action must be upheld by a reviewing court unless it is unsupported by substantial evidence.

Grant v. Fritz, 201 N.W.2d 188 (Iowa 1972) construed an identical § 524.305(6) provision of the 1971 Code. *Grant* dealt extensively with the "substantial evidence rule" to be utilized in judicial review under § 524.305. Such evidence justifies a refusal to direct a verdict; it is more than a scintilla, but less than a preponderance; it has probative force on the issues, even though reasonable men may differ and, in fact, draw inconsistent conclusions from it. 201 N.W.2d at 197.

Grant concluded its analysis of substantial evidence by citing approvingly from Consolo v. Fed. Maritime Comm., 383 U.S. 607, 620-21 (1966): " . . . it gives proper respect to the expertise of the administrative tribunal. . . . places a premium upon agency expertise, and for the sake of uniformity, it is usually better to minimize the opportunity for reviewing courts to substitute their discretion for that of the agency."

Following this analysis of *Grant*, we find the record before the superintendent established: 1) the 1970 population of Grimes was 902, with an estimated growth to approximately 1300 as of June 1974, A. 5; 2) within a 15-mile radius of Grimes, resi-

dents had services of 23 full-service banks and 34 bank offices. A. 9. In addition, there was testimony that there was slight industrial and business growth in Grimes (Tr. 45); that it was largely a bedroom community (Tr. 45); that the area was already subject to heavy banking competition (Tr. 55); and that no Iowa town within 15 miles of a town of 20,000 (or more) population had in excess of one banking facility, with the exception of Story City whose two banking facilities had "survived the Depression". (Tr. 64).

Having reviewed the whole record before the superintendent, we can perceive no distinguishing fact in the Grimes application which removes it from the force of the holding of *Grant*. The trial court's finding that the superintendent's denial was unsupported by substantial evidence "was arrived at without proper regard to the scope of review which is limited and defined by section 524.305 . . . ". *Grant*, 201 N.W.2d at 198.

We conclude the superintendent's denial "was the consequence of an exercise of his candid judgment on the record before him." *Grant*, 201 N.W.2d at 197. Accordingly, we reverse the trial court and reinstate the superintendent's denial of the Grimes state bank charter.

Reversed.

Snell, Oxberger and Carter, JJ. concur. Donielson, J. dissents.

DONIELSON, J. (dissenting) 480

I dissent. I am mindful of the limited standard of review set forth by 524.305, The Code, and interpreted in Grant v. Fritz, 201 N.W.2d 188 (Iowa 1972). Yet judicial review is not intended to be a rubber stamp of any bank superintendent's decision.

As set forth in 524.305, since amended, and placed the judicial review under the Administrative Procedures Act, the court *"shall review the whole record"* to determine if substantial evidence exists. In reviewing the whole record, I find that the superintendent's decision was as the trial court decided not supported by substantial evidence.

The trial court's brief order of denial listed two paragraphs, the first being:

> "1. The convenience and needs of the public are being adequately served in view of the number and proximity of existing bank facilities in relation to the proposed location of the new state bank."

In the survey conducted and made a part of the record, 59 percent of the Grimes residents did all or part of their banking locally. Twenty-eight percent of the Grimes residents would support a new full service bank with 25 percent possibly supporting a new bank. Only 16 percent would doubtfully support it and of the rural residents, 13 percent would support it, 24.4 percent possibly support it and 22 percent doubtful. The customers of other banks serving the area said that 29 percent would support a new bank, 20 percent possibly, 43 percent no and 8 percent doubtful.

Of the Bankers Trust customers, a greater number would switch to the new bank than would remain.

Eighty-five percent of the commercial businesses in the City of Grimes were either incorporators or major supporters

of the new bank charter. This town of approximately 1300 is seven miles from the northwestern edge of the City of Des Moines. Fifty-two percent of the people are employed in Des Moines, Urbandale, or Johnston, but 59 percent of the residents did their banking locally. The only real objectors were persons who were involved with the present bank. The present bank had never financed a single local home. As a matter of fact, of the $5,000,000 deposits, local loans totaled approximately $1,000,000. The evidence was overwhelming that the convenience and needs of the public were not being adequately served contrary to what the superintendent of banking found. The bank superintendent, as well as the majority, use vague generalities, not substantial evidence in arriving at their decision. My view in reading the whole record is that all of the substantial evidence was contrary to both the banking superintendent and the majority.

Reason #2:

> "2. Economic characteristics of the area primarily to be served by the proposed state bank do not afford reasonable promise of adequate support of the state bank."

Between 1960 and 1970, the community had a 19.7 growth, and from 1970 to 1974, a 76 percent growth. There was substantial evidence of new growth in the building industry for both apartments and homes, which fails to support the finding of the superintendent of banking. One need only to refer to the investigation report of the proposed charter and organization of the Grimes State Bank, which is a part of the record, including the conclusion and the confidential portions to see what has happened here.

I see no substantial evidence in reviewing the *"whole record"* to satisfy *Grant* and 524.305, and, therefore, would affirm the trial court.