SUPREME COURT OF SOUTH DAKOTA

Independent Trust Company, LLC v. South Dakota State Banking Commission

696 N.W.2d 539 (S.D. 2005) · No. No. 23357 · Decided April 27, 2005

SUMMARY

The Supreme Court of South Dakota reviewed the denial of Independent Trust Company, LLC's application to organize and operate a trust company in Dakota Dunes. The court held that the Banking Commission's findings under SDCL 51A-6A-5 were not clearly erroneous and affirmed the circuit court's affirmance of the denial.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Tiede, Circuit Judge; Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Meierhenry, Justice; Tiede, Circuit Judge for Zinter, Justice, disqualified
JURISDICTION	South Dakota
DECIDED	April 27, 2005
DOCKET	No. 23357
DISPOSITION	affirmed
PROCEDURAL POSTURE	Independent Trust Company, LLC appealed the South Dakota Banking Commission's denial of its application to organize and operate a trust company. The circuit court affirmed the Commission, and the South Dakota Supreme Court affirmed the circuit court.
STANDARD OF REVIEW	The Commission's findings of fact are reviewed for clear error; questions of law are reviewed de novo. A mixed question is reviewed under the clearly erroneous standard when the analysis is essentially factual and under de novo review when resolution requires consideration of the principles underlying a rule of law. The court will not reverse factual findings unless definitely and firmly convinced that a mistake has been made.
PRECEDENTIAL VALUE	Published opinion; precedential

PARTIES	Independent Trust Company, LLC v. South Dakota State Banking Commission, Department of Commerce and Regulation, Division of Banking, Security National Bank, intervenor and appellee

TOPICS

judicial review of agency action · administrative procedure act · agency adjudication · administrative law · trust administration

PRACTICE AREAS

administrative law · banking regulation · trust company regulation · appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in affirming the Banking Commission's denial of ITC's application to operate a trust company.
2. Whether the Commission's findings that ITC failed to satisfy the four conditions in SDCL 51A-6A-5 were clearly erroneous.
3. Whether the Banking Director's memorandum recommending or indicating satisfaction of the statutory conditions deprived the Commission of authority to deny the application.

HOLDINGS

1. The Banking Commission, not the Banking Director, possessed final statutory authority to determine whether the conditions for establishing a trust company had been satisfied and to approve or disapprove the application.
2. The Commission's findings that ITC failed to prove the four statutory conditions for operating a trust company were not clearly erroneous, and the denial of the application was properly affirmed.

KEY QUOTATIONS

> *"ITC had the burden of proving by a preponderance of the evidence that it satisfied the four conditions contained in SDCL 51A-6A-5"* (696 N.W.2d at 542)

> *"This does not mean that the Commission's discretion is absolute."* (696 N.W.2d at 542)

> *"It must base its actions on factual determinations limited to the factors enumerated in the statute."* (696 N.W.2d at 542)

> *"However, the question is not whether there is any evidence to support contrary findings, but whether the Commission's findings are clearly erroneous."* (696 N.W.2d at 542)

> *"This Court will only reverse if it is "definitely and firmly convinced that a mistake has been made.""* (696 N.W.2d at 545)

FACTUAL BACKGROUND

Independent Trust Company, LLC was organized by five partners of an accounting firm and an attorney to operate a trust company in Dakota Dunes, South Dakota. Its application projected rapid growth and profitability but did not include a written business plan, detailed financial statements for the organizers, or adequate information concerning expenses, capitalization, compliance, security, and operational experience. After a contested hearing, the Banking Commission found that ITC failed to prove the statutory conditions concerning the organizers' financial standing and character, the officers' qualifications and experience, public need, and prospects for success.

PROCEDURAL HISTORY

Independent Trust Company filed an application with the South Dakota Division of Banking under SDCL chapter 51A-6A. Security National Bank intervened in opposition, and after a contested hearing the Commission denied the application on January 9, 2004. The circuit court affirmed the Commission after a July 21, 2004 hearing. The Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- Application of American State Bank, 254 N.W.2d 151 (S.D. 1977)
- Application of Dorsey & Whitney Trust Co., 2001 SD 35, 623 N.W.2d 468
- Permann v. Dept. of Labor, 411 N.W.2d 113 (S.D. 1987)
- Rios v. Dept. of Soc. Servs., 420 N.W.2d 757 (S.D. 1988)
- Valley State Bank v. Farmers State Bank, 87 S.D. 614, 213 N.W.2d 459 (1973)
- Wall v. Fenner, 76 S.D. 252, 76 N.W.2d 722 (1956)

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