



Hyde v. Banking Board

552 P.2d 32 (1976) | Cited 0 times | Colorado Court of Appeals | June 10, 1976

Petitioners appeal from an order of the Banking Board denying their application for a charter to operate a commercial state bank under the name "First Bank of Glendale." They allege procedural defects and errors in the Board's ruling on the evidence. We find that the order was issued upon unlawful procedure and therefore set it aside.

The Board conducted public hearings on Petitioners' application in November and December 1974. At the regular meeting of the Board in February 1975, a vote was taken on the application, and at the regular meeting in May 1975, the Board's order denying the charter was approved and adopted.

Petitioners first attack the validity of the Board's order on the basis that it failed to issue the order within 120 days from the conclusion of the hearing, as required by § 11-3-110(6), C.R.S. 1973. However, we find no violation of that time limit.

At the end of the evidentiary hearing in December 1974, it was agreed that counsel would submit written briefs in lieu of closing oral arguments. The Board issued its order within 120 days after the filing of the

briefs; however, this was more than 120 days after the end of the evidentiary hearing in December. The statute requires that the order must be issued within the time limit "following the date of conclusion of the hearing." Therefore, the question to be answered is what constitutes the conclusion of the hearing.

We do not agree with petitioners' contention that the hearing on the application was concluded at the December public hearing when the evidence was taken. Closing arguments of counsel, whether made orally or in the form of written briefs, are part of a hearing. Where additional time is granted for the filing of briefs after the close of an evidentiary hearing, the hearing cannot be considered concluded until such briefs are filed. See *Hill v. Trustees of Glenwood Cemetery*, 323 Mass. 388, 82 N.E.2d 238. Therefore we hold that the order of the Board was filed within the 120 day time limit and the order was not invalid on this basis.

However, we do agree with petitioners' allegation that the Board's order is invalid for failure to comply with the requirements of the Open Meeting Law, § 24-6-401, et. seq., C.R.S. 1973 ("Sunshine Law") as to the meetings in February 1975 and May 1975, when the vote was taken on the application and when the order was approved and adopted. The propriety of the notice given for the public hearing on the application in December 1974 is not questioned.



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Section 24-6-402(2), C.R.S. 1973, provides that any meetings of a state board at which formal action occurs shall be held only after "full and timely notice to the public." Subsection (4) of that statute provides that unless there has been compliance with the requirements of subsections (1) and (2), no formal action of the Board shall be valid. The Board argues that since there was compliance with subsection (3) of § 24-6-402, C.R.S. 1973, by the mailing of notice to persons maintained on the "Sunshine list," sufficient notice was given to the public to render the action valid. We do not agree. The statute does not invalidate the formal action of a board for failure to comply with notice to those persons on the "Sunshine list," but it does invalidate an action taken where there is not full and timely notice to the public. Compliance with subsection (3) is not a substitute for compliance with subsection (2). Therefore we hold that mailed notice to the persons on the list does not constitute full and timely notice to the public.

A copy of the notice mailed to persons on the list was available for public inspection upon request in the office of the Division of Banking. However, we hold that such a procedure does not constitute sufficient notice under the statute. Some overt action must be taken by the Board to give notice to the public that a meeting is to be held. At the very minimum, full and timely notice to the public requires that notice of the meeting be posted within a reasonable time prior to the meeting in an area which is open to public view.

Since full and timely notice was not given, the order of the Board denying the charter is invalid, and the cause must be remanded for reconsideration of the application, voting, and issuance of a new order after compliance with § 24-6-401, et. seq., C.R.S. 1973. A new evidentiary hearing is not required since the validity of that proceeding is not challenged.

The order is set aside and the cause is remanded for further proceedings consistent with this opinion.

Disposition

Order Set Aside.

