

CHAPTER 3. HEARINGS AND CONFERENCES

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Authority

The provisions of this Chapter 3 issued under section 1(d) of the act of June 17, 1915 (P. L. 1012, No. 432) (7 P. S. § 6151(d)); sections 201 and 202 of the Department of Banking Code (71 P. S. §§ 733-201—733-202); section 8 of the Pawnbrokers License Act (63 P. S. § 281-3); section 12 of the Consumer Discount Company Act (7 P. S. § 6212); section 7 of the Credit Union Act (Rep 1990-198) (15 P. S. § 12307); section 103(a)(viii) Banking Code of 1965 (7 P. S. § 103(a)(viii)); and section 103(a)(8) of the Savings Association Code of 1967 (15 P. S. § 1503(a)(8)), unless otherwise noted.

Source

The provisions of this Chapter 3 adopted February 2, 1973, effective February 3, 1973, 3 Pa.B. 216; amended June 24, 1977, effective June 25, 1977, 7 Pa.B. 1740, unless otherwise noted.

Cross References

This chapter cited in 10 Pa. Code § 61.2 (relating to license applications, public notice, hearings and capital requirements).

§ 3.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Application—A proposal to charter or license an institution, to establish a branch, to merge or consolidate with or purchase the assets of an institution where the resulting institution is Commonwealth chartered or licensed, or to relocate an office.

Business day—A day on which Commonwealth offices remain open, excluding Saturdays, Sundays, or legal holidays.

Hearing file—That file compiled in contemplation of a hearing, consisting of the application accompanied by supporting data and supplementary information.

Interested person—A person with an interest in an application.

Legal holiday—A day in which Commonwealth offices remained closed.

Objecting person—An interested person who submits an objection to the Department.

Objection—A written statement of opposition to approval of an application by the Department.

Protest—A written statement which opposes approval of an application and which requests a hearing before the Department.

Protesting person—A financial institution which submits a protest to the Department.

§ 3.2. Scope.

(a) The provisions of this chapter set forth procedures by which the Department, boards, and other entities established under acts wherein the Department has supervisory or regulatory responsibility, may intelligently inquire into and reach informed decisions with respect to applications and in such other cases as the Department in its discretion shall deem proper. These procedures provide a method by which all protesting, objecting and other interested persons may present their views. Nothing contained in this chapter shall be construed to prevent interested persons from presenting their views in a more informal manner when deemed appropriate by the Department, or to prevent the Department from conducting such other investigation as may be deemed appropriate.

(b) The provisions of this chapter supersede the provisions set forth in 1 Pa. Code Chapter 35 (relating to formal proceedings), and any applicable section of 1 Pa. Code Part II (relating to general rules of administrative practice and procedure), including any section relating to the same, similar or related subject matter as that of this chapter.

§ 3.3. Notice of filing of application.

Applications shall be filed in accordance with the provisions of the applicable statute or this part. If appropriate, notification of filing will be provided to the Federal administrator by the Department and to any other person requesting, in writing, notice of the date on which an application was filed. The Department will solicit, in whatever manner it deems appropriate, comments from each entity which the Department believes, in its sole discretion, might be affected by or have an interest in the pending application.

§ 3.4. Hearing file.

(a) *Contents.* The hearing file in each case shall consist of the application with supporting data and supplementary information. In addition, the hearing file shall contain all data and information submitted by protesting, objecting and other interested persons in favor of, or in opposition to, such application. All factual information contained in any field investigation report made by a Department examiner will also be made part of the hearing file, unless deemed confidential by the Department. Additionally, a person submitting information may request

that the Department deem confidential material not relevant to the property interests of protesting, objecting, and other interested persons, such as trade secrets normally not available through commercial publications.

(b) *Availability to protesting persons.* The hearing file shall be available for inspection in the office of the Department upon written request from a protesting person at such time as the Department will prescribe. No document in the hearing file may be removed from the office of the Department by persons other than members of the Departmental staff. Photocopies may be made available, on request, to protesting persons at the established charge.

§ 3.5. Protests, objections or other written comments.

(a) Within 10 business days after any required notice by publication, pursuant to the provisions of this title, any interested person may submit to the Department a protest, an objection, or other written comments concerning the application. Except as provided in subsection (b), any submission not received within the ten-day period shall not be considered.

(b) The time provided in subsection (a) may be extended by the Department if, in the sole discretion of the Department, such extension is warranted.

(c) In the absence of a protest, the Department, if it believes it to be in the public interest, may order a hearing to be held.

§ 3.6. Place of hearing.

Persons submitting a protest shall be given a hearing. The Department, in any matter, reserves the right to conduct hearings at any location it deems to be appropriate.

§ 3.7. Date of hearing.

A hearing shall be scheduled as soon as practicable after having been requested or ordered, allowing at least 20 business days between the date of notice and the date of hearing.

§ 3.8. Notice of hearing.

(a) *Contents.* The Department, when notifying protesting persons of the scheduling of a hearing, will set forth in the notice the subject matter of the application and the date, time and place of the hearing.

(b) *To whom sent.* The notice described in subsection (a) will be sent to the applicant and to all protesting persons.

§ 3.9. Presiding officer.

If a hearing is scheduled, the presiding officer shall be the Secretary, or such other person as may be named by the Secretary.

§ 3.10. Prehearing conferences.

(a) The provisions of 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences) shall be applicable to the extent that they are not inconsistent with the provisions of this section.

(b) At least five business days prior to a prehearing conference or, if none is scheduled, at least five business days prior to the hearing, applicant shall serve upon all protesting persons and provide the presiding officer with a written statement containing the following:

(1) The names, addresses, and capacities of all persons who may be called as witnesses and the general nature of the evidence to be presented through such witnesses.

(2) The reports of any expert whose opinion will be offered in evidence at the hearing. Such reports shall include the findings and conclusions of the expert.

(c) At least three business days prior to a prehearing conference or, if none is scheduled, at least three days prior to the hearing, each protesting person shall serve upon the applicant and other protesting persons and provide the presiding officer with a written statement containing the same matter relative to evidence they intend to present at the hearing as is required of the applicant under subsection (b) of this section.

(d) Prior to a prehearing conference or prior to a hearing, any or all parties should confer and consult with each other as often as may be necessary for the following purposes:

(1) To consider the factual and legal issues involved and to agree upon those items as to which admissions can be made.

(2) To prepare a list of all exhibits to be offered in evidence, numbered or lettered consecutively, and to note on each whether it may be offered without proof. Copies of all exhibits shall be made available to opposing parties. If any exhibits are known to exist or probably will be required but are not available at the time, the substance thereof must be disclosed to opposing parties, and numbers or letters shall be reserved for such exhibits. The exhibit list shall be filed with the presiding officer prior to the hearing or prehearing conference. Exhibits not submitted and marked in this manner shall not be admitted at the hearing unless the presiding officer is satisfied that their existence or the necessity of introducing them could not have been determined at the earlier stages referred to in this subsection.

(e) At a prehearing conference, the factual and legal issues will be reviewed, admissions agreed upon, exhibits agreed upon, and the parties shall make full disclosure of the theories which they intend to pursue at the hearing. Failure to make such disclosures may require exclusion at the hearing of any evidence relating to an undisclosed theory.

(f) The presiding officer may make an order reciting the action taken at the conference and the agreements made by the parties as to any of the matters considered and limiting the issues for the hearing to those not disposed of by admissions or agreements of the parties. Such order, when entered, shall control the subsequent course of action unless modified at the hearing to prevent manifest injustice.

(g) No application for continuance of a hearing will be considered unless accompanied by verified petitions setting forth compelling reasons, after notice to all parties. At the discretion of the presiding officer, it may be required that the petition be signed by and bear the endorsement of any of the real parties in interest.

Notes of Decisions

Department of Banking did not abuse its discretion when it refused to allow savings association to orally examine examiner at hearing, since savings association did not disclose request at prehearing conference or list examiner as a potential witness. *Pennsylvania Savings Association v. Department of Banking*, 523 A.2d 837 (Pa. Cmwlth. 1987).

§ 3.11. Hearing rules.

(a) *Presentation.* The presentation at hearings should conform with the following:

(1) *Opening statements.* The applicant and each protesting person may make opening statements of such length as the presiding officer may prescribe. Such opening statements shall concisely state what the participant intends to show. The applicant shall have the opportunity to present his statement first.

(2) *Applicant's presentation following the opening statements.* The applicant shall present his data and materials, oral or documentary.

(3) *Protesting person's presentation.* Following the presentation of the applicant, the protesting persons shall present their data and materials, oral or documentary. The protesting persons may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(4) *Summary of statements.* After all of the presentations set forth in this subsection have been concluded, the parties to the hearing may make short and concise summary statements reviewing their position. The applicant shall present his concluding summary statement last.

(5) *Procedure.* The provisions of this subsection supersede 1 Pa. Code §§ 35.121—35.128 (relating to hearing).

(b) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties. All witnesses will be present of their own volition, but any person appearing as a witness may be subject to questioning by any party, by any representative of the Department, or by the presiding officer. The refusal of a witness to answer questions may be considered by the Department in determining the weight

to be accorded the testimony of that witness. Witnesses shall not be sworn. The Department may call witnesses.

(c) *Evidence.* The presiding officer shall have the authority to exclude data or materials which he deems to be improper or irrelevant. Formal rules of evidence shall not apply to these hearings. Documentary material shall be of a size consistent with ease of handling, transportation and filing, and copies must be provided for each participant in the hearing, including assisting board members. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size, 8 1/2 inches by 11 inches, for submission as evidence. Two copies of all such documentary evidence shall be furnished to the Department, and one copy shall be furnished to each other person represented at the proceeding. At any time during the hearing, the presiding officer, any member of an assisting board, and any representative of the Department shall have the authority to ask questions in order to enable the Department to intelligently inquire into and reach an informed decision with respect to the application in question. The provisions of this subsection supersede 1 Pa. Code §§ 35.161—35.169 (relating to evidence).

(d) *Procedural questions.* The Department, presiding officer, or any designated member of an assisting board shall determine all procedural questions not governed by this chapter. The Department, presiding officer, or designated member shall each have the authority to limit the number of witnesses to be used by any party and to impose such time limitations as he shall deem reasonable. The provisions of this subsection supersede 1 Pa. Code §§ 35.127, 35.162 and 35.187 (relating to limiting number of witnesses; reception and ruling on evidence; and authority delegated to presiding officers).

(e) *Transcript.* A transcript of each hearing will be arranged for by the Department, with all expenses of such service, including the furnishing of two copies of the transcript to the Department, one copy to the applicant, and one copy to each member of an assisting board, being borne by the protesting persons or, in the case of a hearing ordered by the Department, being borne by the applicant. The provisions of this subsection supersede 1 Pa. Code §§ 35.131—35.133 (relating to transcript).

(f) *Record.* The hearing file shall automatically be deemed a part of the record of these proceedings, as well as all evidence submitted under subsection (c) and the transcript described in subsection (e).

§ 3.12. Closing the hearing file.

If requested by any party to the hearing, and approved by the presiding officer or designated member of an assisting board, the hearing file may remain open for five days following receipt of the transcript by the Department during which time the applicant and any protesting person may submit additional written statements. A copy of any statement so submitted during this period of time shall also be sent simultaneously to the other parties to the hearing.

§ 3.13. Briefs.

(a) The provisions of 1 Pa. Code §§ 35.191—35.193 (relating to briefs) shall be applicable to the extent they are not inconsistent with the provision of this section.

(b) Fifteen business days subsequent to receiving a transcript of the hearing, the applicant shall file its brief with the presiding officer and serve a copy upon each protesting person. Ten business days subsequent to receiving the applicant's brief, each protesting person shall file its brief with the presiding officer and serve a copy upon the applicant. Five business days subsequent to receiving the protesting persons briefs, the applicant may file and serve a reply brief. The presiding officer may extend the times for filing when, in his judgment the circumstances require such extension.

(c) Each party to the hearing shall furnish three copies of its brief to the Department and one copy to each other party and to each member of an assisting board.

(d) Briefs shall be on paper 8 1/2 inches by 11 inches.

§ 3.14. Retained authority.

The Department may adopt different procedures that it deems necessary and reasonable in acting upon a particular application.

§ 3.15. Departmental decision.

The applicant, protesting persons and their respective counsels will be notified of the final disposition of the application by the Department.

§ 3.16. Computation of time.

(a) In computing a period of days provided for in this chapter, the day of the act from which the period begins to run is not included. The last day of the period so computed shall be included if it is a business day. If it is not a business day, the period shall run until the end of the next business day.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

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