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CONVENIENCE AND ADVANTAGE IN SMALL LOAN LICENSING, A WORKABLE STANDARD

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Ten per cent of the nation's instalment credit needs is satisfied by state regulated lenders in an industry widely known as the small loan business and variously known as the personal loan, consumer loan or instalment loan business.[1] This large industry, which serves one out of six families and some 10,000,000 borrowers through almost 12,000 licensed offices, has come into being and flourished since World War I.[2] It satisfies a social need existing since the turn of the century. Once given the chance, legitimate capital employed under the direction of men of character and competence has driven the loan sharks from the field of every state in which an adequate small loan law has been enacted. The development of the industry, the metamorphosis of loan shark lending to regulated lending, is manifested not only by its size, but also by the confidence of investors and creditors, among whom are included many thousands of stockholders and holders of debt pieces including individuals in various walks of life, banks, insurance companies, pension trusts, charitable and religious institutions, mutual funds, labor unions and many others. One of the conditions for the issuance of a license in 32 states is a finding that it will *"promote the convenience and advantage of the community in which the business of the applicant is to be conducted."*[3] That provision has been criticized

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[1] The maximum loan under small loan legislation prior to Word War II was generally $300, which was 20 monthly payments multiplied by an ante World War I average weekly wage of $15. Advice of Jackson R. Collins, Esq., Counsel for Beneficial Finance Co. After World War II increased wages and decreased purchasing power of the dollar have been reflected by larger maximums; e.g., five statutes now have a maximum of $500, eight $600, three $800, seven $1000, three $1500 and four $2500. In 1959 the average small loan borrower borrowed about $450. Generally, statutory rates are adjusted to loan size to cover the high expenses of the business and to give the lender a fair return on his investment.

[2] M. R. Neifeld, Ph.D., authority on the small loan industry, author of many books on consumer finance and of money-lending articles in Encyclopedia Britannica.

[3] The standard form of licensing provision adopted in substance in the statutes of Ala., Alaska, Conn., Fla., Ga. (Industrial Loan Act), Haw., Ida., Ill., Ky., La., Md., Mich., Minn., Neb., Nev., N.H., N.J., N.M., N.Y., Ohio, Okla., Ore., Penna., R.I., S.C., Utah, Vt., Va., Wash., W.Va., Wisc., provides: "Upon the filing of such application * * * if the Commissioner shall find upon investigation (a) that the financial responsibility, experience, character and general fitness of the applicant * * * are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this Act, and (b) *that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted,* and (c) that the

as unworkable, the contention being that it contains no practical, workable standard. For that reason it is argued that administrators charged with the duty of passing on small loan license applications have not always applied the standard. The purpose of this article is to show that the convenience and advantage clause is workable.

STATUTORY BACKGROUND

The development of the industry reflects the fruitfulness of the efforts of the Russell Sage Foundation, after extensive research, to develop sound and effective small loan legislation in the United States through the publication of seven drafts of a model small loan law between 1916 and 1942. Prior to the fifth draft in 1932 any applicant could get a license by paying the licensing fee and satisfying ministerial requirements of the act. Thereafter, minimum capital requirements had to be satisfied and the regulatory authority was given the duty of investigating and passing upon the experience, character and fitness of the applicant and of determining whether the issuance of the license would promote the convenience and advantage of the community.[4]

The convenience and advantage clause was added because experience had shown that the capital invested in the field was not always well related to demand, with the result that there was too much service in some localities and too little in others. Also it had been found that the public interest was not well served where competition was too severe because it tended to bring on over-lending, harsh collection practices, excessive costs of doing business, failure of lenders to appreciate the social aspects of the legislation and an unwillingness to join trade associations to maintain high standards of lending.[5] "The legislative desideratum was not the mere restriction in the number of licenses, but rather the accomplishment of the well known objectives for which the act was passed."[6]

Objective treatment of the issue can be most conveniently attained

applicant has available for the operation of such business at the specified location liquid assets of at least twenty-five thousand dollars ($25,000) (the foregoing facts being conditions precedent to the issuance of a license under this Act), he shall thereupon issue and deliver a license to the applicant * * *." The Iowa Small Loan Act standard, although worded differently, is substantially the same. Iowa Code § 536.4 (1958). This article is concerned with the ability of an administrative official to apply the italicized language. Whether such a provision in a small loan statute is desirable is another question.

[4] The efforts of the foundation are noted in many of the small loan cases. In 1947 the trustees, feeling their objective in the small loan field had been accomplished, turned to other areas.

[5] Hubachek, Annotations on Small Loan Laws 53, n.7 (Russell Sage Foundation 1938).

[6] Kelleher v. Minshull, 11 Wash. 2d 380, 397, 119 P.2d 302, 309 (1941).

through the eyes of a regulatory authority, hereafter called the Commissioner, who is concerned only with the satisfaction of the statutory objective, the establishment and maintenance of a healthy small loan business. The governing statutes require the Commissioner to investigate the application. In a few of the states hearing procedures are provided if objections are filed by those entitled to notice. Whether there is a hearing or not, the scope of the inquiry is the same and if the convenience and advantage standard can be administered satisfactorily by the Commissioner, it is workable. The inquiry, then, is as to how he should approach a license application and what rules, regulations and procedures he may adopt, under his rule making power, to lighten his task.

A Legally Valid Standard

The Commissioner would be unjustified in feeling that there is any basic legal obstacle to workability. In every case in which the constitutional issue has been raised, it has been held that the typical statute furnishes a sufficiently definite guide and is not an improper delegation of legislative power.[7] Consequently, his concern is with the application of a valid standard.

Concern over the lack of definition of the standard, often expressed by the blind observation that no one knows what it means, should not be a stumbling block. A few unsuccessful attempts have been made by the courts to define similar standards in other statutes,[8] but no case has been found in which a complete definition of the small loan standard has been tried. However, it must be observed that it and similar standards have been applied satisfactorily without definition in cases involving small loan laws, banking statutes,[9] radio broadcasting[10] and public utilities.[11] To avoid mountain climbing over

[7] (Small Loan)—Kelleher v. Minshull, *supra*, note 6. Motors Acceptance Corp. v. McLain, 154 Neb. 354, 47 N.W.2d 919 (1951); Family Finance Co. v. Gaffney, 11 N.J. 565, 95 A.2d 407 (1953); (State Banking Acts)—Bank of Italy v. Johnson, 200 Cal. 1, 251 Pac. 784 (1926); Schaake v. Dolley, 85 Kan. 598, 118 Pac. 80 (1911); Weer v. Page, 155 Md. 86, 141 Atl. 518 (1928); Moran v. Nelson, 322 Mich. 230, 33 N.W.2d 772 (1948); State v. Securities Commission, 145 Minn. 221, 176 N.W. 759 (1920); Elizabeth Fed. Sav. & Loan Assoc. v. Howell, 30 N.J. 190, 152 A.2d 359 (1959), Pue v. Hood, 222 N.C. 310, 22 S.E.2d 896 (1942); (Community Currency Exchange)—Gadlin v. Auditor of Public Accounts, 414 Ill. 89, 110 N.E.2d 234 (1953).

[8] (Banking)—Moran v. Nelson, supra note 7; Planters Bank v. Garrott, 122 So. 2d 256 (Miss. 1960); State v. Securities Commission, supra note 7; (Utility)—Abbott v. Public Utilities Comm., 48 R.I. 196, 136 Atl. 490 (1927); On the difficulty of definition, see (Banks)—Bank of Italy v. Johnson, supra note 7; (Pawnbrokers)—Equitable Loan Soc. v. Bell, 339 Pa. 449, 14 A.2d 316 (1940).

[9] Stokes, "Public Convenience and Advantage in Applications for New Banks and Branches," 74 Banking L.J. 921 (1957).

[10] F.C.C. v. Pottsville Broadcasting Co., 309 U.S. 134 (1940).

[11] Hall, "Certificates of Convenience and Necessity," 28 Mich. L. Rev. 276 (1930).

ant hills, the judicial approach of turning from definition to application should be accepted.

Scope of Inquiry

One of the first questions the Commissioner must face is what convenience and advantage is to be served, which is another way of inquiring as to what base the standard is to be applied. The language of the standard directs concern to the interests of the public in the *community* in which the business is to be conducted. The word *community,* which bears a statutory definition in only two small loan acts,[12] is not *municipality* or *county* or *area*. The distinction is significant. The community concept, sound, in that it recognizes that the basic economic laws have little respect for municipal boundary lines. refers to a natural affinity to a particular place for a given purpose. For small loan purposes it includes a trade center and may take the form of a municipality, a portion of a municipality or a municipality and its environs. It has no predetermined size or shape. Its composition and extent, which may include territory in another state not subject to the Commissioner's jurisdiction, are questions of fact to be determined by the Commissioner.[13]

In passing on the extent of the "community" the Commissioner can get help from physical, economic and social indicators. The physical indicators are rivers, mountains, interstate highways and railway lines and other physical features which tend to divide the territory, box it in or otherwise make a geographical pattern. Some of the economic factors are the existence of an accessible trade center dominating minor or substantial trade centers, the accessibility of the center to the area it serves as evidenced by flow of traffic, public transportation, roads, mobility of those in the area, parking facilities, lenders normally served by creditors and lenders associations and any special status of the center

12 "'Community' means an incorporated town or city and may include the immediately contiguous area thereto or part thereof as determined by the superintendent. 'Community' may also mean an incorporated area of the same economic unity as determined by the superintendent." Ariz. Rev. Stat. Ann. § 6-601(2) (1956). "'Community' means a contiguous area of the same economic unit or metropolitan area as determined by the superintendent, and may include all or part of an incorporated city or several towns or cities." Nev. Rev. Stat. § 675.020(1)(c) (1959).

13 (Small Loan)—Family Finance Co. v. Gaffney, supra note 7; Household Finance Corp. v. Gaffney, 20 N.J. Super. 394, 90 A.2d 85 (1952), aff'd, 11 N.J. 576, 95 A.2d 412 (1953); (Bank—"locality")—Application of Howard Savings Institute of Newark v. Howell, 32 N.J. 29, 159 A.2d 113 (1960); (Bank—"Community")— Upper Darby Nat'l Bank v. Myers, 386 Pa. 12, 124 A.2d 116 (1956); (Bank—"village")—Wyandotte Sav. Bank v. Eveland, 347 Mich. 33, 78 N.W.2d 612 (1956); (Currency exchange—"community")—Cohn v. Smith, 14 Ill. 2d 388, 153 N.E.2d 83 (1958); Durschlag v. Smith, 14 Ill. 2d 549, 152 N.E.2d 828 (1958); Cf; State v. Dep't of Com., 245 Minn. 529, 73 N.W. 2d 790 (1955).

as, for example, that of a county seat. The social factors include tradition evidenced by nomenclature, trade associations, newspaper circulation, shopping habits, reliance on the center for services offered by professional men, hospitals, welfare and charitable institutions, major retailers, police and fire protection, local newspaper subscriptions and the like.[14]

After the Commissioner has measured the community and thereby determined the scope of the inquiry, his next step is to test for strength. Since the court decisions passing on the administrative action usually lump all the factors involved in the determination of the community and its strength in their recital of the facts,[15] a break-down of the tests will be helpful. For convenience, the component parts of the measure will be called quantitative (how much), comparative (how does it stack up) and qualitative (how good is it and where is it going).

Tests Employed

The quantitative test is the bulk, surface impression. Its items are the population of the community broken down to the portion of each municipality included within the community, the number of family units, the kind and size of industry, size of industrial payroll, the number and classification of industrial workers, the number of retail, service and professional establishments, their description and size, retail sales statistics, wholesalers, jobbers, distributors, pedestrian and motor vehicle traffic counts, the number and location and volume of business of small loan lenders, banking outlets of all kinds and other credit service establishments. Changes in the boundary lines of the municipalities in the community within the past decade will have a bearing on the data relating to those municipalities. The quantitative measure also includes information with respect to the composition of the population such as the location of their residential areas, average

[14] Cf., discussion of pertinent factors in cases cited supra notes 7 and 13. In a case involving good will, a negative covenant with a 25-mile radius was held reasonable, S. C. Finance Corp. v. Westside Finance Co., 113 S.E.2d 329 (S.C. 1960); in a case turning on mutuality, an employment contract with a negative covenant applicable to a 50-mile radius was upheld, Coe & Co. v. Douglass, 334 Ill. App. 195, 78 N.E.2d 818 (1948); negative covenant in employment contract with area limitation to "any city or the environs or trade territories in which he had been located or employed" held reasonable in Personal Finance Co. v. Hynes, 130 Neb. 547, 265 N.W. 541 (1936); contra, where area reasonableness is affected by time element (Baltimore City trading area), Tawney v. Mutual System, 186 Md. 508, 47 A.2d 372 (1945).

[15] See, supra notes 7, 13; Household Finance Corp. v. State, 40 Wash. 2d 451, 244 P.2d 260 (1952); S.C. Board of Bank Control v. Fidelity Finance Co., 113 S.E.2d 544 (S.C. 1960); Suburban Bank v. Jackson Co. State Bank, 330 S.W.2d 183 (Kan. City Ct. App., Mo. 1959); Wall v. Fenner, 76 S.D. 252, 76 N.W.2d 722 (1956); Planters Bank v. Garrott, *supra* note 8.

yearly income for the various groups, the number of people locally employed as opposed to the number of commuters, the nature of the employment by classification and other related matters.

If the application is for a location in a developed shopping center or one under construction, additional quantitative information is required. The Commissioner, after having found the extent of the community to be attributed to it and as part of its testing, will have to determine whether it has been completely leased, who the tenants are, the available retail floor space, the estimated retail sales for the center, the area the developers believe it will serve, how far it is towards completion, the opening date if not open, parking facilities, location of any competing shopping centers, its ability to compete successfully with established municipal trade centers, and in the case of a center under construction, whether its financing has been completed.

The comparative measure is an effort to gain knowledge of current strength by matching the various elements of the community for given periods with itself and with similar communities. It involves comparisons with prior years and the current years of the same and similar communities on population data, average yearly income, retail sales, building as evidenced by commercial and residential building permits, postal statistics, bank deposits, bank resources and check clearances, development of industries, issuance of business licenses, school population, police and fire department personnel, and other facts from which significant comparisons can be made. Both population and retail sales for the municipality in which the principal trade center for the community is located should be checked against the same data for the county and state and for the same periods in those cases where the trade center does not so dominate the county or state as to make the calculation of little value. The number and outstandings of the small loan companies, credit unions, personal loan departments of banks, and sales finance companies in number of debtors and dollars, and the ratios of number of debtors and their respective credit service agencies to the population of the community when checked against similar data for comparable communities will be helpful in determining the adequacy of existing credit service.

The qualitative measure represents consideration of the future prospects of the community, the kind of service needed and the service which the applicant desires to offer. Any attempt to prognosticate is based on a look at the past and opinions on the future. The results of the comparative test, which may be expressed in percentages and ratios for convenience in appropriate instances, will be the basis for

that portion of the evaluation of the past as indicative of where the community is going. In addition, in those states where adequate annual reports of the small loan lenders are filed, a study of the reports for a reasonable period in the past will show whether the business in the community has been profitable. Changes in ownership of lenders may be significant in the service available as would be the case where a small lender had been acquired by a more powerful and aggressive interest. The statistical data usually can be sweetened by a description of the changes in facilities such as parking lots, the entry into the community of large and modern retail and service outlets and the development of specific industrial facilities. Such data will show the stability and direction of the economy of the community in the recent past.

The evaluation of the past can be supplemented by the expert opinions and opinions of others for the future evidenced by action taken or proposed to be taken. The inquiry will consider, among other things, data developed by Boards of Education in connection with future school needs, projections by utility companies, expansion plans of established industry, new industry and retail establishments intending to locate in the community in the near future, municipal action taken to encourage development in the form of zoning changes and parking authorities, surveys of the area made by governmental agencies and plans for housing developments, apartment houses and shopping centers. These factors will give the Commissioner a basis to determine whether the pattern of the past is likely to continue.

The kind of service needed and the kind of service the applicant desires to offer is the final aspect of the qualitative test.[16] As a part of the over-all consideration of the application, the Commissioner will want to know something about the service the applicant is prepared to render. The applicant should be required to indicate whether he will give a full loan service by making all of the types of loans contemplated by the statute, whether he has any policies with respect to the kind of risk to be covered, maximum loan and maturity or limitation on aggregate dollar amount of unpaid balances to be outstanding at any one time, and types of borrowers to be served.[17] If the applicable statute and regulations permit a licensee to

[16] Character, fitness, experience, and minimum capital are covered by other subsections of the licensing provision.

[17] If more than one application is pending and only one can be issued, an applicant not having priority in time may argue for preference because its service is superior. In two cases not involving the priority question, the reduced rate issue was presented, Household Finance Corp. v. Gaffney, supra note 13 (by inference, not to be considered) and Personal Finance Co. v. Lyon, 203 Misc. 710, 121 N.Y.S.2d 72 (Sup.

render additional service to local retail and service establishments by purchasing time paper, the applicant should be required to indicate whether he intends to engage in such activity. Also the Commissioner will expect an estimation from a qualified source of the size to which the office can be expected to grow and the capacity of the applicant to satisfy those expectations.

The foregoing indicates that quite a lot is expected of the Commissioner. Unfortunately, there is no known licensing formula or rule of thumb which can be used as a short-cut to avoid the necessity of developing evidence to be used in passing on the application.[18] However, he has it within his means to do the job well and the talents of an economist are not required. In the first place it is fitting and it is his duty, either personally or acting through a deputy, to provide an on-the-spot inspection of the location of the licensee, and of the community.[19] The investigation can include visits and discussions with various state and county departments such as those dealing with labor, education, highways, welfare and conservation. Additional contacts can be made with municipal authorities, the chamber of commerce, real estate agents, librarians, newspaper offices, the postmaster, utilities officials, railroad and trucking agents and others in sensitive positions in the community. The fact gathering effort, which will reveal most of the pertinent factors applicable to the community, can be supplemented by reference to financial data compiled in official records of the Commissioner's department and other related state agencies, to the census reports covering population and business and to standard publications containing economic statistical data. Additional information usually will be turned up by the survey, which often takes the form of market analysis reports

Ct. 1953) (no error to consider with other factors). Both cases recognized the impropriety of the Commissioner in issuing a license conditioned on the use of a rate lower than the statutory maximum.

[18] Two formulae, the Sullivan formula (the estimated number of actual borrowers is determined by multiplying the population base by .0936 and the estimated loan capacity is calculated by multiplying the result by the amount of the average outstanding loan—the N.J. administrator maintained statistical data so the borrower ratio can be adjusted to changing conditions consistently with the principles of the study) and a Retail Sales formula were covered in Household Finance Corp. v. Gaffney, supra note 13. The former could be considered because in its application it weighed many factors in addition to a mathematical computation. The latter was insufficient. In S.C. Board of Bank Control v. Fidelity Finance Co., supra note 15, reference is made to a population ratio formula, but there is no consideration of its validity. A regulation setting up a population ratio licensing formula probably would be void. Cf., City of Colorado Springs v. Graham, 352 P.2d 273 (Colo. 1960); Gross v. N.Y.C. Alch. Bev. Con. Bd., 7 N.Y.2d 531, 166 N.E.2d 818 (1960).

[19] The statutes require the Commissioner to investigate the application. See, Application of State Bank of Plainfield, 160 A.2d 299 (N.J. App. Div. 1960).

prepared for a local purpose, surveys made by local Boards of Education, projections made by utilities for future service and shopping center brochures. A great deal of additional pertinent data can be obtained from the applicants and those affected by the application if appropriate rules and regulations are adopted.

Aside from the ability of the Commissioner to go out and get first hand information and the availability of a great deal of pertinent statistical information on file in his office in the form of official records and publications with statistical data, there is considerably more that he can do to lighten his burden. Even though prior determinations involving the same community or parts of it are not res judicata and each subsequent application must be decided on its own facts,[20] prior determination and their records can be made part of the record where it is convenient to do so, and in such case the interested parties should be given an opportunity to examine the prior record and express themselves in a hearing or by written memoranda before the decision on the application.[21] Within the department itself much can be done to get uniformity and efficiency of effort. For example, preparation of standard forms for surveys covering the many sources of information in which the Commissioner will be interested and the statistical data compilation to be used by Commissioner's department will insure complete coverage and will save time. Such standard forms, when completed and signed by the person doing the work, can be made a part of the record. The application form itself can require the applicant to attach maps showing the location for which the license is sought, the location of existing credit facilities and the extent of the community. With the assistance of the Attorney General a model record and opinion, covering substantive matters and satisfying the general procedural requirements of the state, as well as any particular requirements of the small loan act, can be prepared for guidance. The rules and regulations[22] can specify in general terms the data to be considered in license applications. In those states and under those conditions where hearings are not conducted, a regulation can be adopted requiring applicants to file memoranda covering the information called for in regulations and such other material they care to bring to the attention of the Commissioner. If the statute does not give other small loan lenders who might be affected an opportunity to express themselves, the regulation can provide for notice to the

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[20] Davis, Administrative Law, §§ 10.01-10.06 (1959).

[21] Family Finance Co. v. Gough, 10 N.J. Super. 13, 76 A.2d 82 (1950); Planters Bank v. Garrott, supra note 8.

[22] The statutes give the Commissioner rule making and regulation powers.

small loan lenders in the community and can permit them to file memoranda with respect to their position. Organization of the investigative effort together with the encouragement of the various interested parties in a license application to participate makes for better development of the facts and lightens the administrative load.

Generally, provisions in statutes requiring an application to be acted on within a specified time present no obstacle. A well organized effort normally will enable the task to be performed within the time limits. In those instances where unforeseen difficulties arise or where the Commissioner is confronted with a large number of pending applications, he can spend more time, because the limits are directory rather than mandatory[23] and the furtherance of the public interest justifies the spending of such additional time as might be required.

Obviously, advance preparation in the form of internal organization and rules and regulations designed to elicit information from the applicant and other interested persons can make life easier for the Commissioner.

Applicable Rules

The Commissioner, after having limited the scope of the inquiry by his determination of the size of the community and after having tested it in the various ways mentioned, in preparation for making a decision will have to keep in mind a number of general rules. A license must be issued on the existence of a present condition and while the future prospects of a community must be considered in evaluating it qualitatively, the license cannot be issued solely on the basis of a trend or a hope, because "A 'trend' may change its direction at any time."[24] Although a license should be issued to a qualified applicant if existing small loan service is inadequate, it does not follow that the license should not be issued if the service is adequate.[25] Healthy competition is desirable and the intent of the legislation was not to foster monopoly.[26] In the course of his deliberation he must keep in mind the general objective, which is the creation and maintenance of small loan service, soundly competitive, but in keeping with demand.

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[23] Cf., Carrigan v. Ill. Liquor Control Comm'n, 19 Ill. 2d 230, 166 N.E.2d 574 (1960). The Idaho, Ky., Nev., N.M., and S.C. statutes provide for enlargement of the time for passing on an application by agreement between the Commissioner and applicant. Such provision should be construed as directory rather than mandatory, because a contrary conclusion would frustrate the regulation contemplated by the Act.

[24] Household Finance Corp. v. Gaffney, supra note 13, citing N.J. Bell Tel. Co. v. Com. Workers, 5 N.J. 354, 75 A.2d 721 (1950).

[25] Cf., Application of Howard Sav. Institute of Newark v. Howell, supra note 13; Moran v. Nelson, supra note 7; Suburban Bank v. Jackson Co. State Bank, supra note 15; Planters Bank v. Garrott, supra note 8.

[26] Household Finance Corp. v. Gaffney, supra note 13.

Aside from the legal rules, the Commissioner will recognize some limitations on the services offered by competing credit agencies. In view of the aggressiveness, in the small loan field, of personal loan departments of banks as reflective of management policy, and in view of the statutory limitation on the maximum loan small loan companies can make, bank personal loan service varies considerably from place to place. Traditionally, banks and small loan companies do business in different risk areas, but the post World War II development of the personal loan departments of banks reflects more and more overlapping of service. In evaluating bank outstandings it must be borne in mind that the accounting of banks is not uniform and in their personal loan outstandings other types of credit frequently are covered. Credit unions extend credit not only to the type of borrower served by small loan companies, but to those in a higher income group.[27] Also the members of a credit union may be identified with a special group rather than with the community such as the employees of a named company, many of whom may commute to work from other communities. Sales finance companies, which purchase time paper, indirectly satisfy only a small part of the credit needs of small loan borrowers, because the greatest use of small loan credit is not to obtain cash for purchases, but rather to consolidate and amortize on an orderly basis debt already incurred.[28]

The Decision

With the legal and economic ground rules in mind and after considering all the data developed,[29] the Commissioner must decide whether to approve or disapprove the application. Although the courts have held that the factors previously mentioned may be considered, no court has ever attempted to list all the appropriate factors. The Commissioner may consider any which have probative value, including testimony or material submitted by qualified experts offered by any interested party, and generally he is not bound by common law rules of evidence or procedure. He is not required to assess or weigh each item nor must he make a decision with mathematical

[27] In 1958, 44% of all U.S. spending units earned $4,000 or less, Fed. Res. Bul., July 1959, p. 713, Sup. Table I. Credit Unions made 11% of their loans to borrowers having $4,000 or less annual income, University of Michigan Research Center, Study 640, Table D-32. Small loan companies make approximately 45% of their loans to borrowers making $4,200 or less per annum, Neifeld, supra note 2.

[28] Approximately 65% of all small loans are made to consolidate debts, Neifeld, supra note 2.

[29] An interested party may file petitions or affidavits urging the approval of the application. While they are to be considered, generally they do not carry great weight. Cf., Durschlag v. Smith, supra note 13, State v. Dept. of Com., supra note 13.

precision.[30] His mental processes by which the conclusion is reached need not be indicated in the record or made the subject of findings. In support of the administrative process, the courts have held consistently that the finding will be upheld if supported by substantial evidence.[31] In those cases where hearings are required, interested parties must have been apprised of surveys and data which are to be made part of the record as well as any formula or rule of thumb which may be applied. The final decision of the Commissioner, which is his answer after weighing all the factors in the light of his experience and knowledge, must reflect a consideration of the evidence developed with respect to the application and the record should indicate the evidence supporting the decision. The Commissioners who have applied the convenience and advantage standard do not appear to have had any difficulty in making the record.

The limited review together with the presumption of regularity attending the administrative effort[32] and the development of the rule in those cases where hearing procedures are involved that the applicant bears the burden of showing that the license should have been issued certainly tends to discourage appeals. The decided cases generally support the administrative action. The rules of law and action of the courts effectuate the legislative intention calling for the exercise of an informed discretion. In such a legal climate it can hardly be said that the convenience and advantage standard is unworkable because it results in undue appellate activity.

While there may be those who would question the desirability of the convenience and advantage clause, there can be no doubt that it is a workable standard which a Commissioner can apply effectively.

[30] Household Finance Corp. v. Gaffney, supra note 13; S.C. Board of Bank Control v. Fidelity Finance Co., supra note 15.

[31] Family Finance Co. v. Gaffney, supra note 7; Household Finance Corp. v. Gaffney, supra note 13; Household Finance Corp. v. State, supra note 15; Kelleher v. Minshull, supra note 6; S.C. Board of Bank Control v. Fidelity Finance Co., supra note 15; Planters Bank v. Garrott, supra note 8; Cooper, Administrative Law: The "Substantial Evidence" Rule, 44 A.B.A.J. 945 (1958).

[32] Family Finance Co. v. Gaffney, supra note 7; Wall v. Fenner, supra note 15.