

ARKANSAS DEPARTMENT OF HUMAN SERVICES,  
et al. v. GREENE ACRES NURSING HOMES, INC.,  
Extendi-Care, Inc., et al.

88-102

757 S.W.2d 563

Supreme Court of Arkansas  
Opinion delivered October 10, 1988

1. APPEAL & ERROR — MOOTNESS — WHERE APPELLANT LICENSED THE ADDITIONAL BEDS IN THE ABSENCE OF A COURT ORDER, THE ISSUE AS TO THAT APPELLEE WAS MOOT. — Where the appellant appealed an order of the circuit court holding that Act 40 of 1987, which placed a moratorium on licensing of additional nursing home beds, did not apply to applications filed during the pendency of Act 593 of 1987, but where appellant inspected and approved one appellee's additional beds even though the trial court stayed the part of its order requiring the State to inspect and license the facilities, the appeal was moot with respect to that appellee, and that part of the appeal was dismissed.
2. ADMINISTRATIVE LAW & PROCEDURE — AGENCY INTERPRETATION OF STATUTES — AFFORDED GREAT DEFERENCE ALTHOUGH NOT BINDING. — On appeal, agency interpretations of statutes are afforded great deference, even though they are not binding.
3. LICENSES — REQUESTS FOR ADDITIONAL BEDS FOR EXISTING NURS-

ING HOMES — EVEN WHERE APPLICATION FOR A LICENSE WAS COMPLETE UNDER ACT 593 OF 1987, SINCE NO LICENSE HAD BEEN GRANTED PRIOR TO THE EFFECTIVE DATE OF ACT 40 OF 1987, ITS ISSUANCE WAS PROHIBITED DURING THE MORATORIUM. — Where Act 593 of 1987 dispensed with the requirement of obtaining a permit of approval for nursing homes having an associated capital expenditure of less than \$500,000, but did not abolish the license application procedure, and where Act 40 of 1987 imposed a moratorium on licenses for additional beds, although the appellee submitted its application during the effective dates of Act 593 and qualified for the exception to the permit of approval requirement, since no license for that application had been granted prior to the effective date of Act 40, even if its application for a license was complete under Act 593 for purposes of processing and review, the issuance of the license was prohibited during the effective dates of the moratorium.

4. STATUTES — ACT 40 OF 1987 — NO RETROACTIVE APPLICATION WHERE LICENSES SUBMITTED PRIOR TO ENACTMENT WERE DENIED. — That Act 40 results in the denial of licenses with respect to applications submitted prior to its enactment does not mean that it is being applied retroactively.
5. LICENSES — ACT 40 OF 1987 — THE ACT DOES NOT APPLY ONLY TO THE REVIEW AND ISSUANCE OF PERMITS OF APPROVAL AND IS APPLICABLE TO THE LICENSURE OF PROJECTS. — Act 40 of 1987 does not apply only to the review and issuance of permits of approval and is applicable to the licensure of projects.

Appeal from Greene Circuit Court; *David Burnett*, Judge; dismissed in part and reversed and remanded in part.

*Breck G. Hopkins*, Deputy Gen. Counsel, and *Richard B. Dahlgren*, Asst. Gen. Counsel, Dept. of Human Servs., Office of Gen. Counsel, for appellant.

*Mooney & Boone*, for appellee Extendi-Care, Inc.

*Branch, Thompson & Philhours*, *A Professional Association*, by: *Robert F. Thompson*, for appellee Greene Acres Nursing Homes, Inc.

ROBERT H. DUDLEY, Justice. This is an appeal from a circuit court judgment reversing the decision of an administrative agency, the Long Term Care Facilities Advisory Board. We hold the appeal is moot as to Greene Acres Nursing Homes, Inc. and reverse the circuit court's judgment as to Extendi-Care, Inc.

A brief history of the legislation involved is helpful in understanding the issues. Act 593 of 1987 (Regular Session) became effective on April 4, 1987. Prior to that date, it was necessary to obtain a certificate of need from the State Health Planning and Development Agency before a nursing home could be constructed, expanded, or altered. With the enactment of Act 593, it was no longer necessary for a nursing home to obtain a permit of approval for an associated capital expenditure of less than five hundred thousand dollars (\$500,000). On June 19, 1987, Act 40 of 1987 (1st Extraordinary Session) went into effect. It placed a moratorium on the licensing of additional nursing home beds. There are certain exceptions to the moratorium, none of which are pertinent to this appeal.

Appellees, Greene Acres Nursing Homes, Inc. and Extendicare, Inc., submitted applications for licenses to add beds to their nursing home facilities after Act 593 (Regular Session) became effective but before the effective date of the Act 40 (1st Extraordinary Session) moratorium. The amounts of capital expenditure associated with their proposed expansions brought them within the \$500,000 or less exception of Act 593. However, appellees were notified by letters dated July 20, 1987, that their applications would be reviewed in conformance with the law in effect at the time of the review, that is, Act 40 of 1987.

Appellees and over seventy other similarly situated applicants requested a hearing before appellant, the Long Term Care Facilities Advisory Board. One hearing for all of the applicants was held on September 17, 1987. By letter of October 19, 1987, the Chairman notified the applicants that all applications would be reviewed individually applying the law in existence at the time of the review, that is, Act 40. The letter also specifically designated that it was final agency action for purposes of judicial review.

Appellees petitioned for judicial review in circuit court. The case was heard on January 4, 1988, and the circuit court reversed the agency action holding that Act 40 did not apply to applications filed during the pendency of Act 593. That holding was in error.

[1] Before discussing the reason that holding was in error, we dispense with the mootness issue raised by appellee Greene



permit of approval requirement. However, even if its application for a license was complete under Act 593 for purposes of processing and review, a license for that application still had not been granted prior to the effective date of Act 40. The clear language of Act 40 prohibits the issuance of licenses during the effective dates of the moratorium. The fact that Act 40 results in the denial of licenses with respect to applications submitted prior to its enactment does not mean that it is being applied retroactively. Rather, Act 40 is being applied from and after its effective date of June 19, 1987, to impose the legislatively mandated moratorium.

[5] We also reject appellee's argument that Act 40 applies only to the review and issuance of permits of approval and that it is not applicable to the licensure of projects. In doing so, we again need only turn to the clear language of the Act, "nor shall there be any additional beds *licensed* for . . . nursing homes . . . in this State."

We dismiss in part and reverse and remand in part to the trial court for proceedings in accordance with this opinion.

---