IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01166 COA

MID-DELTA HOME HEALTH INCORPORATED AND MID-DELTA HOME HEALTH OF CHARLESTON — **APPELLANTS**

v.

MISSISSIPPI ASSOCIATION FOR HOME CARE, CONTINUE CARE HOME HEALTH, INC., CONTINUE CARE HOME HEALTH, II, INC., TRI-COUNTY HOME HEALTH CARE OF MISSISSIPPI, STA-HOME HEALTH AGENCY, INC. OF GRENADA, AND ALEXANDER'S HOME HEALTH AGENCY, INC. — **APPELLEES**

CONSOLIDATED WITH

NO. 95-CA-01222 COA

MISSISSIPPI STATE DEPARTMENT OF HEALTH — **APPELLANT**

v.

MISSISSIPPI ASSOCIATION FOR HOME CARE, CONTINUE CARE HOME HEALTH, INC., CONTINUE CARE HOME HEALTH, II, INC., TRI-COUNTY HOME HEALTH CARE OF MISSISSIPPI, STA-HOME HOME HEALTH AGENCY, INC., OF GRENADA AND ALEXANDER'S HOME HEALTH AGENCY, INC. — **APPELLEES**

CONSOLIDATED WITH

NO. 96-CA-00231 COA

MID-DELTA HOME HEALTH INCORPORATED AND MID-DELTA HOME HEALTH OF CHARLESTON — **APPELLANTS**

v.

MISSISSIPPI ASSOCIATION FOR HOME CARE, CONTINUE CARE HOME HEALTH, INC., CONTINUE CARE HOME HEALTH, II, INC., TRI-COUNTY HOME HEALTH CARE OF MISSISSIPPI, STA-HOME HEALTH AGENCY, INC. OF GRENADA, AND ALEXANDER'S HOME HEALTH AGENCY, INC. — **APPELLEES**

DATE OF JUDGMENT:	10/09/95
TRIAL JUDGE:	HON. WILLIAM HALE SINGLETARY
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	RICKY L. BOGGAN
	LAURA TEDDER
	MICHAEL B. WALLACE
	JAMES W. CRAIG
ATTORNEYS FOR APPELLEES:	ROBERT N. WARRINGTON
	L. CARL HAGWOOD
	VINCENT CARRACI
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES (OTHER THAN WORKER'S COMPENSATION)
TRIAL COURT DISPOSITION	COURT ENJOINED MID-DELTA FROM OPERATING UNDER LICENSURE
DISPOSITION:	AFFIRMED - 10/7/97
MOTION FOR REHEARING FILED:	10/21/97
CERTIORARI FILED:	
MANDATE ISSUED:	5/14/98

BEFORE McMILLIN, P.J., DIAZ, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

This suit was brought by various competitors of a home health care company to enjoin that company's use of a license granted in 1994 by the State Department of Health. The licensee, Mid-Delta Home Health, Inc., was allowed to operate in 16 counties in addition to the 6 in which it had operated since 1981. The Chancery Court of Hinds County enjoined any enlargement of Mid-Delta's operating area, relying on a statutory moratorium prohibiting the regulatory agency from expanding currently approved territory. Mid-Delta appeals and argues that the statutory moratorium only applies to certificates of need and is inapplicable to the license authority that it was granted. We find that the moratorium limits licenses and affirm the chancery court.

STATEMENT OF FACTS

Beginning in 1979, home health care companies were required to obtain state approval to operate. 1979 Gen. Laws Miss. ch. 45, § 3, codified as Miss. Code Ann. § 41-7-191 (Rev. 1993). One year before that statute, the home health care company that is the focus of this litigation was formed. That

company, Mid-Delta Home Health, Inc., was headquartered in Belzoni. The 1979 statute did not require pre-existing home health companies to obtain certificates of need. The Belzoni office therefore has no formal certificate of need document from the State.

In 1980 Mid-Delta wished to open an additional office. It submitted an application for a certificate of need to establish Mid-Delta Home Health of Charleston, Inc., which would serve Tallahatchie County. At the May and June 1980 meetings of the Mississippi Health Care Commission (now these duties are conducted by the Mississippi Department of Health), Mid-Delta's application was discussed and ultimately approved. At the June meeting the minutes reflect "discussion by Commission members regarding the 50-mile radius the home base was authorized to encompass upon approval of any such application and the duplication of services resulting from this provision." At the January 15, 1981 meeting, the Health Care Commission voted that the "catchment area" for home health companies would be a "50-mile radius from the office and would include all of the counties in which 50 percent or more of the county fell within that radius."

From 1979 through 1981, home health companies only had to obtain a certificate of need. By legislation adopted in 1981, home health companies also had to obtain licenses. 1981 Gen. Laws Miss. ch. 484, § 2, codified at Miss. Code Ann. § 41-71-3 (Rev. 1993). The relationship between certificates of need and licenses will be discussed below, but in substance a certificate of need was required for the start-up and for substantial changes in a health care facility: establishment, relocation, enlargement, substantial capital expenditures, adding of services, and change of ownership. Miss. Code Ann. § 41-7-191 (1) (Supp. 1997). The separate licensing process required annual applications by the home health company that provided "such information as the agency shall require." Miss. Code Ann. § 41-71-5 (Rev. 1993). The application form required the home health company to show current details on the company, including locations in which it was then actually serving patients. Both authorizations were needed after 1981. The license itself names the specific counties in which the holder of the certificate of need may provide services.

After the licensing law became effective, Mid-Delta submitted applications for licenses covering their Humphreys (Belzoni) and Tallahatchie (Charleston) offices. What exactly Mid-Delta requested is disputed. Mid-Delta states that it applied for licenses for all counties within a 50-mile radius of the Belzoni and Charleston offices. Had such licenses been granted at the time, there would have been no lawsuit today. Instead, Mid-Delta was not granted a license on the 22 counties within a 50-mile radius of the Charleston and Belzoni offices, but received licenses on 6 counties.

Credible and basically unrebutted evidence was presented that the Health Care Commission did at times grant licenses that explicitly covered all of the 50-mile radius and at other times did not. Many such requests were informal and unrecorded. Mid-Delta continued its efforts over the next decade to acquire the additional license authority that it desired. Most of these contacts were telephone calls to the licensing agency.

What Mid-Delta had to overcome in that campaign for broader explicit authority was the statute adopted in 1983 that reflects a conclusion by the legislature that the home health care needs of the state had already been adequately met by existing companies. All parties refer to the statute as a moratorium. It provides the following:

The Department of Health shall not grant approval for or issue a Certificate of Need to any person

proposing the establishment of, or expansion of the currently approved territory of, or the contracting to establish a home office, subunit, or a branch office within the space operated as a health care facility as defined in Section 41-7-173(h)(i) through (viii) by a health care facility as defined in subparagraph (ix) of Section 41-7-173(h).

Miss. Code Ann. § 41-7-191(10) (Supp. 1997).

Counsel was finally employed by Mid-Delta in 1994. Counsel's efforts succeeded in having an Attorney General opinion issued on November 8, 1994. This opinion was as follows:

1. If an application by an existing home health company had been properly submitted to the Health Care Commission prior to the moratorium, but never acted upon, that application should be evaluated in 1994 by the pre-existing, pre-moratorium law;

2. The Department of Health may grant the request for licensing, "provided the law and regulations in effect at the time of the request [pre-moratorium] would have allowed so."

After receiving the Attorney General opinion, the Department of Health sent a letter on December 30, 1994 to Mid-Delta. The letter notified Mid-Delta that its request for approval of licenses to include the additional counties, a request that the Department of Health considered to have been pending since 1981, would be approved.

What is pending before this Court are three consolidated appeals of suits that were filed soon after Mid-Delta received this approval. The Mississippi Association for Home Care, called "an Association of Home Health Agencies," filed suit to enjoin the granting of this license. Subsequently five competing home health companies filed a separate action against both Mid-Delta and the Mississippi Department of Health. By order of July 19, 1995, the chancery court granted a partial summary judgment to the plaintiffs and held that the moratorium statute precluded the granting of a license for new areas regardless of whether the application had been pending prior to the moratorium. A hearing was held on the remaining issue, namely, of whether factually there had been a granting of the license before the 1983 moratorium and the formal record was missing or never existed. After hearing evidence the chancellor found that in fact the license for all 22 counties had never been granted. The court enjoined Mid-Delta from operating in the 16 additional counties, but also granted a partial stay of the order so that Mid-Delta could continue to care for current patients in those counties. Mid-Delta appealed both from the original order and from the denial of a motion for reconsideration of the partial stay order.

Finally, Mid-Delta filed a motion to vacate and dismiss based on the argument that the chancellor had no jurisdiction to review this licensing decision. Mid-Delta relied on a then-recent supreme court case dealing with appellate review of casino licensing decisions. That motion was denied, and an appeal was taken from it as well.

All three appeals have been consolidated and will be resolved here.

DISCUSSION

A. STANDARD OF REVIEW

Considerable dispute exists between the parties regarding the nature of the proceedings in the chancery court and our corresponding review obligations.

Mid-Delta cites the well established principle that great discretion is given to administrative agencies. Their decisions are not retried de novo on appeal either in a trial court sitting as an appellate court, or in the traditional appellate courts. *Mississippi Public Service Commission v. Columbus & Greenville Railway Company*, 573 So. 2d 1343, 1346 (Miss. 1990).

The plaintiffs did not initially appeal from the administrative decision to grant additional licenses. Instead, they filed for an injunction in chancery court against the Department of Health as well as Mid-Delta. As an alternative source of jurisdiction, however, the plaintiffs sought to have their action construed as an appeal under a statute that permits appeals from a final order "pertaining to Certificates of Need." Miss. Code Ann. §41-7-201 (Rev. 1993). That appeal section permits any person affected by the certificate of need, including someone who is not a party in the administrative action, to be made a party in order to bring an appeal.

Mid-Delta states the proper statutory authority was a section dealing with appeals from licensing decisions, not certificate of need decisions. Miss. Code Ann. §41-71-11 (Rev. 1993). That statute is structured so that only applicants and other participants in the licensing proceeding can bring an appeal. It also states that the appeal is to be brought by a person aggrieved "after a hearing."

There was no hearing in the 1994 administrative procedures at the Mississippi Department of Health. Instead, Mid-Delta through phone calls, letters, and meetings with a variety of state agencies, including the Attorney General's Office and the Department of Health, received the letter of December 30, 1994, which both sides on this appeal treat as evidence of the final agency action. That letter states that Mid-Delta has brought a "novel request" which "prompted an extensive review of the records" of the relevant health care agencies. This novel request was to consider an application filed in June of 1981 as still pending. The Department agreed with Mid-Delta and told it to contact the director of the Division of Health Facilities Licensor and Certification "to begin the process necessary to amend your licensed service area. . . ."

We conclude from this review that the State Department of Health is entitled to deference in its decision making. However, there were no contested proceedings at which any of the parties objecting to Mid-Delta's license could present their arguments. This was a series of contacts by Mid-Delta seeking in essence a *nunc pro tunc* license that would reflect what in Mid-Delta's view they always had except on paper. To the extent the agency made conclusions regarding the meaning of its own statutes, those conclusions are entitled to deference. The only facts included in the letter notifying Mid-Delta that it would be granted an expanded license were statements regarding what was discovered in the state agency's own records and the effect of certain other matters not being found in those same records. Such findings regarding the internal operations and record keeping of the agency will receive the same respect as are the previously mentioned conclusions about the statutes that the agency administers.

Since there was no hearing, the statute for appeals from licensing "hearings" is not applicable. Miss. Code Ann. §41-71-11 (Rev. 1993). What is applicable is the general authority cited by the

contestants that when "injured parties do not have a full, plain, complete and adequate remedy of law, the chancery court has jurisdiction for judicial review of the actions of such board or agency." *Charter Medical Corp. v. Mississippi Health Planning and Development Agency,* 362 So. 2d 180, 182 (Miss. 1978).

We agree with Mid-Delta that to the extent the State Department of Health made findings or interpreted statutes, those findings are given deference, not the opinion of a trial judge sitting as a reviewing court. *Mississippi State Department of Health vs. Mississippi Baptist Medical Center,* 663 So. 2d 563, 574 (Miss. 1995). Mid-Delta argues that the chancellor's decision is entitled to little deference for another reason: it was an adoption of the proposed findings and conclusions submitted by the plaintiffs. The adoption of the prevailing party's proposed findings "is within the Court's sound discretion." *Rice Researchers, Inc. v. Hiter,* 512 So. 2d 1259, 1266 (Miss. 1987). "Case complexities and crushing caseloads necessitate substantial reliance upon the submissions of trial counsel." *Id.* The appellate court must assure itself "that the trial court has adequately performed its judicial function" by making an independent review of the record before it, while merely using one side's proposed findings to express that independent decision-making. *Id.* at 1269. We see no evidence that the trial court abdicated its responsibilities.

B. THE MORATORIUM STATUTE

The chancellor found that the 1983 statute declaring a moratorium on some aspects of home health care approval resolved all the claims being made by Mid-Delta. Quite simply, the chancellor found that the moratorium statute barred any expansion of territory; Mid-Delta's request for 16 counties not covered by its license would be an expansion of territory; therefore, the Department of Health exceeded its authority in granting the additional license. It did not matter whether the new license was called an amendment, clarification, correction, or anything else.

Mid-Delta argues that its position is supported by the "plain reading of the moratorium law." In summary, Mid-Delta's position is this:

1. The certificates of need acquired by Mid-Delta authorized them to serve patients in all counties within a 50 mile radius of the home offices in Belzoni and Charleston.

2. The licenses that were requested in 1981 should have included all of the territory within that 50 mile radius, which was 22 counties;

3. What should have been done in 1981 or 1982 could be done in 1994; and

4. The moratorium statute specifically only blocks the issuance of certificates of need, while both Mid-Delta and the State Department of Health state that no new certificate of need is required in order to service these additional 16 counties.

We have quoted the moratorium statute above. In order to determine its "plain meaning," we will perform the task of, if not quite diagraming the one long sentence that forms this statute, at least breaking it down into clauses in order to understand what is being prohibited.

In examining the structure of the statute, we find that two methods of action by the Department of

Health are being prohibited, while three forms of requests by home health companies are barred. We first examine what Department of Health actions are prohibited. The statute says "that the Department of Health shall not [1] grant approval for or [2] issue a Certificate of Need to. . . ." Miss. Code. Ann. §41-7-191 (10) (internal numbering added). Thus it is not just certificates of need that the Department of Health may not issue. Neither may it grant any "approval for" three kinds of requests that may be made by a home health company.

We next examine the statute's listing of the kinds of requests that cannot be granted. What is barred is "any person proposing [1] the establishment of, or [2] expansion of the currently approved territory of, or [3] the contracting to establish a home office, subunit, or a branch office within the space operated as a health care facility as defined in Section 41-7-173(h)(i) through (5iii). . . ." *Id.*

Finally, the one kind of requester to which the moratorium applies appears at the very end of the statute, namely "a health care facility as defined in subparagraph (9) at Section 41-7-173(h)." *Id.*

We start with the clear prohibition -- no certificates of need. A certificate of need is required when establishing, relocating, or changing the ownership of a home health company or other covered health care provider. Miss. Code Ann, § 41-7-191 (1). As already set out, the effect of policies articulated by the Mississippi Health Care Commission in 1981 was to define the geographical area encompassed by a certificate of need as including all counties within a 50 mile radius of the home office. The Commission was the agency empowered by the legislature to implement the statute, and the Commission's interpretation of the area encompassed by the certificates of need that it issued is entitled to great weight. We conclude that a new certificate of need was not required for Mid-Delta to provide services in all 22 counties.

Mid-Delta argues that the conclusion that we just made is the one that resolves the case. Since all Mid-Delta needed was an additional license and licenses are not mentioned by name in the moratorium statute, the Department of Health's decision to grant the licensing authority is within its discretion. We cannot reach the point Mid-Delta would take us, though, until we determine whether anything prohibited by the moratorium statute is in fact if not in words the granting of a license. The one possibility is the statement that the Department may not "grant approval for. . . any person proposing the. . . expansion of the currently approved territory of. . . a health care facility. . . ." This provision would bar what occurred only if the Department of Health's agreement in 1994 to amend the license constituted approval of expanded territory.

To start at the beginning in resolving this remaining issue, we will look first at the function of licenses. Every legal entity desiring to provide home health services must acquire a license from the Department of Health. Miss. Code. Ann. §41-71-3. The application filed by Mid-Delta on June 2, 1981, requested a license to serve the geographic area of Humphreys County, Yazoo County, Sunflower County, Leflore County, and Holmes County, all of which were said to be "within a 50 mile radius of Belzoni, Mississippi." That was granted. The other application, in the blank for describing the territory that was to be served, stated "Tallahatchie County and surrounding counties are within a 50 mile radius of Charleston, Mississippi." Even if the latter was a request for a license to cover all counties within a 50 mile radius of Charleston, such a license was not received.

The actual licenses that appear in the record set out specific services that can be offered and also the specific geographic area by county names. Each year Mid-Delta received licensing authority only for

6 counties. A license is not a legal irrelevancy, to be ignored so long as a certificate of need of desired scope is acquired. Both authorizations are needed. If a home health company disagreed with the licensing agency decision, it had the right to file an appeal within 30 days after receiving notice of the decision. Miss. Code. Ann. §41-71-11.

An appellate court in 1981 would likely have looked for a rule or statute addressing whether the Health Care Commission could grant a license covering less area than did the certificate of need. Even if the "catchment area," which we take to mean the service area, included all counties within 50 miles, it still might have been within the regulatory agency's discretion to impose reasonable, non-arbitrary requirements on how much of that area would actually be licensed. There was some evidence that licenses were only granted for the area than was then actually being served. The Department of Health in its letter of December 30, 1994, to Mid-Delta only states that some home health companies in addition to Mid-Delta were granted licenses "which likewise contained a smaller service area than that the companies requested or could have been granted." The Department of Health also states that in 1981 "the assignment of service areas to home health agencies was done in an inconsistent manner, in some instances, with no clear reason for the assignment. . . ." None of that constitutes an interpretation of the statute or regulations that would have mandated that the full 50 mile radius of a certificate of need always be covered by a license.

At worse, the failure of the Health Care Commission to grant a license covering all 22 counties in 1981 failed to provide Mid-Delta all the benefits of the regulatory scheme to which Mid-Delta was entitled. If Mid-Delta could have convinced a court that the failure to grant all 22 counties was reversible error, the means of doing that was by an appeal in 1981. Miss. Code Ann. §41-71-11. The licenses as issued in 1981 and 1982 quite literally and effectively restricted Mid-Delta to 6 counties. In the absence of timely appeal, each license became final and Mid-Delta could only try for a larger licensed area the next year. Both Mid-Delta and the Department of Health argue that the 1981 application remained pending until "granted" in 1994. That is incorrect. The application was ruled upon in 1981. Whether the decision to grant approval only for 6 counties was an oversight is ultimately insignificant. What is significant is that a decision was made.

We next turn to the authority under the moratorium statute for a license to be granted for the additional counties today. We have already attempted to parse the multi-clause sentence that comprises the moratorium. The Department of Health may not "grant approval. . . to any person proposing. . . the expansion of the currently approved territory of. . . a health care facility. . . ." Miss. Code. Ann. §41-7-191(10) (Supp. 1997). Until Mid-Delta received its new license in 1994, it only had a certificate of need *and* license for 6 counties. Acquiring a license for 22 counties was an expansion of territory. Mid-Delta's recognition that it did not have the "currently approved territory" that it desired is what has led to what is now 16 years of struggle with agencies and courts.

Mid-Delta also highlights the caption of the moratorium legislation as being indicative of legislative intent. The 1983 legislation addressed several different subjects, as the fairly long title demonstrates. The section of the title from which Mid-Delta would have us glean the necessary purpose is this: "to provide for a moratorium on the issuance of certificates of need for home health care facilities. . . ." 1983 Gen. Laws Miss., ch. 484. The supreme court has held that a bill's title "may be resorted to as an aid to ascertain the legislative intent." *Aikerson v. State*, 274 So. 2d 124, 128 (Miss. 1973). The first answer is that the title of the legislation also states at its conclusion, "and for related purposes."

A title that summarizes the complicated sections of a bill cannot be comprehensive, else it would be nearly as long as the bill. The barring of expansion of a home health care company's territory by whatever means such expansion could be granted, is a "related purpose" to that stated in the caption.

Moreover, we have to give effect to each part of a statute. It would have been grammatically economical, but perhaps inconsistent with legal training, to use only the words needed to bar certificates of need if that is in fact all that was intended. The Code section in that event would simply have said that the Department "shall not issue a certificate of need" to any person proposing the expansion of territory, etc. Instead, the statute states that the Department "shall not grant approval for *or* issue a certificate of need to" a person making the prohibited proposals. Miss. Code Ann. § 41-7-191 (10)(emphasis added). Over-zealous verbiage, once enacted, is law. We cannot declare superfluous the prohibition of acts other than the grant of certificates of need. We must give the language effect. A short-hand reference in the title of the legislation does not change that obligation.

Mid-Delta argues that applying the statutory moratorium here would give it retroactive effect. Had an application been pending since 1981, then the issue of retroactivity would be raised. We need not reach that question, because the 1981 application resulted in a license covering fewer than all the counties requested. A party aggrieved by state regulatory action must appeal that decision within the statutorily-required time or else it becomes final. The relevance of this moratorium is not its retroactivity, but its coverage of any license application filed today.

Quite literally, Mid-Delta's new license granted an expansion of currently approved territory. The moratorium statute declared that could not be done. The moratorium applies.

C. JURISDICTION TO ENJOIN OPERATIONS UNDER THE LICENSES

Mid-Delta argues that the Mississippi Supreme Court has prohibited judicial review of licensing decisions. A Mississippi Gaming Commission (MGC) statute states that "[j]udicial review is not available for actions, decisions, and orders of the commission relating to the denial of a license or to limit or condition a license." Miss. Code. Ann. §75-76-127(2) (Rev. 1990). From that statutory language, the court determined that an aggrieved property owner or license applicant could not seek judicial review "so long as MGC acts within its statutory framework as it did here. However, MGC does not enjoy plenary power incapable of judicial review under all circumstances." *Casino Magic Corp. v. Ladner,* 666 So. 2d 452, 456 (1995). *Casino Magic* does not stand as a general prohibition to appellate jurisdiction, but instead is a command that an agency's statutes must be consulted in order to determine the breadth of judicial review. *See also Mississippi Gaming Commission v. Board of Education,* 691 So. 2d 452, 456-57 (Miss. 1997).

As we discussed in an earlier section of this opinion, no statute explicitly addresses appeals from a decision by the Department of Health, without a hearing, to expand territory covered by a license. *Casino Magic* is therefore inapplicable. What controls is the general jurisdiction of the chancery court to review the propriety of agency action. That review gives great deference to the agency, but requires reversal if the action is not supported by substantial evidence, is arbitrary, capricious, or beyond the power of the agency, or violated some statutory or constitutional rights. *Mississippi State Tax Comm. v. Jenkins*, 624 So. 2d 91, 92 (Miss. 1993). We have held that the moratorium statute places this action beyond the power of the Department of Health.

D. OBLIGATION TO REMAND TO THE

DEPARTMENT OF HEALTH FOR FACT FINDING

The chancery court conducted a hearing on whether a license had actually been granted, but was not properly recorded prior to the moratorium going into effect.

Mid-Delta cites case law that requires further proceedings in the administrative agency if the discretion of that agency needs still to be applied. In one case a chancery court, sitting as an appellate court, decided that some of the charges against a nurse that led to the revocation of her license were not supported by substantial, credible evidence. *Mississippi State Board of Nursing v. Wilson*, 624 So. 2d 485, 493 (Miss. 1993). The chancellor concluded that since the license had been revoked by the Board "on the collective charges," the absence of substantial evidence on some justified the reinstatement of the license. *Wilson*, 624 So. 2d at 492. The supreme court instead ordered that the case be remanded so that the Board of Nursing could decide whether license revocation was still the proper punishment, or whether a lesser remedy would be appropriate. *Id.* at

Wilson does not create a rule that there must be a remand of every case in which an administrative agency erred. Only if the agency's discretion or expertise needs again to be applied would a remand be justified. In the record is the letter of December 30, 1994, in which the State Department of Health stated that it had undertaken "an extensive review of the records" to determine whether a license had ever been issued to Mid-Delta for the 22 counties. It concluded this:

What is clear from an examination of the records is that you made a request, like every other home health agency, on your initial licensure application in June of 1981. . . . In your case the commission appears to have taken no action, or alternatively, taken action and never recorded the action or communicated such to you.

Thus the factual as well as legal implications of the absence of a record of a license already had been addressed by the Department. The chancellor was not in error in refusing to send the issue back for them again to address whether a license might actually have been issued, but not properly recorded.

CONCLUSION

We accept that the certificate of need encompassed a territory 50 miles in radius. We hold that Mid-Delta, though it had a *certificate of need* for all 22 counties, had to appeal from the 1981 *license* decision that granted rights only in some of the counties. The opportunity for addressing the right to a broader license passed. The 1982 license was again an opportunity to seek a broader license, and failing that, judicial review. A moratorium was imposed in 1983, closing the door for the total package of approvals necessary for Mid-Delta to operate in 22 counties.

We find little to the contrary in the Department of Health's December 30, 1994 letter that interprets the effect of the moratorium. By implication the Department considered it necessary that the license application have been pending since before the moratorium. The letter relies extensively, as did the

inquiry to the Attorney General's office, on the argument that an application was pending and that the pre-moratorium law in effect in 1981 when the application was filed would apply. In fact the 1981 application was not pending. Final agency action had been taken and appellate review had been available. The moratorium applies and bars territorial expansion.

THE JUDGMENTS OF THE HINDS COUNTY CHANCERY COURT ARE AFFIRMED. ALL COSTS ARE TAXED TO THE APPELLANTS.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.

COLEMAN, J., NOT PARTICIPATING.