

COURT OF APPEALS OF VIRGINIA

Roanoke Memorial Hospitals v. Kenley, 3 Va. App. 599

352 S.E.2d 525 (1987) · Decided January 6, 1987

SUMMARY

The Court of Appeals of Virginia affirmed a circuit court judgment upholding the Commissioner of Health’s issuance of a Certificate of Need to Lewis-Gale Hospital for radiation therapy services. The court held that the State Health Plan’s 6,000-treatment-visit standard was discretionary rather than mandatory and that the Commissioner’s decision was consistent with the plan. The court also concluded that the circuit court applied the appropriate standard of judicial review.

CASE DETAILS

COURT	Court of Appeals of Virginia
WRITING FOR THE COURT	Cole, J.; Koontz, C.J.; Hodges, J.
JURISDICTION	Virginia
DECIDED	January 6, 1987
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a circuit court judgment affirming the Virginia State Commissioner of Health's decision to issue Lewis-Gale Hospital a Certificate of Need for a radiation therapy suite and related equipment.
STANDARD OF REVIEW	Under Virginia Code § 9-6.14:17, the reviewing court determines whether the agency acted within its legal authority, complied with statutory requirements and required procedures, and made findings supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; agency factual findings may be rejected only if, considering the record as a whole, a reasonable mind would necessarily reach a different conclusion.
PRECEDENTIAL VALUE	Published Virginia Court of Appeals opinion; precedential.
PARTIES	Roanoke Memorial Hospitals v. James B. Kenley, M.D., Lewis-Gale Hospital, Inc.

TOPICS

- judicial review of agency action
- administrative law
- statutory interpretation
- standard of review

PRACTICE AREAS

health law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Commissioner's decision to issue Lewis-Gale Hospital a Certificate of Need was inconsistent with the State Health Plan because existing megavoltage units did not all perform at least 6,000 treatment visits per year.
2. Whether the circuit court applied the appropriate standard of judicial review to the Commissioner's administrative decision.

HOLDINGS

1. The State Health Plan's use of the word "should" conferred an appropriate amount of discretion on the Commissioner, and the statutory requirement that a Certificate of Need decision be "consistent with" the plan did not require exact compliance with every plan standard. The Commissioner therefore acted within his authority in finding the proposed project consistent with the State Health Plan.
2. The circuit court applied the appropriate standard of review by determining whether the Commissioner complied with statutory and legal authority and whether substantial evidence supported the agency's factual findings, without substituting its independent judgment for that of the agency.

KEY QUOTATIONS

"We agree with the reasoning of the Kentucky Court of Appeals and hold that the use of the word "should" in the context of the State Health Plan was intended to confer an appropriate amount of discretionary authority in the administrative body."

"We believe that "consistent with" as used in the context of the statute does not mean "exactly alike" or "the same in every detail." It means instead, "in harmony with," "compatible with," "holding to the same principles," or "in general agreement with.""

FACTUAL BACKGROUND

Lewis-Gale Hospital sought a Certificate of Need to construct a radiation therapy suite and purchase equipment to begin radiation therapy services. The applicable State Health Plan stated that no additional megavoltage units should be opened unless existing units in the medical service area performed at least 6,000 treatment visits annually. The Commissioner determined that a need existed and that the application was consistent with the State Health Plan, relying on the plan's criteria, the evidence concerning utilization, and projections regarding future treatment volume.

PROCEDURAL HISTORY

Lewis-Gale applied for a Certificate of Need, despite recommendations by the Southwest Virginia Health Systems Agency Board and Department of Health staff that the application be denied. Following an informal fact-finding conference, the hearing officer found a need for the proposed radiation therapy services, and the

Commissioner approved the application. Roanoke Memorial appealed to the Circuit Court for the City of Salem, which affirmed the Commissioner; the Court of Appeals of Virginia affirmed the circuit court.

DISPOSITION

affirmed

CASES CITED

- Starks v. Kentucky Health Facilities, 684 S.W.2d 5, 7 (Ky. Ct. App. 1984)
- University of South Florida v. Tucker, 374 So. 2d 16 (Fla. Dist. Ct. App. 1979)
- Virginia Real Estate Commission v. Bias, 226 Va. 264, 269, 308 S.E.2d 123, 125 (1983)
- Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)

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