

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

G. C. SIMKINS, JR., ET AL.,)
)
Plaintiffs)
)
)
v.) No.C-57-G-62
)
MOSES H. CONE MEMORIAL)
HOSPITAL, ET AL.,)
)
Defendants.)
)
UNITED STATES, Applicant for)
Intervention.)
_____)

PLEADING OF THE UNITED STATES
IN INTERVENTION

The United States, as Intervenor herein, for its pleading in intervention alleges:

1. The constitutionality of an Act of Congress affecting the public interest, the Hill-Burton Act (Title VI of the Public Health Service Act, 42 U.S.C. 291 et seq., hereafter called the Act) is drawn in question in this action.

2. Except by this intervention, neither the United States of America nor any agency thereof nor any officer or employee thereof as such officer or employee is a party hereto.

3. The pleadings whereby the constitutionality of the Act has been drawn in question is the plaintiffs' complaint wherein they claim that the Act deprives them, and the class they represent, of rights, privileges and immunities guaranteed by the due process and equal protection clauses of the Fourteenth Amendment and the due process clause of the Fifth Amendment.

4. The purpose of the Act is to assist the several States to inventory existing hospital and related facilities, and to survey and program for construction of additional hospital and related facilities; to assist in the construction of public and other non-profit hospitals in accordance with the State program; and to authorize the Surgeon General to make certain grants for research, experiments and demonstrations relating to effective utilization of hospital services, facilities and resources.

5. The Act requires that, to be eligible to participate in program of aid grants established by the Act, the State must designate a single agency for carrying out the purposes of the Act and must adopt a State plan for construction of public and nonprofit hospitals, which will afford, in conjunction with existing facilities, the necessary physical facilities for furnishing adequate hospital services.

6. Section 622(f) of the Act (42 U.S.C. 291e(f)) provides that the Surgeon General shall, by general regulations, prescribe:

"(f) That the State plan shall provide for adequate hospital facilities for the people residing in a State, without discrimination on account of race, creed, or color, and shall provide for adequate hospital facilities for persons unable to pay therefor. Such regulation may require that before approval of any application from a hospital or addition to a hospital is recommended by a State agency, assurance shall be received by the State from the applicant that (1) such hospital or addition to a hospital will be made available to all persons residing in the territorial area of the applicant, without discrimination on account of race, creed or color, but an exception shall be made in cases where separate hospital facilities are provided for separate population groups, if the plan makes equitable provision on the basis of need for facilities and services of like quality for each such group; and (2) there will be made available in each such hospital or addition to a hospital a reasonable volume of hospital services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial standpoint."

7. In September 1946, the State of North Carolina, acting through the North Carolina Care Commission, filed with the Public Health Service an application, pursuant to the Act for federal funds to conduct a survey of existing hospital and related facilities in North Carolina. The application was approved and, following an allotment of funds to the State, the North Carolina Medical Care Commission filed a state plan with the Public Health Service. This plan was approved by the Surgeon General on July 8, 1947, and, with periodic revisions, has remained in effect to the time of the filing of this pleading.

8. The State plan provides for the division of Guilford County, North Carolina into two hospital service areas, the Greensboro Hospital Service area and the High Point hospital service area.

9. Greensboro is one of several hospital service areas where, pursuant to the State plan as approved by the Surgeon General, separate hospital facilities are provided for separate population groups.

10. Defendant, Moses H. Cone Memorial Hospital, Inc., is a body incorporated under and by virtue of the laws of North Carolina. Pursuant to its corporate charter, it has established and now maintains a State licensed hospital in Greensboro, North Carolina known as the Moses H. Cone Memorial Hospital.

11. Defendant, Wesley Long Community Hospital, Inc., is a body corporate under and by virtue of the laws of North Carolina. Pursuant to its corporate charter, it has established and now maintains a State licensed hospital in Greensboro, North Carolina known as the Wesley Long Community Hospital.

12. Pursuant to the State plan, the Moses ^{Cone}~~Long~~ ^{Memorial}~~Community~~ Hospital, submitted project application numbers NC-86, dated June 17, 1950, and NC-330, dated October 28, 1959, for hospital construction.

13. The North Carolina Medical Care Commission approved project numbers NC-86 and NC-330 and submitted them to the Surgeon General.

14. On July 11, 1950, the Surgeon General approved project NC-86 and authorized the expenditure of \$462,000 as the federal approved share of a total project cost of \$5,277,023.

15. On March 17, 1960, the Surgeon General approved project NC-330 and authorized the expenditure of \$697,950 for general hospital construction as the federal approved share of a project cost of \$1,850,000 and an expenditure of \$110,000 for a diagnostic and treatment center as the federal approved share of a total project cost of \$240,000.

16. In project NC-86, as originally submitted to the Surgeon General by the Commission and as approved by him, the Commission stated that the applicant, Moses Cone Memorial Hospital, had given adequate assurances that the hospital facilities would be operated without discrimination because of race, creed or color. In project NC-330, as submitted to the Surgeon General by the Commission and as approved by him, the Commission stated that the applicant, Moses Cone Memorial Hospital, had given adequate assurance that the hospital facilities would be operated without discrimination because of race, creed, or color.

17. On April 15, 1960, William F. Henderson, Executive Secretary of the Commission wrote to the Public Health Service stating that project application NC-330 had incorrectly stated the intention of the Moses Cone ^{Memorial} ~~Community~~ Hospital with respect to the assurances that the hospital facilities would be operated without discrimination because of race, creed, or color. By amendment submitted to the Surgeon General and approved by him on April 19, 1960, the Commission and the Moses Cone ^{Memorial} ~~Community~~ Hospital withdrew the non-discrimination assurance previously given.

18. Pursuant to the provisions of the State plan adopted by the North Carolina Medical Care Commission and approved by the Surgeon General, the Wesley Long Community Hospital submitted project number NC-311, dated November 18, 1958; project number NC-353, dated sometimes prior to January 12, 1961; and project number NC-358, dated February 1, ¹⁹⁶¹ ~~1962~~, all for general hospital construction. The North Carolina Medical Care Commission approved all these projects and submitted them to the Surgeon General.

19. On June 30, 1959, the Surgeon General approved project NC-311 and authorized the expenditure of \$1,617,150 as the federal approved share of a total project cost of \$3,240,722. On May 15, 1961, the Surgeon General approved project NC-353 and authorized the expenditure of \$66,000 as the federally approved share of a total project cost of \$120,000. On

December 15, 1961, the Surgeon General approved project NC-353 and authorized the expenditure of \$265,650 as the federal approved share of a total project cost of \$492,636.

20. The Wesley Long Community Hospital has not given assurance that it will operate its facilities without discrimination because of race, creed or color.

21. As of the date of the filing of these pleadings, the United States has paid to the Treasurer of the State of North Carolina the sum of \$1,229,552.50 on projects NC-86 and NC-330 for the Moses Cone Memorial Hospital. The facilities for which these funds were paid have been constructed and are presently being used.

22. As of the date of the filing of these pleadings, the United States has paid to the Treasurer of North Carolina the sum of \$1,596,301.60 on projects NC-311 and NC-353 for the Wesley Long Community Hospital. The facilities for which these funds have been expended are still under construction as of the date of the filing of this pleading.

23. The Moses Cone Memorial Hospital has refused and is presently refusing to admit Negro patients on the same terms and conditions as white patients.

24. The Wesley Long Community Hospital has refused and is refusing to admit Negro patients on the basis of race.

25. The conduct complained of in paragraphs 23 and 24 above is authorized by the State plan described in paragraph 7 above which was adopted pursuant to the Act and the regulations thereunder.

26. The conduct described in paragraphs 23 and 24 above violates the Fourteenth Amendment of the Constitution.

27. This matter involves an actual controversy which can be resolved by this Court.

WHEREFORE, the United States prays that this Court declare that so much of Section 291e(f) of Title 42, U.S.C. as authorizes the Surgeon General to prescribe regulations concerning separate hospital facilities for separate population groups is unconstitutional, null and void and prays for such other relief as justice may require.

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