

IN THE CHANCERY COURT OF
JACKSON COUNTY, MISSISSIPPI

**IN RE MIKE MOORE, ATTORNEY GENERAL EX
REL, STATE OF MISSISSIPPI
TOBACCO LITIGATION**

Cause No. 94-1429

March 6, 1996

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT AS TO DEFENDANTS' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

William H. Myers, Chancery Court Judge

Came for consideration Defendants' Motion to Clarify this Court's Judgment of August 25, 1995, denying Defendants' Motion for Partial Summary Judgment on the issue of the Attorney General's authority to bring the captioned cause for the recovery of Medicaid expenditures, and for Findings of Fact and Conclusions of Law.

The Court, having been advised that Plaintiff has no objection to the Motion to Clarify, being otherwise fully advised in the premises, and finding the Motion to Clarify Judgment and for Findings of Fact and Conclusions of Law to be well-taken, sustained said motion in a ruling from the bench on August 29, 1995. The Court now renders its Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT

1. The Attorney General determined that the subject matter of the captioned cause is a matter of statewide interest. Complaint ¶¶ 7, 78, 84, 89 and 92; Moore Aff. ¶ 4.

2. The Mississippi Medicaid Law, § 43-13-101, *et seq.*, was approved on October 10, 1969, during an Extraordinary Session of the Mississippi Legislature. The Medicaid Law did not then, nor does it now contain the words: limit, divest, restrict, modify, displace, or any similar language, pertaining to the authority of the Attorney General to bring an action in matters of statewide interest.

3. After the passage of the Medicaid Law in 1969, the Mississippi Legislature, in its Regular Session in 1970, amended § 3826 of the Mississippi Code of 1942 which deals with how the Attorney

General is elected, his term of office and his qualifications. The Legislature more clearly defined the powers of the Attorney General, codifying his common law and constitutional powers, and his authority described in, and well-recognized by, decisions of the Mississippi Supreme Court. Section 3826 of the Mississippi Code of 1942, which became § 7-5-1 of the Mississippi Code of 1942, which became § 7-5-1 of the Mississippi Code of 1972, was, after the passage of the Medicaid Law, amended to contain the following language:

[The Attorney General] shall have the powers of the Attorney General at common law and is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest.

4. In 1991, twenty-two years after the enactment of the Medicaid Law and at a time said Medicaid Law was in effect, the Mississippi Legislature re-enacted § 7-5-1 of the Mississippi Code of 1972, without limiting the Attorney General's authority *vis-à-vis* Medicaid.

CONCLUSIONS OF LAW

1. The Attorney General of the State of Mississippi is a constitutional officer. *See* Art. 6, § 173, Miss. Const. (1890).

2. Though § 173 makes no delineation of the nature and scope of the Attorney General's power, the creation of the office of the Attorney General by the Constitution vested him with common law powers. *Kennington-Saenger Theaters, Inc. v. State ex rel District Attorney*, 18 So.2d 483, 486 (Miss. 1944).

3. The common law duties of the Attorney General include the power to control and manage all litigation on behalf of the State; and to intervene in all actions of concern to the general public, including the right to institute, conduct, and maintain all suits necessary for the enforcement of the laws of the State, the preservation of order, and protection of the public rights. *Capital Stages, Inc. v. State ex rel Hewitt*, 128 So. 759, 763-64 (Miss. 1930). And as to all litigation, the subject matter of which is of statewide interest, the Attorney General alone has the right to represent the State. *Id. See also Dunn Const. Co. v. Craig*, 2 So.2d 166, 174 (Miss. 1941).

4. The Attorney General's constitutional and common law powers were codified in 1970 by an amendment to § 3826 of the Mississippi

Code of 1942, which later became § 7-5-1 of the Mississippi Code of 1972, which provides, in part:

The Attorney General provided for by § 173 of the Mississippi Constitution... shall be the chief legal officer and adviser for the State, both civil and criminal, and is charged with managing all litigation on behalf of the State...

He shall have the powers of the Attorney General at common law and is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest.

5. The Court is aware of no constitutional provision, statute or decision of the Mississippi Supreme Court, which gives the Governor of this State or the Division of Medicaid the power to bring or maintain an action in matters of statewide interest. Such authority is reserved to the Attorney General. *See Henry v. State*, 39 So. 856, 860-61 (Miss. 1906) (undeniable that the Attorney General, not the Governor, is the officer provided by the people as the legal advisor of the State with the power to sue in its name, for "[w]hen men vote for a governor, they have no thought that they are voting for a law advisor").

6. In the absence of a statute expressly prohibiting the Attorney General from bringing the present action to recover Medicaid expenditures, he has the common law and constitutional power to institute this action, which he determined to be of statewide interest. *State ex rel Patterson v. Warren*, 180 So.2d 293, 300 (Miss. 1965) (the Attorney General, as a constitutional officer, enjoys common law powers, "except insofar as they have been expressly restricted or modified by statute or the State Constitution").

7. The Mississippi Medicaid Law neither expressly nor impliedly limits, divests, restricts, modifies, displaces, or in any way affects the power of the Attorney General to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest.

8. The State has the right to "bring all actions and obtain all remedies to which individuals are entitled." Section 11-45-1, Miss. Code ann. (1972). And this Court ruled on February 21, 1995, that the State's Complaint states equitable claims for relief independent of any claims of smokers. To interpret § 43-13-137 of the Medicaid Law, which provides that the Law's provisions are "controlling insofar as inconsistent with other law," as expressly restricting or limiting the

Attorney General's power to bring and maintain actions of statewide interest would effectively divest the State of the right to bring this action because only the Attorney General has the power to bring and maintain such action of statewide interest on behalf of the State. Stripping the Attorney General of his authority would divest the State of its right. The interpretation of the Medicaid Law and § 43-13-137 urged by the defendants would violate a settled rule of statutory construction that statutes be interpreted in favor of the State having an independent right of recovery, i.e., an interpretation which will expand and broaden its existing remedies under common law, the Constitution and § 11-45-1, not one which would narrow or restrict its rights or divest it of such existing remedies. *See City of Jackson v. Miss. State Bldg. Comm'n*, 350 So.2d 63 (Miss. 1977).

JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the Court finds, and is of the opinion, that Defendants' Motion for Partial Summary Judgment is not well-taken and should be denied.

It is, therefore, ORDERED, ADJUDGED AND DECREED, that Defendants' Motion for Partial Summary Judgment shall be, and the same is hereby, denied.