



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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J. Vaden Hunt, Esquire
County Attorney, Pittsylvania County
P.O. Box 426
Chatham, Virginia 24531

Dear Mr. Hunt:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether Commonwealth of Pennsylvania ("Pennsylvania") inmates housed at Green Rock Correctional Center ("Green Rock") are required to be included in Pittsylvania County, Virginia's ("Pittsylvania County") population for the purposes of its 2011 decennial reapportionment of local electoral districts.

Response

It is my opinion that the General Assembly has not authorized local governing bodies to exclude out-of-state prisoners housed in state adult correctional facilities from the locality's population for the purposes of the decennial reapportionment if the total population of inmates housed at the state adult correctional center does not exceed twelve percent of the locality's population.

Background

You relate that all of the population of Pittsylvania County stands at approximately 61,414. You also relate that the Green Rock inmate population of 985 were included in Pittsylvania County's population figures in the 2010 Census, and this inmate population constitutes less than two percent of Pittsylvania's population. The information that you provided indicates that all of the prisoners at the Green Rock facility were transferred to Green Rock after adjudication in Pennsylvania. The information provided indicates these prisoners will remain housed in Pittsylvania County until 2013.

Applicable Law and Discussion

Article I, § 2 of the United States Constitution directs the federal government to conduct a decennial census of the population of each state. The United States Supreme Court has concluded that Equal Protection Clause does not require states to rely on total population figures from the federal census

when drawing district boundaries for state or local government office holders.¹ For example, under federal law, a state can exclude inmate populations in drawing districts for state or local districts.²

Virginia law provides that, if the local governing body's members are elected by district, "the district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the *population* of the district."³ Section 24.2-304.1(C) provides that governing bodies must reapportion local election districts every ten years using the decennial census population figures provided by the United States Bureau of the Census as a basis for the municipality's population. This same clause allows local governing bodies to exclude inmate populations if the locality contains a state adult correctional facility, and the inmate population of such facility, as determined by information provided by the Department of Corrections, exceeds twelve percent of the total population of the municipality on the date of decennial census.

According to the facts you present, the Green Rock inmate population was included in Pittsylvania County's population in the 2010 United States census. At 985 inmates, this accounts for less than two percent of Pittsylvania County's estimated population of 61,414. This is below the twelve percent threshold required by § 24.2-304.1(C) to allow a local governing body to exclude inmates housed in a state adult correctional facility from Pittsylvania County's population for purposes of the decennial reapportionment.

Conclusion

Accordingly, it is my opinion that the General Assembly has not authorized local governing bodies to exclude out-of-state prisoners housed in a state adult correctional facility from the locality's population for the purposes of the decennial reapportionment if the total population of inmates housed at the facility does not exceed twelve percent of the locality's population.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹ *Burns v. Richardson*, 384 U.S. 73, 91 (1966) ("[w]e start with the proposition that the Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which this substantial population equivalency is to be measured."). *See also* *Daly v. Hunt*, 93 F.3d 1212 (4th Cir. 1996) (explaining Supreme Court jurisprudence with respect to a state's apportionment of legislative districts for state and local electoral districts).

² *Burns*, 384 U.S. at 92 (stating that no Court precedent had "suggested that that the States are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime, in the apportionment base by which their legislatures are distributed and against which compliance with the Equal Protection Clause is to be measured.").

³ VA. CONST. art. VII, § 5; VA. CODE ANN. § 24.2-304.1(B) (2006) (emphasis added).