



COMMONWEALTH of VIRGINIA

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The Honorable C.T. Woody, Jr.
Sheriff, City of Richmond
1701 Fairfield Way
Richmond, Virginia 23223

Dear Sheriff Woody:

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 the Virginia Compensation Board (the “Compensation Board”) must reimburse sheriffs, jail superintendents, or localities for unbudgeted medical costs of inmates who are “State Responsible” as defined in the Budget Appropriations Act. You ask this question because the Compensation Board’s Policy and Procedure Manual provides that the Compensation Board will only reimburse the medical costs for inmates who are “State Responsible” and more than ninety days past their final sentence date.¹

Applicable Law and Discussion

All correctional facilities, whether local or state, must provide medical care for inmates in accordance with law.² For local inmates, § 53.1-126 of the *Code of Virginia* requires sheriffs and jail superintendents to provide necessary medical services to inmates.³ For state inmates, § 53.1-32(A) similarly requires state correctional facilities “to provide . . . medical . . . care and treatment” for “prisoners committed or transferred thereto.”⁴ These are costs of incarceration.

There are two circumstances under which a state inmate may be housed in a local correctional facility. First, § 53.1-21 of the *Code* allows for certain inmates who are confined in a state or local

¹ COMPENSATION BOARD POLICY & PROCEDURE MANUAL, CB Form-20 (2014).

² See generally *Estelle v. Gamble*, 429 U.S. 97, 104-105 (1976) (holding that prisoners have a constitutional right under the Eighth Amendment to adequate medical care and treatment); *Jackson v. Wiley*, 352 F. Supp. 2d 666, 675 (E.D. Va. 2004).

³ 1988 Op. Va. Att’y Gen. 469, 471 (citing 1986-87 Op. Va. Att’y Gen. 255); see also 6 VA. ADMIN. CODE §§ 15-40-320 to 520.

⁴ VA. CODE ANN. § 53.1-32(A) (2013).

correctional facility to be transferred to another state or local correctional facility upon the direction of the Director of the Department of Corrections.⁵ Second, § 53.1-20 provides that a convicted person who is to be confined in a state facility is to be transferred to the state system within sixty days of transmission of the final sentencing order to the Director of the Department of Corrections,⁶ subject to the ability of the Governor to restrict admission to the state system in the event of a threat to public safety.⁷

Section 53.1-20.1 requires the Department of Corrections to compensate local jails for the cost of incarceration “as provided in the general appropriation act,” and it fixes a specific time at which that financial responsibility begins:

If the Director [of the Department of Corrections] is unable to accommodate in a state correctional facility any convicted felon sentenced to the Department for a felony committed before January 1, 1995, whose sentence totals more than two years or who is convicted of a felony committed on or after January 1, 1995, and who is required to serve a total period of one year or more in a state correctional facility, *the Department of Corrections shall compensate local jails for the cost of incarceration as provided for in the general appropriation act beginning on the sixty-first day following the date of mailing by certified letter or electronic transmittal by the clerk of the committing court to the Director of the final order.*^[8]

The general appropriations act,⁹ in turn, provides funding for the state to compensate localities for unbudgeted medical costs incurred by local correctional facilities for state-responsible inmates.¹⁰

In summary, § 53.1-20.1 imposes financial responsibility on the state beginning “on the sixty-first day” following transmission of the commitment order, thus making the local jail responsible for medical costs for the first sixty days. The Compensation Board’s policy of imposing that responsibility on the state beginning on the ninety-first day, thus making the local jail responsible for medical costs for the first ninety days, is inconsistent with this statute. A state agency has no authority to adopt a policy inconsistent with a statute.¹¹

⁵ VA. CODE ANN. § 53.1-21 (2013).

⁶ “Persons convicted of felonies committed on or after January 1, 1995, and sentenced to the Department or sentenced to confinement in jail for a year or more shall be placed in the custody of the Department and received by the Director into the state corrections system within sixty days of the date on which the final sentencing order is mailed by certified letter or sent by electronic transmission to the Director by the clerk.” VA. CODE ANN. § 53.1-20(B)(2013).

⁷ “If the Governor finds that the number of prisoners in state facilities poses a threat to public safety, it shall be within the discretion of the Director to determine the priority for receiving prisoners into the state corrections system from local correctional facilities.” VA. CODE ANN. § 53.1-20(C).

⁸ (Emphasis added.)

⁹ The official title of this act is the Budget Appropriations Act.

¹⁰ H.B. 29, 2014 Reg. Sess. (2014); H.B. 30, 2014 Reg. Sess. (2014). The Appropriations Act defines “State Responsible Inmate” as “any person convicted of one or more felony offenses and (a) the sum of consecutive effective sentences for felonies, committed on or after January 1, 1995, is (i) more than 12 months or (ii) one year or more, or (b) the sum of consecutive effective felonies, committed before January 1, 1995, is more than two years.” H.B. 29, 2014 Reg. Sess. (2014); H.B. 30, 2014 Reg. Sess. (2014).

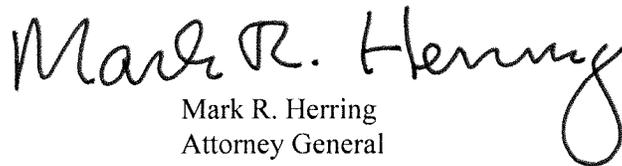
¹¹ “Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of this

Conclusion

For the foregoing reasons, it is my opinion that the Compensation Board is required to reimburse local correctional facilities for the medical costs of all inmates who are "State Responsible" while those inmates are in the temporary custody of a local correctional facility, beginning on the sixty-first day after notice of the commitment order is provided.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General