

01-059

**CONSTITUTION OF VIRGINIA: LEGISLATURE (QUALIFICATIONS OF SENATORS AND DELEGATES — FRANCHISE AND OFFICERS (APPORTIONMENT) (QUALIFICATIONS TO HOLD ELECTIVE OFFICE.**

**ELECTIONS: ELECTION DISTRICTS, PRECINCTS, AND POLLING PLACES - EFFECTIVE DATE OF REDISTRICTING MEASURES.**

**State senator may move his residence from City of Harrisonburg to Shenandoah County, which is included in reapportioned 26<sup>th</sup> Senatorial District precleared by U. S. Department of Justice, and complete his term of office through year 2003.**

The Honorable Kevin G. Miller  
Member, Senate of Virginia  
July 17, 2001

You ask whether you may move your residence within the newly apportioned 26<sup>th</sup> Senatorial District from the City of Harrisonburg to Shenandoah County and complete your term of office in the Senate of Virginia in the year 2003.

You note that you have represented the 26<sup>th</sup> Senatorial District in the General Assembly of Virginia since 1984. You note further that the redistricting plan for the Senate of Virginia, signed by the Governor on April 21, 2001,<sup>1</sup> now includes Shenandoah County.<sup>2</sup>

Section 5 of the Voting Rights Act of 1965, as amended,<sup>3</sup> which is applicable to the Commonwealth, requires that any change in state or local election laws or voting practices or procedures be submitted to the United States Department of Justice for review and evaluation of its potential impact on minority voters, before such change may be implemented. This review is commonly referred to as "§ 5 preclearance."<sup>4</sup> Under accepted rules of statutory construction, interpretations by the agency charged with administering a statute are entitled to great weight.<sup>5</sup> A statute requiring § 5 preclearance cannot be implemented until preclearance is obtained.<sup>6</sup> The redistricting plan for the senatorial districts of the General Assembly was precleared under § 5 by the United States Department of Justice on July 9, 2001.

Article IV, § 4 of the Constitution of Virginia sets forth the qualifications for election to the Senate of Virginia:

Any person may be elected to the Senate who, at the time of the election, is twenty-one years of age, is a resident of the senatorial district which he is seeking to represent, and is qualified to vote for members of the General Assembly.... A senator or delegate who moves his residence from the district for which he is elected shall thereby vacate his office.

A prior opinion of the Attorney General concludes that Article IV, § 4 must be read in conjunction with Article II, § 5,<sup>7</sup> which sets forth the qualifications to hold elective office:

The only qualification to hold any office of the Commonwealth or of its governmental units, elective by the people, shall be that a person must have been a resident of the Commonwealth for one year next preceding his election and be qualified to vote for that office, except as otherwise provided in this Constitution ....

Consequently, only those persons entitled to vote for an office elective by the people are entitled to hold that office. In addition, members of the Senate of Virginia must maintain their residence in the district for which they are elected.

The plain language of Article IV, § 4 specifies only that each senator or delegate must maintain his residence in the district "for which he is elected." The district for which you are elected is, of course, the 26<sup>th</sup> Senatorial District. Since the decennial redistricting legislation setting forth Virginia's senatorial districts was precleared by the Department of Justice on July 9, 2001,<sup>8</sup> the 26<sup>th</sup> Senatorial District now includes Shenandoah County.

Therefore, I am of the opinion that, since the Department of Justice has now precleared the redistricting plan for the Virginia Senate, which includes Shenandoah County within the 26<sup>th</sup> Senatorial District, you may move your residence from the City of Harrisonburg to Shenandoah County and still complete your term of office through the year 2003.

<sup>1</sup>"The General Assembly shall reapportion the Commonwealth into electoral districts ... in the year 1971 and every ten years thereafter." Va. Const. art. II, § 6. Legislation enacted by the General Assembly to accomplish decennial redistricting " shall take effect immediately," and legislators "in office on the effective date of the decennial redistricting legislation shall complete their terms of office." Va. Code Ann. § 24.2-311(A) (Michie Repl. Vol. 2000).

<sup>2</sup>Va. Code Ann. § 24.2-303.1(D)(26) (Michie Supp. 2001).

<sup>3</sup>42 U.S.C. § 1973c (1994).

<sup>4</sup>See 28 C.F.R. § 51.13(e) (1991) (listing examples of changes affecting voting which must meet § 5 preclearance requirement, including "[a]ny change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, ... reapportionment ...)").

<sup>5</sup>United States v. Sheffield Board of Comm'rs, 435 U.S. 110, 131-35 (1978) (noting that Congress has adopted United States Attorney General's long-standing administrative interpretation of § 5, by which Supreme Court is bound).

<sup>6</sup>1992 Op. Va. Att'y Gen. 34, 37.

<sup>7</sup>1970-1971 Op. Va. Att'y Gen. 130, 131.

<sup>8</sup>See *supra* note 1.

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