

# The Role of the Attorney General's Office in Soil & Water Conservation Districts

## Assistant Attorney General assigned to Soil and Water Conservation Districts:

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## Basic Roles:

- Advice for civil legal matters
- Representation in litigation

There are three statutes that address the Attorney General's Office's representation of SWCDs:

- **Va. Code § 2.2-507(A)– Legal Service in Civil Matters** (see below for additional information)  
The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, **upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters** for such district directors or districts.
- **Va. Code § 10.1-501 - Duty of the Attorney General** (see below for additional information)  
The **Attorney General shall represent and provide consultation and legal advice in suits or actions** under this chapter upon request of the district directors or districts.
- **Va. Code § 10.1-501.1- Defense of Claims** (see below for additional information)  
The **Attorney General shall provide the legal defense** against any claim made against any soil and water conservation district, director, officer, agent or employee thereof (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and water conservation district or used by district employees or other authorized persons in the course of their employment, or (ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

## Seeking Advice Va. Code § 2.2-507(A):

- Who may seek advice?  
Soil and Water Conservation District Directors OR Soil and Water Conservation Districts
- Who may districts seek legal advice from:  
(1) local, public, or private sources  
(2) **upon request**, the Attorney General shall provide legal service in civil matters
- What may you seek advice about?  
The business of the Soil & Water Conservation District

## Representation and legal defense Va. Code § 10.1-501.1:

The District's role in litigation is limited to these things:

- You are suing
- You are being sued
- You are required to provide information for a lawsuit

The role of the Office of the Attorney General when SWCD is involved in litigation:

The Attorney General shall represent and provide consultation and legal advice in suits or actions under this chapter upon request of the district directors or districts. Va. Code § 10.1-501

Key Points for Va. Code § 10.1-501.1:

- (1) “The Attorney General **shall provide the legal defense** against any claim made against any soil and water conservation district, director, officer, agent or employee thereof . . .”
  - (a) If the claim is against any soil and water conservation district, director, officer, agent or employee thereof and it meets the limitation set forth in subparagraph (i) or (ii), the Attorney General’s Office must provide the defense
  - (b) The representation is limited to responding to lawsuits; it does not include bringing suits
- (2) There are two classes of actions this Office will defend:
  - (a) Those “(i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and water conservation district or used by district employees or other authorized persons in the course of their employment” and
  - (b) Those “(ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.”

### **Legal Service** Va. Code § 2.2-507(A)

Upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

Key Points for Va. Code § 2.2-507(A):

- (1) It limits the services provided to civil matters
- (2) Because the term “legal services” is broad, it may include bringing suits

### **Attorney-Client Privilege**

- The attorney-client privilege protects communications between an attorney and a client from disclosure where the communication concerns rendering legal advice.
- The communication must be made with the expectation of confidentiality.
- The privilege does not apply where the communication involves the furtherance of a crime or a tort.
- Here, the privilege does not apply where the communication does not pertain to the business of a SWCD.
- Records that are protected under the attorney-client privilege are excluded from the provisions of the Freedom of Information Act in that records protected under attorney-client privilege do not have to be released to the public (§ 2.2-3705.1(2)). Also, an open meeting may be closed to the public as per FOIA in order to discuss communications protected by the attorney-client privilege (§ 2.2-3711(A)(7)). These exclusions to FOIA remain in place until the privilege is waived.
- The privilege belongs to the client (SWCD) and can only be waived by the SWCD. Waiver occurs when the communication is disclosed to someone other than the SWCD and its attorney. Once waived, the privilege cannot be restored.