



# COMMONWEALTH of VIRGINIA

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The Honorable Clifford L. "Clay" Athey, Jr.  
Member, House of Delegates  
35 North Royal Avenue  
Front Royal, Virginia 22630

Dear Delegate Athey:

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 a sanitary district is authorized to operate and maintain community buildings and recreational facilities outside the boundaries of the sanitary district, when doing so would serve residents of the district.

## Response

It is my opinion that a sanitary district is limited to operating and maintaining community buildings and recreational facilities that are located within the boundaries of the district, unless it reaches an agreement with another jurisdiction to operate buildings and facilities outside those boundaries.

## Applicable Law and Discussion

The Code allows for the creation of sanitary districts.<sup>1</sup> Once a sanitary district is created, the governing body of a locality where the district has been established is empowered to construct, operate and maintain the water supply, garbage removal, sewerage, and power and gas systems.<sup>2</sup> Other functions of a sanitary district can include the construction, maintenance and operation of "community buildings, community centers, [and] other recreational facilities."<sup>3</sup> The powers and duties of localities in managing sanitary districts are restricted to those specifically granted.<sup>4</sup>

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<sup>1</sup> VA. CODE ANN. § 21-113 (2008).

<sup>2</sup> Section 21-118(1) (2008).

<sup>3</sup> Section 21-118.4(a1) (2008).

<sup>4</sup> See §§ 21-118; 21-118.4 (powers of localities with respect to sanitary districts are subject to "conditions and limitations" of the Code). See also *Marsh v. Gainesville Haymarket San. Dist.*, 214 Va. 83, 197 S.E.2d 329 (1973).

The boundaries of a sanitary district are to be set forth in the order creating the district.<sup>5</sup> The statutory scheme generally presupposes that the districts will be encompassed by a single jurisdiction.<sup>6</sup> Nevertheless, in operating a sanitary district, the governing body is expressly authorized

[t]o negotiate and contract with any person, firm, corporation or municipality with regard to the connections of any such system or systems with any other system or systems now in operation or hereafter established, and with regard to any other matter necessary and proper for the construction or operation and maintenance of any such system *within the sanitary district*.<sup>[7]</sup>

Furthermore, once a sanitary district has been created, the governing body of a locality is given the express power to

[t]o contract with any person, firm, corporation, municipality, county, authority or the federal government or any agency thereof to acquire, construct, reconstruct, maintain, alter, improve, add to and operate any such motor vehicle parking lots, water supply, drainage, sewerage, garbage removal and disposal, heat, light, power, gas, sidewalks, curbs, gutters, streets and street name signs and fire-fighting systems *in such district*, and to accept the funds of, or to reimburse from any available source, such person, firm, corporation, municipality, county, authority or the federal government or any agency thereof for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, addition to and operation of any such system or systems;<sup>[8]</sup>

The power of a sanitary district to build and operate recreational facilities and community buildings is similarly limited to the boundaries of the sanitary district.<sup>9</sup>

Finally, § 15.2-1300 broadly provides that

[a]ny power, privilege or authority exercised or capable of exercise by any political subdivision of this Commonwealth may be exercised and enjoyed jointly with any other political subdivision of this Commonwealth having a similar power, privilege or authority except where an express statutory procedure is otherwise provided for the joint exercise.

Based on these statutory provisions, I conclude that a sanitary district generally is limited to operating and maintaining community buildings and recreational facilities that are located within the boundaries of the district, which you indicate encompasses land only within one county. Upon reaching

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<sup>5</sup> Section 21-113.

<sup>6</sup> See §§ 21-113 (sanitary districts to be established "in and for the county"); 21-117 (allowing for the merger of sanitary districts originally "created in any county"); 21-118 (setting forth the powers and duties of "such county" in which the sanitary district is created); 21-118.5 (governing body may provide a unified water and sewerage supply for "one or more sanitary districts located within such county").

<sup>7</sup> Section 21-118(3) (emphasis added).

<sup>8</sup> Section 21-118.4(c) (emphasis added).

<sup>9</sup> Section 21-118.4(a1).

Honorable Clifford L. "Clay" Athey, Jr.

September 7, 2010

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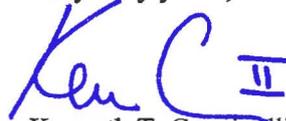
an agreement with another jurisdiction, however, a sanitary district properly can operate community buildings and recreational facilities outside the boundaries of the sanitary district.<sup>10</sup>

### Conclusion

Accordingly, it is my opinion that a sanitary district is limited to operating and maintaining community buildings and recreational facilities that are located within the boundaries of the district, unless it reaches an agreement with another jurisdiction to operate buildings and facilities outside those boundaries.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli  
Attorney General

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<sup>10</sup> Cf. 2004 Op. Va. Att'y Gen. 80, 82 (locality could enter into an agreement with neighboring jurisdiction in North Carolina to create joint water authority).