



The People's Lawyer: Why It Matters Who Is Virginia's Attorney General

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The Attorney General's race is still in doubt. With less than 350 votes separating Delegate Bob McDonnell (R Va Beach), certified as the winner on November 28th, and Senator Creigh Deeds (D Bath County), who has filed a petition for a recount, Virginia voters are unlikely to know who will be their lawyer for the next four years until just before Christmas.

Many voters have no idea how important a role the Attorney General plays as an elected statewide official. Most see the job simply as a stepping stone to the Governor's mansion without understanding the many ways in which the Attorney General's actions can affect them as individual consumers, the business climate of the Commonwealth and the efficiency and effectiveness of state government.

Often characterized by candidates and the press as "Virginia's chief law enforcement officer," the Virginia Attorney General is, in fact, the people's lawyer serving as our advocate on consumer matters, defending our decisions as jurors in criminal appeals, protecting our investments in charitable organizations and institutions, initiating and overseeing prosecution of government fraud and conflicts of interest, and advising the state officials and agencies who serve us.

Whoever is sworn in as the next Attorney General, here are some questions that Richmond women should be asking the man who takes office in January:

How will you represent my interests as "consumer counsel?"

Under the Code of Virginia, the Attorney General is required to represent the "interests of the people as consumers." What does this mean to the man who becomes the next Attorney General? Will he take an active role in investigating and enforcing Virginia's Consumer Protection Act?

When she was Attorney General, Mary Sue Terry helped reduce the costs to businesses and consumers of liability and workers' compensation insurance at a time when premiums were rising and insurance was increasingly unavailable. She did this through legislation she advocated and through aggressive representation of consumers in insurance rate cases pending before the State Corporation Commission.

Will the new Attorney General take action to address the malpractice insurance crisis by advocating changes in insurance regulations? Will he take steps to protect consumers from price gouging during disasters? Will he prosecute those who deceive consumers by making false claims about their products or services; for example, those businesses currently selling international drivers licenses falsely claiming that it is legal to drive in Virginia using such a document?

It is important to let the Attorney General know what you expect from him as your consumer advocate.

How will you decide how money from settlements negotiated in consumer class action cases will be distributed?

With the exception of the tobacco settlement funds, the distribution of settlement proceeds from consumer lawsuits is completely within the discretion of the Attorney General pursuant to whatever agreement ending the lawsuit was approved by a court. Some past Attorneys General have distributed money from lawsuits in a manner designed principally to serve their political objectives. One Attorney General distributed money from the settlement of a price fixing lawsuit involving a woman's shoemaker to so-called crisis pregnancy centers rather than in a manner more likely to benefit directly the consumers who had paid more for shoes because of the company's anti-trust activities. Another made grants from settlement funds to health care institutions and organizations in jurisdictions that could be of strategic importance in a future campaign.

Will the next Attorney General adopt an open process that includes affected consumers in the decision how consumer settlements are distributed? If not, why not?

How will you decide when to challenge or defend a law passed by the legislature, appeal a case or sign an amicus ("friend of the court") brief in a pending case?

In past administrations, Virginia Attorneys General, acting on behalf of the people of the Commonwealth of Virginia (their ultimate client), have: 1) refused to defend the legislature's decision to increase office allowances for members of the House and Senate (the legislature won); 2) defended at trial and on appeal a plainly unconstitutional statute passed by the legislature that sought to ban a particular abortion procedure (the so-called partial birth abortion bill); 3) filed lawsuits attacking the application of certain EPA rules and the federal Motor Voter Law to Virginia; and 4) authored or signed briefs that advocated severe limitations on the right of individuals to sue the state for discrimination under the Americans with Disabilities Act, the Age Discrimination Act and Title IX of the Education Amendments of 1972.

What policy will the next Attorney General follow in making these kinds of decisions? Will his actions reflect his personal beliefs, those of his political party or some other standard? Will he consult with the Governor before committing the people of the Commonwealth to a side in a legal dispute?

How will you interpret the law in official opinions you write as Attorney General? Will you be an "activist" or a "strict constructionist"?

One of the important roles played by the Attorney General is quasi-judicial. The Attorney General is obligated by law to issue a formal opinion regarding how the law should be interpreted when asked by certain public officials. The questions asked each year cover far reaching issues from the legality of "pull tabs" in fraternal lodges to the right of localities to regulate shooting ranges to the Lieutenant Governor's authority to vote as "a member of the Senate."

An official opinion of the Attorney General is not the same as a court decision, but it is entitled to great deference by the courts. Once an Attorney General issues an opinion, the failure of the legislature to take action to override it by changing or clarifying the law is read by the courts as an indication that the legislature agrees with the Attorney General's reading of the law.

One example illustrates well the power the Attorney General can wield through the opinion function. In 1962-63, in 1966-67 and in 1991, three Attorneys General had opined that it was unconstitutional under the Virginia Constitution for public school divisions to provide free bus service to students attending private religious schools. Each of these Attorneys General interpreted the Virginia Constitution as setting a stricter standard for the separation of church and state than is set by the First Amendment.

This longstanding interpretation was never addressed by the Virginia legislature nor overturned by the Virginia courts. In 1995, stating simply that "I am of the opinion that these prior opinions do not accurately state the current law," then Attorney General James Gilmore issued an opinion overruling the prior opinions and interpreting the law as permitting local school divisions to provide bus transportation to students attending private religious schools. Ironically, the 1995 busing opinion

was requested by and issued to one of the candidates for Attorney General this year, Delegate Bob McDonnell.

Just as it is important to know how a judge will apply the law and what regard he or she will have for past decisions, it is important to know how the next Attorney General will approach this quasi-judicial opinion writing function.

Will you be a good steward of my tax dollars?

The Attorney General of Virginia is the managing partner of a public law firm with almost 300 employees and a budget of more than \$25 million -- not including almost 60 additional lawyers paid for by various state agencies but supervised by the Attorney General, and the millions of dollars spent annually on outside counsel (private lawyers and law firms) who handle matters ranging from issuance of bonds to mundane collection work.

You should be asking what steps the next Attorney General will take to be sure that dollars spent on the state's legal work are well invested and that the quality of representation provided to taxpayers is high.

What will the Attorney General do to improve the state's collection of debts owed and fines and penalties unpaid? How will the Attorney General account for the \$9,000 a year that he will receive as Attorney General for expenses "not otherwise reimbursed?"

Will your management practices reflect a commitment to full equality of opportunity at all levels?

Every employee of the Office of the Attorney General is an at will employee who serves at the pleasure of the Attorney General.

Will the next Attorney General commit to ensuring that the Office's hiring and personnel practices reflect a commitment to merit over political affiliation and full equality of opportunity and compensation at all levels of employment?

Will the Attorney General commit not to discriminate in employment based on race, national origin, gender, religion, disability, Veterans' status, sexual orientation or gender identity?

How will the Attorney General assure that the contracting and procurement practices of the Office of the Attorney General under his leadership assure that small, women and minority owned businesses get their fair share of the state dollars that the Office spends?

How the next Attorney General answers these questions will reveal much about what kind of leader he will be as "the people's lawyer" and more about what kind of leader he might be as Governor when he (inevitably, it seems) decides to move up in four years.

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