

Does a town clerk have the authority to institute legal proceedings on behalf of the municipality?

In *Gcali NO v MEC for Local Government in the Eastern Cape* 1998 JOL 117*, Case No 802/95 (12/06/1995) it was decided, among other things, that a town clerk does not have authority to institute legal proceedings on behalf of the municipality in his or her capacity as town clerk, without instruction from the council to do so. The High Court of Transkei held that “(T)he general rule in regard to the institution or defence of legal proceedings by a municipality is that such proceedings must be authorised by the council of the municipality, an authority usually afforded by means of a resolution of the council or a committee possessing delegated authority.” In authorising the institution or defence of legal proceedings, the council acts as an agent of its principal, the municipality. There was no legislative provision in section 59 of the Transkeian Municipalities Act 24 of 1979, nor the LGTA, which authorised the town clerk to institute proceedings for and on behalf of the municipality. This does not mean that a town clerk cannot seek legal relief as an employee, acting in his personal capacity.