

LOCAL GOVERNMENT

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Professionalising management

NEW RULES
ON APPOINTMENTS



TOWARDS A

Professionalised municipal administration

IMPORTANT AMENDMENTS TO MUNICIPAL SYSTEMS ACT PUBLISHED FOR COMMENT

The Department of Cooperative Governance and Traditional Affairs (CoGTA) has published proposed amendments to the Municipal Systems Act which will do much to promote a more professional administration by way of better-qualified senior management, more impartiality and greater efficiency.

The Bill is in direct response to the crisis in local government and forms part of CoGTA's turnaround strategy. The Bill has been approved by Cabinet and has now been published for comment. What follows is a short outline of the content.

Minimum qualifications and experience for managers

Too many councils have appointed managers who might belong to the right party, but have no skills or experience for the

job. The new legislation seeks to address this. To be appointed as municipal manager, a person must have specific qualifications and experience (to be set out in regulations). Any appointment in conflict with the requirements will now be void. If a council cannot appoint a suitable person, it may request the MEC for local government or the Minister to second someone until a suitable person has been appointed.

The same rules apply to the appointment of section 56 managers who report to the municipal manager. Minimum requirements are also set. It is, however, a pity that CoGTA has not used this opportunity to empower the municipal manager to appoint section 56 managers, rather than the current situation, where the council, in consultation with the municipal manager, appoints them.

Importantly, the above rules, if adopted, will apply to new appointments. Existing appointments are not affected.

Municipalities must report to the MEC and the Minister on the appointment process and outcome. If the requirements for appointment have not been met, the MEC must take appropriate steps to enforce compliance, including going to court. If the MEC fails to take the necessary steps, the Minister may step in. Furthermore, councillors may be held personally liable for any fruitless and wasteful expenditure which any of their illegal decisions may cause.

It must be noted that there are already National Treasury regulations dealing with the minimum competency levels of the municipal manager as accounting officer, the chief financial officer and other finance officials. When CoGTA issues its regulations on minimum requirements, it must ensure a harmonious and mutually supportive set of requirements.

Separating politics from the administration

Second, in order to draw a clear line between the political and administrative sides of the municipality, the amendment proposes that a municipal manager or a section 56 manager may not hold political office in a political party, whether in a permanent, temporary or acting capacity. 'Political office' is defined as the position of (deputy) chairperson, (deputy)



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secretary or treasurer of a party at national, provincial or regional level, or whatever other level the party operates on. Again, the rule applies to future appointments only.

This rule is very welcome because it has become a frequent occurrence that a senior office holder in a political party, often the regional chairperson or secretary, has been appointed as a municipal manager, section 56 manager or even a lower-ranking official. The effect of such an appointment is that the official often exercises political power over the councillors belonging to his or her party. This turns the council's accountability structure on its head (see *LGB12(1)*, March 2010, pp 10–11). The only problem with the proposed provision is that it does not go far enough. If a lower-ranking official is a senior office-bearer in his or her party, the damage to the organisational discipline is even more severe.

Performance agreements

Third, in order to achieve greater efficiency among senior managers, the provisions relating to performance agreements will be tightened. When an employment contract is concluded with a municipal manager or a section 56 manager, a performance agreement must be signed within 60 days. The appointment lapses if no such agreement is signed. This will

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certainly get the council and the managers moving to have performance agreements signed!

Re-employment of dismissed officials

Fourth, in order to employ persons of integrity, the proposed amendments make it difficult for a person who has been dismissed for misconduct by a municipality to get a job at another municipality. This provision tries to stop the trend of officials who have been dismissed, or are subject to a disciplinary hearing, simply hopping from one municipality to another, often continuing their track record of maladministration or corruption at their new place of employment.

An official dismissed for misconduct may only be re-employed in another municipality after a period prescribed by the Minister. Furthermore, where an employee is subject to a disciplinary inquiry, he or she may not be employed by another municipality until the inquiry has been conducted.

Salaries of municipal managers

Fifth, in order to get greater uniformity among municipalities in the salaries, benefits and other terms and conditions of employment of municipal managers and section 56 managers, the Minister may now make regulations to regulate these elements of employment.

Appointments to established posts

Sixth, in order to ensure that municipalities appoint persons to established posts, and do not serve as employment centres for party loyalists, no person may be employed unless it is in an establishment post. The National Treasury has found that 28% of municipal employees are appointed to non-existent posts. In Mpumalanga the figure is as high as 60% and in the Eastern Cape, 39%. The amendment provides that a contract of employment to a non-existent post is null and void. Furthermore, the person who made the employment decision is personally liable for any fruitless and wasteful expenditure flowing from such an invalid appointment.

key points

- CoGTA has proposed amendments to the Systems Act to tighten the rules on the appointment of senior managers in local government.
- Municipalities may no longer appoint party office bearers as senior managers.
- The MEC or the Minister will monitor appointments and step in where necessary.
- A councillor who votes in favour of illegal appointments may be held personally liable for any fruitless and wasteful expenditure that may arise.
- If a performance contract is not concluded within 60 days of appointment, the appointment lapses.

Investigations by the Minister

Finally, given the poor track record of some provinces in investigating maladministration and corruption, the amendment provides that, should an MEC fail to hold an investigation within 90 days, despite the fact that the Minister has requested it (see *LGB10(3)*, July/August 2008, pp 9–10), the Minister may conduct such investigation.

Conclusion

While further debate on the proposals is necessary, CoGTA is to be congratulated for suggesting some forthright amendments to the Systems Act that will go a long way towards securing more professional, impartial and efficient municipal administrations. As soon as they become law the *Bulletin* will carry full articles on the various provisions.



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