

WHAT ABOUT THE ORDINANCES?

With the enactment and implementation of the Municipal Demarcation Act, Municipal Structures Act and the Municipal Systems Act, the new dispensation for local government has firmly taken root. Are the old ordinances still applicable?

It is submitted that the answer is twofold. The ordinances *are not* applicable to the extent that:

- the matter has been dealt with in terms of one of the above Acts (certainly if the ordinances are inconsistent with these Acts); and
- the ordinances are inconsistent with the new legal order, e.g. where they encroach upon a municipality's right to regulate its own internal affairs (s 160(6) of the Constitution) – many of the ordinances' rules pertaining to internal arrangements of municipalities must be replaced by a municipality's own internal rules.

However, the ordinances *are* applicable to the extent that they fill any gaps in the existing legal framework. Ordinances dealing with land-use planning are examples of this.

The national Department for Provincial and Local Government is undertaking a review of all national and provincial legislation. This process will eventually result in the repeal of most of the local government ordinances.

MUNICIPAL STAFF MEMBER ON A WARD COMMITTEE?

There is no legal provision that *expressly* prohibits municipal staff members from being members of a ward committee. However, it is submitted that their inclusion is problematic.

Ward committees are council's primary advisory committees. They will play an important role in council's decision-making. Having municipal staff members on a ward committee can cause conflict of interest. For example, a ward committee has to formulate a recommendation to the council on the municipal budget. The municipal budget includes allocations to the department where the staff member is employed and also to staff salaries. Thus, the municipal staff member would be in a position to influence

council's decision-making on these issues *as a ward committee member*.

Regardless of the relevant person's best intentions to serve as a committee member representing the interests of the ward, the reality is that the legitimacy of the ward committee as a vehicle for public participation would be greatly enhanced if it were *seen to be* made up of members of the public only.

Municipal staff can influence council's policy via the available internal mechanisms of the administration (s 51(l) of the Systems Act).

Another difficulty relates to the issue of delegation of executive powers to a ward committee (s 74(b) of the Structures Act). It is our submission that councils should refrain from using this provision, at least for the time being while the concept of ward committees is still new. In a situation where a ward committee has executive powers, the inclusion of municipal employees poses a real problem. In sum, the inclusion of staff members is not in line with the legal framework in the Structures Act.

PR COUNCILLOR ON A WARD COMMITTEE?

Again, there is no legal provision that *expressly* prohibits the inclusion of PR councillors on a ward committee.

However, most of the arguments, mentioned above, apply. It is clear from the legal framework established by the Structures Act and the Systems Act that the ward committee is a vehicle to facilitate participation by residents, communities and local organisations in the affairs of the municipality. It is suggested that there is no need to provide PR councillors with a channel for participation in municipal affairs. Their membership of the council provides them with those opportunities.

PR councillors could be *assigned* to ward committees as *ex officio* members (see *LGL Bulletin* 2001(1), p. 10). This could be done to include a constituency element in their work and to facilitate their interaction with communities.

MORE THAN TEN ON A WARD COMMITTEE?

Section 73(2)(b) of the Structures Act sets the upper limit for the number of ward committee members (excluding

the ward councillor) at ten. If more than ten additional members have been appointed, the ward committee has been constituted illegally. It is suggested that such a ward committee be reconstituted to include not more than ten members. If this is not possible for some reason, the committee must be redefined as an 'ordinary' advisory committee in terms of section 17(4) of the Systems Act. This provision allows a municipality to establish advisory committees consisting of members who are not councillors. There is no limit to the number of members of these advisory committees.

A consequence of being defined as an 'advisory' committee is that no functions can be delegated. Delegation is limited to council's political structures, established in terms of the Structures Act (s 59 of the Systems Act). Delegation to an advisory committee is not legally possible.

IS THE WARD COMMITTEE A COMMITTEE OF COUNCIL?

The regime for ward committees in the Structures Act (s 74–78) is very different from the regime for other committees of council. Unlike council committees, ward committees are composed of non-council members (except for the chairperson). Consequently, these members are not entitled to remuneration.

The ward committee's purpose is to enhance participatory democracy. The purpose of other committees of council is to enable it to perform its functions effectively (s 79 and s 80).

The members of a ward committee are, unlike other council committee members, not accountable to the municipal executive or the council. They are also not subject to the Code of Conduct for Councillors (Schedule 1 of the Systems Act).

Seen as a whole, the different regime contemplated in respect of ward committees suggests that they cannot be regarded as committees of council.

TIMING OF COUNCIL MEETINGS

The speaker of a council decides when and where council meets (s 29 of the Structures Act). However, the speaker is compelled to call a meeting at a particular time if a majority of the councillors

make a request in writing. Therefore, council has the ultimate authority over the time of council meetings.

Can the council decide to hold ordinary council meetings at a time when minority members cannot attend due to work commitments? Section 160(8) of the Constitution provides that a member of a municipal council is entitled to participate in its proceedings in a manner that allows parties and interests to be fairly represented and that is consistent with democracy.

It is submitted that it would be inconsistent with democracy and that it would amount to an unfair representation of parties and interests if the right of a council to make its internal arrangements leads to the exclusion of council members from the deliberations of council. A council may be well advised to structure the operation of its highest decision-making body so that it complies with the letter and spirit of the Constitution.

CAN COUNCIL MAKE INDIVIDUAL APPOINTMENTS?

Council appoints managers who are directly accountable to the municipal manager (s 56(a) of the Systems Act). In respect of other staff members, section 55(1) of the Systems Act makes the municipal manager responsible for their appointment, subject to the policy directions of the council and the Employment Equity Act 55 of 1998.

Clearly, the Systems Act vests the responsibility for *individual* appointments in the municipal manager. He or she has the discretion to take these decisions, provided that they comply with council's policy. The rationale behind this can be found in section 51(i) of the Systems Act, where it states that the municipality must structure its administration in a manner that enables it to hold the municipal manager accountable for the performance of the municipality (see *LGL Bulletin* 2001(2), p. 2).

If council makes individual appointments, the accountability of the municipal manager towards council is effectively frustrated since he or she would not be in a position to appoint staff and thereby manage the administration's performance.