

## Roles and responsibilities of mayors

### TERMS OF REFERENCE

**S**ection 53 of the Municipal Systems Act (hereafter the Systems Act) determines that every municipality must define the specific role and area of responsibility of each political structure and political office-bearer of the municipality. SALGA resolved to prepare a guide to assist municipalities in complying with this requirement (see *LGL Bulletin* 2001(3) p. 4). This guide highlights and explains the possible content of the terms of reference that a municipality may adopt to comply with the Systems Act. This article contains abbreviated sections of the guide in so far as it deals with roles of executive mayors and mayors in a collective executive system.

### THE MAYOR IN A COLLECTIVE EXECUTIVE SYSTEM

#### Statutory powers of the mayor

Section 49(1) of the Municipal Structures Act (hereafter the Structures Act) lists the statutory powers of the mayor in a collective executive system. The mayor determines the date, time and venue of executive committee meetings, chairs these meetings and performs functions delegated to him or her by the municipal council or the executive committee (including ceremonial functions).

In terms of section 31(2) of the Municipal Finance Management Bill, the mayor is the 'councillor responsible for financial matters' of the municipality. As such he or she must:

- prepare a draft annual budget at least four months before the start of the financial year (s 17(1));
- allow the public access to the draft budget by making it available and inviting the public to submit comments and representations to the municipality (s 17(2)(a));
- table the draft budget in the municipal council for discussions and public hearings (s 17(2)(b));
- submit a copy of the municipality's draft budget to the national or provincial treasury, to the district

municipality in whose area it falls, in the case of a local municipality and to the local municipalities in its area, in the case of a district municipality (s 17(3));

- prepare the final budget and table it in the council for approval as soon as the council discussions and public hearings on the draft budget have been completed (s 17(5)(b));
- manage the budget process in such a way that the budget is tabled in the council at least 30 days before the start of the financial year (s 17(6));
- table an adjustments budget in the municipal council as and when necessary (s 20); and
- table financial statements and reports received from the municipal manager (regarding a list of matters by regulation) in the council at the first council meeting after receiving them (s 36(3)).

#### Inferred powers

The fact that the mayor is the chair of the executive committee means that he or she has certain powers similar to those of the speaker. The difference is that these powers relate to the executive committee and not to the council as a whole. The mayor must, in respect of the executive committee:

- preside at public meetings and hearings called by the executive committee;
- receive petitions on behalf of the municipality when requested to do so by petitioners;
- ensure compliance with the law, including the rules of order, during executive committee meetings;
- interpret the rules of order when required to do so during executive committee meetings, taking into account any prior rulings and interpretations of the speaker; and
- ensure that the executive committee's reports to the council will adequately facilitate the council's oversight functions in relation to committees and the mayor.

### Agenda

The mayor presides at executive committee meetings where he or she is present. This implies that he or she should be involved in the preparation of the agenda. The mayor must, for instance, ensure that reports that must be submitted to the executive committee are complete, in logical order and submitted in time for inclusion in the agenda. He or she must also ensure that agendas are distributed to executive committee members prior to a meeting in accordance with the timeframes stipulated in the municipality's rules of order.

### Meeting procedures

The mayor must see to it that the provisions of the municipality's rules of order with regard to executive committee meetings are adhered to. The rules of order may regulate the detail of the conduct of executive committee meetings. The mayor must know these rules in order for him or her to apply them consistently. Rules of order would, for example, determine which motions and proposals may or may not be made, when a motion or proposal must be disallowed, how an interview with a deputation must be conducted or how to deal with a petition tabled at an executive committee meeting. As in the case of the Code of Conduct for councillors, the mayor should have a record of all the speaker's interpretations of the rules of order, as well as precedents that have developed. This

will ensure consistent application of the rules of order.

### Debate management and voting

In respect of executive committee meetings, the mayor shares responsibility with the speaker to promote members' freedom of speech, subject to the municipality's rules of order (see also *LGL Bulletin 2001(3)* p. 12). He or she must, however, also assess the content of councillors' input in the executive committee for compliance with the rules of order and other legislation.

The mayor must implement the voting procedures in the executive committee as determined by the municipality's rules of order. Mayors must also uphold a councillor's right to have his or her opposition to a resolution recorded in the minutes of a meeting. If there is a deadlock in the executive committee, the councillor presiding (normally the mayor) can in addition to his or her ordinary vote, cast an extra vote (called a casting vote) to decide the matter (s 52(3) of the Structures Act).

### Admission of public to council meetings

In principle, executive committee meetings are open to the public and the media (s 160 of the Constitution read with s 20(1) of the Systems Act). However, the executive committee can close any of its meetings, provided it is reasonable in light of the matter that is being discussed (s 20(3) of the Systems Act). In the circumstances, listed in section 20(2) of the Systems Act, an executive committee cannot close its meetings to the public. While it is the executive committee that decides whether or not to close a meeting, the mayor must be able to advise the committee and facilitate decision-making around the issue. Therefore the mayor must ensure that he or she can explain the legal requirements for closing a meeting and must apply those rules consistently.

The mayor must ensure that members of the public are seated in designated areas from where they can observe the proceedings of the executive committee. The rules of order of municipalities usually authorise the mayor to have anyone who refuses to comply with a ruling removed from the meeting.

### Compliance with the Code of Conduct

The Structures Act states that the speaker must ensure compliance with the Code of Conduct in the council *and committees* (s 37(3), see also *LGL Bulletin 2001(3)* p. 13). This requires at a minimum that the speaker must establish a system of communication with the mayor as chairperson of the executive committee to discuss matters relating to possible transgressions of the Code of Conduct.

### Delegated powers of the mayor

A council could delegate the following powers and functions to its mayor:

- promote the municipality's image;
- ensure the executive committee performs its functions properly;
- lead and promote social and economic development in municipality;
- preside over public meetings and hearings called by the executive committee or the mayor;
- convene public meetings and hearings;
- promote inter-governmental and inter-institutional relations;
- identify those of the municipality's activities requiring a specific committee of councillors to investigate, discuss, evaluate and report in order to make recommendations to the executive committee after consultation with the municipal manager;
- appoint a member of the executive committee as chairperson for each council committee;
- ensure, in consultation with the municipal manager, that a proper committee service responsible for the agendas and minutes is in place for the executive and other committees, that all committees meet regularly and submit reports to the executive committee timeously;
- take responsibility for the quality and speed of decision-making in the executive committee;
- build, maintain and enhance sound relationships between the council, councillors and the administration in consultation with the municipal manager;
- be available on a regular basis to interview the public and visitors to the municipal offices, and to interact with prominent business people as well as developers;

- perform such ceremonial roles as the council may determine; and
- assess the performance of the municipal manager and the mayor's personal assistant, if any, in terms of the relevant performance agreement.

The council may decide to designate the mayor as the appeal authority in terms of the Access to Information Act 2 of 2000 (see *LGL Bulletin* 2001(3) p. 14).

### Ceremonial powers and functions

The following ceremonial powers can be delegated to the mayor:

- opening projects, civic functions and events and new buildings;
- hosting and welcoming dignitaries;
- advocating council policy;
- representing the council at civic events;
- leading campaigns initiated by the mayor or the council;
- representing the council during disasters; and
- acting as patron of local organisations.

### Receiving reports from delegated bodies

A political office-bearer who exercises delegated powers must report to the delegating authority as often as the delegating authority requires, on decisions taken in terms of that delegated power or duty since the previous report (s 63 of the Systems Act).

Where the council has delegated powers to its mayor, the speaker must ensure that the mayor complies with this reporting requirement. The mayor must submit his or her reports on the exercise of his or her delegated powers to the speaker for consideration by the council. Importantly, the speaker does not judge the *content* of the reports. Where the executive committee delegated powers to the mayor, the committee itself must ensure that the mayor complies with these requirements.

### Relationship with the speaker

Neither the mayor nor the speaker occupies the superior political office in the municipality. Neither office is subject to the authority of the other. In the context of the activities of the

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executive committee, the mayor plays the dominant role. In the sphere of the council, the speaker performs that role. With regard to the enforcement of the Code of Conduct for councillors and compliance with the legal requirements regarding delegation of powers to the mayor, the speaker is in charge. This means the mayor must assist the speaker in ensuring legal requirements are met and that in some instances, the decision or ruling of the speaker may be conclusive.

### Conclusion

The White Paper listed the following advantages of the collective executive system: 'by spreading responsibility for executive functions across a number of councillors this structure can act as an effective method for building the capacity of emerging political leadership'. This means a council should be careful not to delegate so many powers to the mayor that he or she becomes a *de facto* executive mayor. This would diminish the advantages of the collective exercise of executive powers.

## THE EXECUTIVE MAYOR

### Statutory powers and duties

Section 56(3) of the Structures Act lists the statutory functions of the executive mayor. In addition to these functions, the executive mayor must:

- perform the ceremonial roles determined by the council (s 56(4) of the Structures Act);
- report to the municipal council on all decisions that he or she has taken (s 56(5) of the Structures Act);
- appoint (and he or she may dismiss) the members of the mayoral committee (s 60 of the Structures Act);
- determine the venue, time and date of mayoral committee meetings;
- exercise those of his or her powers and functions, that were designated by the council, together with the other members of the mayoral

committee (s 60(3) of the Structures Act, see below);

- manage the drafting of the municipality's integrated development plan and submit the draft to the council (s 30 of the Systems Act);
- manage the development of the municipality's performance management system and submit the proposed system to the council (s 39 of the Systems Act);
- oversee and monitor the implementation and enforcement of the municipality's credit control and debt collection policy and by-laws as well as the performance of the municipal manager in implementing these (s 99(a) of the Systems Act, see also p. 8);
- when necessary, evaluate or review the municipality's credit control and debt collection policy and by-laws, or the implementation of the policy and by-laws, to improve the efficiency of existing credit control and debt collection mechanisms, processes and procedures (s 99(b) of the Systems Act); and
- at intervals determined by the council, report to the council on the credit control and debt collection policies, and by-laws and their implementation (s 99(c) of the Systems Act).

The executive mayor can delegate any of his or her powers to the respective members of the mayoral committee. An executive mayor is entitled to receive reports from committees of the municipal council. If it is not possible to dispose of the matter in terms of his or her delegated powers he or she can forward them, together with a recommendation, to the council (s 56(1) of the Structures Act). Where there is no specific committee established to investigate and make recommendations on a matter, the executive mayor would receive reports from the administration.

The executive mayor is the 'councillor responsible for financial matters' in terms of the forthcoming Municipal Finance Management Bill. As such he or she has the same duties as those discussed above under the mayor.

### Inferred powers and functions

The executive mayor has powers similar to those of the speaker, al-

though only in relation to the mayoral committee and not in relation to the council as a whole. This means the executive mayor must, in respect of the mayoral committee, perform the same functions as were mentioned for the mayor under 'Inferred powers'.

### Meetings of the mayoral committee

The executive mayor presides at mayoral committee meetings and must see to it that the provisions of the rules of order are adhered to.

### Code of Conduct in committees

The executive mayor should inform the speaker of issues related to possible transgressions of the Code of Conduct. An example is councillors' attendance of committee meetings.

### Proposed delegated powers

The following powers can be delegated to the executive mayor.

- (a) after consultation with the municipal manager, identifying the municipality's activities that need a specific committee of councillors to investigate, discuss, evaluate and report to him or her and make recommendations to the council;
- (b) appointing a member of the mayoral committee as chairperson for each committee established by the council;
- (c) delegating to such committees any of his or her powers, without being divested of the responsibility concerning the exercise of such delegated powers;
- (d) ensuring, in consultation with the municipal manager, that a proper committee service responsible for the agenda and minutes is in place for each such committee and that any such committee meets regularly, submitting reports to him/her timeously;
- (e) receiving reports with recommendations from departmental heads through the office of the municipal manager on all matters that must be handled by either the executive mayor or the council in terms of these delegations, and for which a specific

committee has not been created to consider the matter beforehand;

- (f) considering the matters raised in such reports and either disposing of them in terms of his or her delegated powers, or forwarding them with his or her recommendation to the council for consideration;
- (g) receiving reports with recommendations from the committees established for specific matters, considers the matters raised in these reports, and either disposing of them in terms of his or her delegated powers, or forwarding them with a recommendation to the council;
- (h) being responsible for the quality and speed of decision-making;
- (i) ensuring that integration takes place between the various committees;
- (j) playing a prominent role, in consultation with the municipal manager, in building and maintaining a good relationship between the council, councillors and the administration;
- (k) being responsible for political supervision of the administration;
- (l) being responsible for liaison with the community, ward committees, other committees and councillors, and political office-bearers in the different spheres of government;
- (m) being available on a regular basis to interview the public and visitors to the municipal offices, and to interact with prominent business people as well as developers; and
- (n) exercising any of the powers of the municipality except such powers:
  - (i) reserved by resolution of the council for the council;
  - (ii) reserved by law for the council; and
  - (iii) the exercise of which requires a resolution taken by a majority other than a simple majority.

A council may decide to designate the executive mayor as the appeal authority in terms of the Access to Information Act.

### Ceremonial functions

The same ceremonial functions as above can be considered for delegation to the executive mayor.

### Receiving reports from delegated bodies

Where the council has delegated powers to its executive mayor, the speaker must ensure that the executive mayor complies with the reporting requirements set out in section 63 of the Systems Act (see above). The executive mayor must submit his or her reports on the exercise of his or her delegated powers to the speaker for consideration by the council. Importantly, the speaker does not judge the *content* of the reports. Where the executive mayor delegated powers to the members of the mayoral committee, the executive mayor must ensure those members comply with these requirements.

### Relationship with the speaker

Similarly to the relationship between the mayor and the speaker, neither the executive mayor nor the speaker occupies a superior political office. Neither office is subject to the authority of the other. The same assessment of the overall focus areas of the two offices applies here as under the mayor.

### Mayoral committee members

The Structures Act requires that when the council of a municipality with a mayoral executive system has more than nine members, the executive mayor must appoint a mayoral committee from among the councillors "... to assist the executive mayor" (s 60). In terms of section 60(3) of the Act the executive mayor must exercise those powers and perform those functions designated by the council, together with the other members of the mayoral committee, i.e. not alone (see *LGL Bulletin* 1999(1) p. 11). Of course the executive mayor may, in his or her discretion, decide to submit other matters also to the mayoral committee before taking a decision.

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