

Can a district councillor be employed by a local municipality within the district?

There is currently no legal provision that directly prohibits a local municipality's employee from sitting on the district council. However, there is a real possibility that if such a case were to come to court, the court would rule that there is a conflict of interest.

An employee of a local municipality will report to the council, which will include some of the same people that she/he works with as a councillor at district level. This is a conflict of interest.

The ability of the local council to manage the employee's performance will be clouded by her/his position as a councillor.

Furthermore, the councillor must get permission from the municipal manager for leave of absence to attend district council meetings.

If permission is refused, the councillor would then have to choose between her/his employment as a municipal official and as a district councillor.

The conflict is even worse if the employee is the municipal manager, who reports directly to the council. In such a case the municipal manager must get permission from the council.

However, this scenario should not be allowed under any circumstance because the municipal manager reports directly to the council, which assesses his/her performance.

As mentioned before, council's ability to do so will be clouded by his/her position as a councillor.

Can a provincial legislature summons mayors?

Provincial legislatures have an oversight function over the provincial executive authority (MEC), including the implementation of legislation and any provincial organ to ensure fulfillment of constitutional obligations and mandates towards local government. Mandates include monitoring, supporting and promoting the development of local government capacity to perform their functions and manage their own affairs.

Provincial legislatures do not have a similar oversight function over local government. However, in fulfilling their oversight role over the provincial department and MEC they can summons any person to give evidence under oath or affirmation, or to produce documents.

In terms of provincial legislation or rules and orders, they can compel any person to comply with the summons. A provincial legislature can summons a mayor, as a person who can give relevant information about the provincial department's interaction with a municipality.

Can a political party remove the chairperson of a standing committee belonging to their party?

A distinction first needs to be drawn between a section 79 and a section 80 committee in terms of the Municipal Structures Act. If a councillor is the chairperson of a section 79 committee, the council appointed him/her and this means that only council can remove the chairperson.

If the councillor is a chairperson of a section 80 committee, on the other hand, the executive committee appointed him/her and this means only the executive committee can remove the chairperson.

While political parties can terminate a councillor's membership in terms of their own internal disciplinary procedures, they cannot remove a political office bearer from office. Either council or the executive committee elected these chairpersons and only they can remove the chairperson so appointed.

See *LGL Bulletin 2002(2) 14* 'Firing the mayor with a double barrelled motion'. The Cape High Court held that a political party cannot remove a duly elected political office bearer from office.

Can a municipality appoint its own employees and councillors on the performance audit committee if it cannot find suitable candidates in the community?

Internal Performance Audit Committee

In terms of section 14(2)(a) of GN 22605 (Municipal Planning and Performance Management

Regulations, 2001), a municipality must annually appoint and budget for a performance audit committee consisting of at least three members, the majority of whom may not be involved in the municipality as councillors or employees.

This clearly means that the majority of the members must not be involved in that particular municipality. This does not preclude a municipality from appointing councillors or employees with the necessary expertise from other municipalities (local municipalities or district municipalities) in their district.

Section 14(2)(h) of the Regulations goes further by allowing the local municipality to use the performance audit committee of the district municipality in whose area it falls.

The only requirement in this instance is that the local municipality must inform the district municipality of its decision and must make suitable arrangements with the district municipality regarding the availability of the performance audit committee.

Three options

- Appoint a performance audit committee consisting of councillors and employees of other local municipalities within the district;
- Appoint the performance audit committee of the district municipality (providing that the members of the committee are not councillors or employees of the local municipality); or
- Use any audit committee established in terms of any other legislation, as long as the provision of section 14(2)(a) is adhered to.

The performance audit committee is to promote transparency and accountability. It is suggested that the local municipality endeavours to appoint one member from its local community in order to comply with the spirit of the legislation.

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