

Division of powers

Who does what in

Powers and functions of municipalities

Section 83 of the Municipal Structures Act stipulates that a municipality has those functions and powers assigned to it in terms of sections 156 and 229 of the Constitution.

- Section 156 of the Constitution deals with a municipality's general legislative and executive powers in respect of local government matters listed in Part B of the Schedules 5 and 6. Section 156 also mentions the authority of a municipality to administer matters, listed in Part B of those schedules, that were assigned to it by national or provincial government.
- Section 229 deals with a municipality's power to impose rates, fees, taxes and other duties.

Municipalities in metropolitan areas have exclusive jurisdiction in their area (s 155(1)(a) of the Constitution). In district management areas, the district municipality has all the municipal functions and powers (s 89 of the Municipal Structures Act). In other words, district municipalities and local municipalities share jurisdiction over the same area, unless that area is a metropolitan area or a district management area. The Constitution calls for a division of duties and powers between district and local municipalities (s 155(3)(c)).

A district municipality's functions and powers

A district municipality bears the responsibility of promoting the overall development of the district area (s 83(3)). In terms of this responsibility, it must -

- ensure integrated development planning for the district area as a whole;
- promote the bulk infrastructural development and the provision of bulk services for the area;

- where needed, build the capacity of local authorities in its area; and
- promote the even distribution of resources between the local municipalities in its area.

The Act continues with a list of specific functions and powers of a district municipality (s 84(1)). These include, among others, matters such as -

- integrated development planning for the district area;
- bulk supply of water and electricity;
- bulk sewage purification works;
- waste disposal sites serving the district area;
- regulation of passenger transport services;
- municipal health services, fire fighting services and municipal airports, serving the district area;
- promotion of local tourism; and
- imposition and collection of taxes, levies and duties as related to these functions.

A local municipality's functions and powers

A local municipality has all the 'general' local government functions of section 156 and section 229 of the Constitution, excluding the functions and powers allocated to the district municipality within which it falls (s 84(2)). However, this does not prevent a local municipality from performing the latter functions in its area (s 84(3)). Disputes between district and local municipalities concerning the question of who can or must perform certain tasks, may be resolved by the MEC, who may define the respective roles in the *Provincial Gazette* (s 86).

Adjustment of the division of powers and functions

The MEC can adjust this division of func-

tions and powers between local and district municipalities if the municipality in which they are currently vested is not capable of performing or exercising them. He or she can allocate functions and powers of a local municipality to a district municipality and vice versa. Exceptions are the district municipality's responsibility to ensure integrated planning for the district area, its power to handle grants made to the district municipality and its power to impose and collect taxes, levies and duties. The MEC must consult the Demarcation Board. The Board has to consider the capacity of a district or local municipality to perform these functions and exercise these powers when it is determining or re-determining boundaries and when it is asked to by the MEC as detailed above. If there is disagreement between the MEC and the Demarcation Board, the MEC must furnish the relevant municipalities and the Minister with reasons before taking a final decision (s 85(5)).

Any adjustment in the division of powers and function between local and district municipalities must be reflected in the relevant 'section 12 notices'. The MEC must regularly review the municipality's capacity. The functions and powers must be reallocated by the MEC when the municipality from which they were taken has regained the capacity to perform or exercise them and agrees with the reallocation. The Minister may overrule a decision by the MEC to adjust or reallocate functions and powers of district and local municipalities. When the MEC refuses to make an adjustment in accordance with the assessment of the Demarcation Board, the Minister may intervene by making his or her own adjustment (s 85(7)).

Temporary allocation in case of (likely) collapse of basic services

If, for any reason, the provision of basic

and functions the district?

services in a district or local municipality collapses, or is likely to collapse, the MEC may allocate the relevant functions and powers to the district municipality (if the collapse occurs in a local municipality) or to a local municipality in the district (if the collapse occurs in a district municipality). The aim of the allocation is to maintain the provision of basic services, and the allocation must be limited to those functions and powers necessary for the restoration and maintenance of basic services.

The MEC must notify the affected municipalities in writing. The Act does not make it entirely clear if notice should be given to both the municipality that stands to lose powers and the municipality that stands to gain powers. The rules of natural justice imply that both should be notified of the temporary allocation. This also means that both municipalities can use the opportunity, afforded in section 87(2), to lodge an objection with the Minister against the allocation. The Minister may confirm, vary or withdraw the allocation after consulting the Demarcation Board (s 87(2)). If no objection has been lodged within 14 days of the date of the notice, consent will be regarded as having been given by the municipality/ies that did not object. The relevant functions and powers should be reallocated by the MEC as soon as the municipality has regained the capability to resume the provision of basic services.

Municipalities should co-operate and assist

District and local municipalities must co-operate with one another by assisting and supporting each other (s 88). On request, the municipalities may provide financial, technical and administrative support services to one another to the extent that their capacity allows them to. The MEC has the duty to assist a district municipality in pro-

viding support to a local municipality.

Assessment and comment

In the context of the new division of powers and functions between district and local municipalities, no real comparison can be made with the existing district councils. The role of district municipalities is likely to become much more important in the new dispensation of local government. District municipalities will play a major role in many of the daily affairs of local municipalities, given the need for the development of capacity at that level of municipal governance. The role of the Municipal Demarcation Board, which will determine the capacity of each municipality and advise the MECs on the adjustment of the division of functions and powers between district and local, will be crucial.

Probably the most interesting provision in chapter five of the Structures Act which deals with the division of powers between district and local municipalities, is section 87. This provision authorises the MEC to temporarily allocate powers to another municipality in the area if the provision of basic services is being threatened. It seems to serve a function similar to section 86, which provides for the adjustment of the division of functions and powers between district and local municipalities if one of them is incapable. But the temporary allocation in terms of section 87 provides for the possibility of an *ad hoc* intervention in the case of a (likely) breakdown in basic service provision by the municipality, whereas the adjustment in terms of section 86 is a more structural and long term one. The 'section 86 adjustment' relates to a broader spectrum of functions and powers

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must be preceded by consultation with the Demarcation Board and must be reflected in the 'section 12 notice'. The fact that the temporary allocation can be taken on review by the affected municipalities as opposed to the 'section 86 adjustment', which can only be reviewed on the Minister's own initiative, is also an indication that the temporary allocation is actually a form of intervention.

The question might then be asked how section 87 relates to the intervention in terms of section 139 of the Constitution. Is

section 87 a tool for the province to intervene 'through the backdoor' and by-pass the procedures and requirements of section 139 and the forthcoming legislation in terms of section 139(3)? The two 'interventions' have to be placed within their respective constitutional contexts. Section 139 of the Constitution authorises an intervention, whereby another sphere of government can, in extreme cases, take over functions and powers of the relevant municipality. Section 87, however, falls within the 'division of powers and functions', as called for, and authorised by, section 155(3)(c) of the Constitution. Section 87 authorises a temporary reallocation of division of functions and powers within the sphere of local government. It is therefore, provided it is not used in a way that has a destabilising effect on local government in the province, a measure that has far fewer consequences for the institutional integrity of local government than has the intervention in terms of section 139 of the Constitution.

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