

WALKING THE TIGHTROPE:

Roles and responsibilities of the municipal manager

The administrative head of the municipality is not escaping the current wave of transformation, restructuring and renaming of local government structures. Coping with a new title is probably the least important of the changes facing the municipal manager. Rather, a key challenge for municipalities is to define the roles and responsibilities of the municipal manager in relation to the executive committee or executive mayor of the municipality.

It is the municipality's constitutionally protected right to regulate its internal affairs (s 160(1) and (6) of the Constitution). Therefore, the most critical player in shaping the roles and responsibilities of the municipal manager is the council itself. As the employer, the council

determines what it expects of a municipal manager. In this respect, s 160(1) and (6) of the Constitution make provision for a municipality to regulate its internal affairs.

However, the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act) and the Local Government: Municipal Systems Act 32 of 2000 (the Act) contain important provisions with legal powers, duties and obligations. This article explores the legal provisions that affect the functioning of the municipal manager. The comments of Johan Leibbrandt and Dr Koos Smith on earlier versions of this article were most useful. Most of the

provisions referred to are in the Systems Act. Therefore, references to 'the Act' are references to the Systems Act.

TWO TYPES OF POWERS AND DUTIES

Powers and duties vested in the municipal manager

Some of the provisions discussed in this article impose duties directly on the municipal manager. For example, the Structures Act instructs the municipal manager to call a by-election when necessary. These powers reside with the municipal manager and can only be exercised by him or her. The council cannot exercise these powers or delegate them to other functionaries or office-bearers.

Powers and duties vested in the municipality

Other provisions contain legal responsibilities imposed on the municipality *as a whole*. However, from the nature of the responsibility or power it appears that the onus is on the mu-

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municipal manager to take initiative and play a leading role, subject to policy directions of the council. An example is the obligation on the municipality to maximise the efficiency of communication and decision making within the administration (s 51(j)).

MUNICIPAL MANAGER'S ACCOUNTABILITY

Section 51(i) contains a paramount principle that should determine the municipality's course in shaping the role of the municipal manager. It states that the municipality must organise its administration in a manner that enables it to hold the municipal manager accountable for the overall performance of the municipality. This has two consequences:

- The council must have the tools to hold the municipal manager accountable, i.e. to demand explanation and to review his or her performance.
- The municipal manager must have the tools to *answer to that accountability*, i.e. the administration must be managed in such a way that it enables the municipal manager to account for the performance of the entire administration.

CONTRACTS AND TERMS OF REFERENCE

It is necessary first to deal with the three internal documents that, to a large extent, will determine what is expected from a municipal manager:

1. the *performance agreement*, concluded each year by the municipal manager and the mayor or executive mayor on behalf of the municipality (s 57(1));
2. the *employment contract*, which must include 'details of duties' (s 57(3)); and
3. the municipal manager's *terms of reference* (s 53).

Performance agreement

The performance agreement must include the performance objectives and targets that the municipal manager must reach, together with the

time frames (s 57(4)(a)). These are based on the municipality's integrated development plan (IDP) (s 57(5)). A system for the evaluation of the municipal manager's performance together with the consequences of unsatisfactory performance must also appear in the agreement (s 57(4)(b) and (c)). It is within the council's discretion to determine which consequences apply to substandard performance.

Employment contract

The employment contract is for a fixed term and must include a provision for cancellation of the contract in the case of non-compliance *with the employment contract itself* (s 57(6)(b)).

No municipal manager can be appointed without him or her signing the performance agreement (s 57(1)(b)). This does not mean that the employment contract and the performance agreement must be concluded at the same time. The performance agreement is separate from the employment contract and must be concluded *within a reasonable time after the appointment* (s 57(2)(a)) of a municipal manager. This means that municipalities are not legally

bound to wait until the IDP process has resulted in the formulation of key performance indicators, strategies and targets before appointing a municipal manager. The employment contract can be concluded before then, provided that it caters for the consequences of substandard performance in terms of the performance agreement.

The employment contract must, *where applicable*, provide for cancellation of the contract in reaction to substandard

performance *in terms of the performance agreement* (s 57(6)(b)).

The Act does not compel a municipality to include termination of employment as a consequence of failure to fulfil the performance agreement. However, if cancellation of employment has been included in the performance agreement as a consequence of unsatisfactory performance,

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the employment contract must make that cancellation possible. The cancellation would have to comply with the relevant provisions of the Labour Relations Act 66 of 1995.

Terms of reference

In this document, the council must define the relationship between the political structures, office-bearers and the municipal manager, and determine the manner in which they must interact, for example, the establishment of an internal memo or reporting system (s 53). The lines of reporting and accountability must also be included, for example, does the municipal manager report to the council, to portfolio committees or to the (executive) mayor? The document must also make provision for dispute resolution between the municipal manager and the political structures and office bearers. The terms of reference may include delegations.

DUTIES IN RELATION TO THE COUNCIL

Beginning of term and by-elections

The municipal manager must call the first meeting of a newly elected council (s 29(2)) and preside over the election of the speaker (s 36(3)).

Each councillor must, within 60 days of the election or appointment, declare to the municipal manager, in writing, any financial interests held (item 7 of the Code of Conduct for Councillors in the Act). The same applies to gifts exceeding R1000. The council must decide which of the financial interests must be made public (item 7(4)).

If a by-election is necessary, the municipal manager must call and set a date for the by-election, after consulting with the Independent Electoral Commission (s 25(3)).

Municipal manager as head of the administration

A municipality's administration is governed by the principles of section 195(1) of the Constitution. Section 6(2) of the Act defines these further and instructs the administration, for example, to take measures to prevent corruption and to give members of the community full and accurate information about the level and

standard of services they are entitled to receive and about the persons in charge of municipal management. The municipal manager must see to the implementation of these principles in his or her administration.

As head of the administration, the municipal manager is responsible for the formation and development of an economical, effective, efficient and accountable administration, which is equipped to implement the IDP, operates within the municipality's performance management system, and is responsive to the needs of the local community to participate in municipal affairs (s 55(1)). Section 55(1) makes the municipal manager's responsibility subject to the policy directions of the council: the municipal manager is not responsible for the policy, but for its implementation.

Communication between council and administration

The municipal manager must manage the communication between the political structures and office-bearers and the administration (s 55(1)(j)). Instructions, queries and other forms of communication from the council, committees, the (executive) mayor or the speaker to the administration cannot bypass the municipal manager's office, because the municipal manager is accountable for the entire municipal administration (s 51(i)).

In the event of such information being communicated directly to officials or departments, the municipality would have to establish procedures to ensure that the municipal manager is informed accordingly. Such procedures should stipulate the level of detail required for the municipal manager to answer to his or her accountability towards the council. A delegation that has the effect of enabling the (executive) mayor or executive committee to issue instructions directly to officials other than the municipal manager, would effectively disable the accountability of the municipal manager to the council (s 51(i)). It would therefore run contrary to the scheme envisaged by the legislation.

Advising the political structures

The municipal manager must advise the political structures and office-

bearers. Particular issues where the municipal manager must render advice are:

- financial matters;
- issues related to the internal administration, such as human resources matters;
- policy matters; and
- legal and technical matters.

Integrated development plans

The executive mayor, executive committee or a special committee (in a municipality of the 'plenary' type) manages the drafting of the IDP. Part of that duty is the assignment of responsibilities to the municipal manager (s 30).

Section 30 clearly identifies the two primary actors in the IDP management. The executive mayor/executive committee or the IDP committee is under a legal duty to 'manage the IDP process'. Duties can only be assigned to the municipal manager. The municipal manager acts within the scope of these assignments. On page 11, certain duties around the IDP are suggested for assignment to the municipal manager.

Performance management

The Act places the 'development of the performance management system' (PMS) in the hands of the executive mayor, executive committee or a special committee (s 39(b)). They must assign responsibilities to the municipal manager (s 39(c)). Sections 44(3)(a) and 56(3)(a) of the Structures Act place the responsibility for the development of evaluation criteria, including key performance indicators, on the executive committee and the executive mayor respectively.

The establishment of a process of regular reporting to council, other political structures, office-bearers, staff, the public, and appropriate organs of state, such as the provincial government (s 41(1)(e)), is important. The municipal manager must implement and manage this reporting system and advise the council on the kind of reporting system it should adopt.

Implementation of performance management

Sections 44(3) and 56(3) of the Structures Act charge the executive committee/executive mayor with:

- evaluation of progress against the key performance indicators;

- review of the performance of the municipality; and
- monitoring of the administration.

The Act states that the performance of the municipality must be monitored, measured and reviewed at least once a year (s 41(1)(c)). Regular reports must go to the council on the implementation of the performance management system (s 41(1)(e)). In view of the fact that the executive committee/executive mayor is charged by law with the above three, it appears that these structures must manage and drive the monitoring, measuring and reviewing exercises as well as the preparation of the reports to council.

The actual implementation of the performance management system would be most appropriately placed in the office of the municipal manager. Ultimately, 'the municipality' must be able to hold the municipal manager accountable for the overall performance of the administration (s 51(i)). The executive committee/executive mayor's assignments to the municipal manager in terms of section 39(b) will prove to be of utmost importance to ensure clarity around the division of responsibilities.

The actual implementation of the PMS would be most appropriately placed in the office of the municipal manager.

Annual report

The municipal manager must drive the preparation of the municipality's annual report (s 46). He or she must notify the community, the Auditor-General and the MEC of a meeting on the annual report. Importantly, the Act states that the municipal manager must be available at the meeting to respond to questions, which can come from the council, but also from the Auditor-General or the MEC, since they have the right to attend and speak at the meeting (s 46(3)).

Delegations

The municipal manager must provide the newly elected council with a report on existing delegations together with recommended changes (s 65). This enables a review of the existing system of delegations inherited from the previous council. The report must be submitted to the council 'through' the executive committee or the execu-

tive mayor (s 65(2)). The municipal manager drafts the report and submits it to the executive committee/executive mayor. Changes can be made there before it is passed on to council, provided that it is clear where changes have been made.

DUTIES IN RELATION TO THE PUBLIC

Responsive administration

The municipal manager plays a specific role, assigned to him by section 55(1)(a)(iii) of the Act. It states that the municipal manager must ensure that the municipal administration is responsive to the needs of the local community to participate in the affairs of the municipality. The Systems Act envisages a municipal manager who ensures that the administration is open to, and facilitates, the input of local communities and residents in municipal affairs.

The municipal manager is accountable to 'the municipality' (s 51(i)), which consists of the political structures, the administration and the community (s 2(b)). Therefore, the Systems Act also envisages a role for the community and for the administration in holding the municipal manager accountable for the performance of the administration. This should not be interpreted as a right for 'the community' or 'the administration' to interfere with the municipal manager's functioning or to call the municipal manager to book. However, it does entitle the community and the administration to a municipal manager's office that is transparent, answers queries and engages with the municipal administration and the larger local community. For example, the transparency requirement is reflected in section 58 where the municipality is instructed to publish the salary scales and benefits of the municipal manager.

Public participation mechanisms

The onus is on the municipality to put in place mechanisms and processes to enable public participation (s 17(2)). The council must decide on the processes it wants to establish. It is

the municipal manager's responsibility to implement that decision and set up those mechanisms. Section 55(1)(n) states that it is the municipal manager's responsibility to facilitate public participation in the implementation of the IDP. The executive committee or executive mayor is responsible for reporting to the council on the involvement of communities in municipal affairs. The executive committee or executive mayor is also charged with ensuring that public views are taken into account and with reporting on the effects of public participation on decision making (ss 44 and 56 of the Structures Act).

Communication

The municipal manager has to ensure that the relevant information regarding public participation is communicated to the local community (s 18). A critical responsibility of the municipal manager is the publication of various notices. The Systems Act requires that a number of notices must be published and/or information be made available to the public. The Act mostly refers to 'the municipality' as being responsible for communication, but sometimes the responsibility is assigned to the municipal manager.

- The municipal manager must give notice of the time, date and venue of council meetings (s 19);
- the municipal manager must notify the public (as well as the Auditor-General and the MEC) of meetings at which the annual report will be discussed (s 46(3)(a));
- copies of the annual report must be submitted to the MEC, Auditor-General and other prescribed institutions (s 46(4)(b));
- copies of the annual report must be available to the public, interested organisations and the media (s 46(4)(a));
- proposed by-laws must be published for public comment (s 12);
- adopted by-laws must be published in the *Provincial Gazette* and in a local newspaper (s 13);
- the municipality must keep and maintain a compilation of its by-laws (Municipal Code) (s 15);
- every notice that was published in the *Provincial Gazette* must be displayed at the municipal offices (s 21(3));

- the community must be notified of the IDP ‘process plan’ (s 28(3));
- the community must be notified of the adoption of the IDP and copies and a summary must be made available (s 25(4));
- reporting to the public on the performance management system (s 41(e)(ii));
- the municipality must communicate its key performance indicators and performance targets to the public (s 44); and
- the municipal manager must ensure that those parts of the Code of Conduct for staff members that affect the local community are communicated to the public (s 70(2)(b)).

Appeals

Appeals against decisions taken by the council, or against decisions taken in terms of powers delegated to a committee, office-bearer or staff member, must be directed to the municipal manager (s 62(1)). The municipal manager must immediately submit the appeal to the relevant authority. The municipal manager is the appeal authority if the appeal is lodged against a decision taken by another staff member.

Service delivery

The municipal manager is responsible for the provision of services to the local community in a sustainable and equitable manner. He or she must develop and maintain a system to assess the satisfaction of the community with the municipal services (s 55(1)(d) and (o)). The Structures Act states that the executive committee or executive mayor must ‘oversee’ the sustainable provision of services (ss 44(3)(e) and 56(3)(e)).

DUTIES IN RELATION TO THE ADMINISTRATION

The municipal manager is responsible, subject to the policy direction of the council, for the management of the administration in accordance with the Systems Act and other applicable legislation (s 55(1)(b)). Importantly, the municipal manager is tasked with the implementation of the IDP and the monitoring of its progress (s 55(1)(c)).

Section 51 lists the general responsibilities of the municipality with regard

to the administration. The onus is on the municipal manager, as head of the administration, to see to the implementation of these principles and values in his or her administration. Critically, section 51(d) stipulates that all staff and councillors must align their roles and responsibilities with the priorities and objectives of the IDP. The municipal manager must ensure that everyone within the administration contributes towards the implementation of the IDP.

Importantly, the Code of Conduct for councillors states that an individual councillor may not interfere in the management or administration of any department of the council, unless the council mandated that councillor (item 11(a)). Individual councillors cannot give instructions to employees without authorisation of the council (item 11(b)).

Staff matters

The municipal manager deals with staff matters, including:

- the appointment of staff (s 55(1)(e));
- (evaluation and review of) staff establishment (s 66(1)(a) and (d));
- job descriptions (s 66(1)(b));
- remuneration (s 66(1)(c));
- staff discipline (s 55(1)(g));
- training (s 55(1)(f)); and
- labour relations (s 55(1)(h)).

Importantly, the Act assigns these duties directly to the municipal manager. The Act envisages the municipal manager to manage day-to-day staff matters.

The municipal manager has to exercise these responsibilities subject to the policy directions of the council. The role of the council is to provide the policy framework and give political direction.

The Systems Act makes the municipal manager responsible for the *appointment* of staff subject to the policy directions of the council (s 55(1)) and the Employment Equity Act 55 of 1998. It is submitted that the executive committee or the executive mayor determines the policy direction on staff appointments. However, 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 take place within the framework of the said policy. These provisions do not apply to managers who are directly accountable to the municipal manager.

Senior management

The council must appoint the managers, referred to above, after consultation with the municipal manager (s 56). The municipal manager negotiates performance contracts (s 57) with new appointees. This represents a balance between the council’s interest in appointing a senior management team to drive its IDP goals and the municipal manager’s

interest in having an opportunity to influence appointments and subsequently formalising what is expected of the new manager in a performance agreement.

Code of Conduct

The municipal manager must ensure that each staff member receives a copy of the Code of Conduct for staff members and that the Code of Conduct is explained to staff members who cannot read (s 70).

The Systems Act vests the responsibility for individual appointments in the municipal manager.

Finances

As accounting officer, the municipal manager is responsible for all income and expenditure, all assets and discharge of liabilities of the municipality and the compliance with the municipal finance management legislation. The Municipal Finance Management Act has not been enacted and section 10G of the Local Government Transition Act is applicable until then.

Importantly, the Municipal Finance Management Bill states that the mayor, executive mayor or designated councillor (if none of these apply) is responsible for the preparation, drafting (including public participation) and tabling of the annual budget (s 15). This responsibility will include the delegation of responsibilities in this respect to the municipal manager or the treasury office.