

Who can dismiss a municipal manager?

The recent controversy surrounding the municipal manager of the Central Karoo District Municipality raised important questions regarding which sphere of government is responsible for the conduct of a municipal manager. Ultimately, who has the power to dismiss a municipal manager?

The Truman Prince controversy

The municipal manager of the Central Karoo District Municipality, Truman Prince, faced public accusations that he made lewd remarks towards under-aged women (as captured on a Special Assignment broadcast), followed by

allegations of unseemly conduct. A number of institutions became involved in the matter. First, the Municipal Council suspended Prince pending a disciplinary hearing and later lifted the suspension. Second, the South African Local Government Association (Salga) sent a report

about the manager to the council, recommending suspension. Third, the Western Cape MEC for Local Government directed the council to suspend Prince. The Premier of the Western Cape also expressed his unhappiness about the matter. Fourth, the ANC, the party to which Prince belonged, held a disciplinary hearing, found him guilty of misconduct and gave him a warning. Fifth, a children's rights organisation called on President Mbeki to intervene.

Which of the above-mentioned institutions is responsible for a municipal manager? Who is responsible for good governance in a municipality? These questions go to the heart of our local government system.

Constitutional framework

One of the fundamental elements of our new constitutional dispensation is the division of public authority between the three spheres of government: national, provincial and local. The Constitution affords a municipality the right to govern, on its own initiative, the local government affairs of its community, within the framework of national and provincial legislation. The national and provincial government must respect this right and may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

The municipal council

The municipal council, democratically elected by the residents of a municipality, has the power to appoint the municipal manager and dismiss him or her on the basis of misconduct. It can also suspend a municipal manager pending a disciplinary hearing. A municipal manager is subject to a code of conduct which includes the duty to act at all times in the best interest of the municipality in such a way that the credibility and integrity of the municipality is not compromised. Where there are allegations of misconduct, there is a duty on the council to act speedily: it must be decided whether a manager must be suspended pending a disciplinary hearing.

key points

- The municipal council has the power to appoint a municipal manager and dismiss him or her on the basis of misconduct.
- A municipal manager is subject to a code of conduct which includes the duty to act at all times in the best interest of the municipality.
- Where there are allegations of misconduct there is a duty on the council to act speedily.

The question is then what happens if a council, regardless of self-evident offences by a municipal manager, does not want to act against the person? In the first instance, the onus rests on the residents, through the ward committees, to carry their voice across to their council members or directly to the council. This is the nature of democracy at local level.

If they are unsuccessful, it is not the end of the story. Other bodies and spheres of government also have an important role to play.

Organised local government

Salga, which represents all municipal councils, has as its aim the protection of local government interests. This includes the assurance of good governance. Salga can, however, only make recommendations to its members. By submitting a report on the Prince case, the principle that local government can solve its own problems without interference from elsewhere was strengthened.

MEC for Local Government

Within the framework of the Constitution, the provincial government, namely the minister

responsible for local government, holds a supervisory competence and duty over municipalities. Empowered with this competence, provincial government can regulate the business of municipalities. Regulation does not include the usurpation of decision-making on behalf of municipalities. There is a duty to monitor whether municipalities remain within the four walls of a law. There is also a duty to support and strengthen municipalities so that the latter will be able to properly execute their functions. This includes giving advice. Unless a municipality does not comply with a constitutional or legislative obligation, the provincial government cannot intervene.

When a municipal manager faces charges of misconduct, the provincial government can do a number of things. First, it should closely monitor whether the municipal council complies with its legal duty, including enforcing the code of conduct among its employees. Second, advice can be given regarding concrete situations. Third, if the municipal council does not meet its legal obligations, the MEC for Local Government may issue a mandate obligating the municipality to act. If the municipality refuses to act, the provincial government may implement that legal duty on behalf of the municipality.

National government

Within the constitutional framework, the national government plays an indirect role only, by setting the framework within which local government operates. The duty to monitor and intervene rests on the provincial government and not the national government.

Political parties

When local politicians are accused of corruption and misconduct, political parties are central to

the issue. In terms of the Constitution, if a councillor loses his or her membership of a political party (outside the floor-crossing window period), their position on the council is forfeited. Thus, the political party in control of a municipal council can dispense of a corrupt mayor by expulsion from the party.

This is not possible with regard to municipal officials. A municipal manager is appointed by the council and can only be dismissed by that council, not through the party of which he or she is a member. Nonetheless, a political party plays an important, indirect role. The expulsion from membership and the conducting of disciplinary hearings is a clear message to the community and municipal councils about the seriousness with which a party views good governance. Complacency is equated with condoning misconduct.

Conclusion

Whether a municipal manager remains in his post as municipal mayor will be decided by the municipal council. It will be influenced by the advice of other municipalities, as voiced by Salga. A political party may influence the council by conducting disciplinary proceedings against its members and, in the appropriate circumstances, dispelling a member from the party. An MEC may give advice on what good governance means in the circumstances. The provincial government may intervene if the municipal council does not meet its legal duties. Good governance should triumph if each institution and sphere of government observes its respective powers and functions.

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