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TO ALL HEADS OF NATIONAL/PROVINCIAL DEPARTMENTS AND ORGANISATIONAL COMPONENTS

PARTICIPATION OF PUBLIC SERVANTS IN ELECTIONS FOR THE NATIONAL ASSEMBLY OR PROVINCIAL LEGISLATURES

1. Considering that employees employed in the Public Service may become candidates for election to the National Assembly or the provincial legislatures during the 2004 general elections, the following issues and arrangements are brought to your attention in this regard:
 - 1.1 The Constitution, 1996 determines in sections 47 and 106 that remunerated public servants are disqualified from being a member of the National Assembly or provincial legislatures. The relevant sections however provide that a public servant **may be a candidate** for election to these bodies, subject to any limits or conditions established by national legislation.
 - 1.2 As regards the latter qualification, the limits and conditions currently applicable to employees appointed in terms of the Public Service Act, 1994 are the following:
 - (a) **Section 36 of the Public Service Act, 1994**

An employee may be a member of and serve on the management of a lawful political party, but limitations are put on such an employee's actions in the public.

(b) **Section 30(a) of the Public Service Act, 1994**

An employee is required to place the whole of her/his time at the disposal of the State.

(c) **Public Service Regulations 2001, Chapter 1, Part VII G2.4**

An employee is **required to resign** from the Public Service **beforehand** if he or she is to become a candidate for election to the National Assembly or any provincial legislature.

(d) **Code of Conduct in Chapter 2 of the Public Service Regulations, 2001**

The Code requires of employees to avoid conflict of interest and not to abuse their positions in the Public Service to promote or prejudice any political party or group—items C2.7, C3.7, C4.5, C4.6 and C5.4 of the Code refer.

2. In order to facilitate a proper application of the Regulation referred to in paragraph 1.2(c) above, the following matters are brought to your attention:

2.1. Regulation G2.4 does not permit the employment of employees once they have become candidates for election to the National Assembly or to any provincial legislature, or once they have been nominated as permanent delegates to the National Council of Provinces.

2.2. As regards the date on which an employee's resignation is to take effect, the following are applicable:

(a) An employee who becomes a candidate for election to the National Assembly or any provincial legislature must resign not later than the date on which he or she is issued a certificate in terms of section 31(3) of the Electoral Act, 1998 stating that he or she is a candidate in the relevant election.

(b) An employee who is nominated as a permanent delegate to the National Council of Provinces, must resign not later than the date on which he or she is nominated by a political party as a permanent delegate to the relevant Council as contemplated in section 61(2)(b) of the Constitution, 1996.

3. In order to assist departments in effectively managing the position of employees in accordance with the above arrangements, the following guidelines are provided:

3.1 All staff should be informed of the provisions and conditions that regulate their participation as candidates in elections to the National Assembly or provincial legislatures, or their nomination to the National Council of Provinces. This is especially necessary considering the general election that will take place during 2004.

- 3.2 Employees wishing to stand as candidates should be encouraged to inform their respective departments of their intentions. In turn, each department should ensure that such employees are properly informed of the conditions applicable to them.
4. It should be noted that this circular applies only to employees employed in terms of the Public Service Act, 1994. Persons employed in the Public Service in terms of other employment legislation (such as the Employment of Educators Act, 1998, the Defence Act, 1957, etc) must be dealt with and managed in accordance with the prescripts that govern their conditions of service.


Acting DIRECTOR-GENERAL
DATE: 14 January 2004