



**MINISTRY: PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA**

Private Bag X884, Pretoria, 0001, Tel: (012) 314 7911, Fax: (012) 328 6529
Private Bag X9148, Cape Town, 8000, Tel: (021) 465 5491/2/3, Fax: (021) 465 5484

Reference no: 1/3/8/P
Enquiries: Ms N Ngewu
Tel no: (012) 314 7293

**TO HEADS OF NATIONAL DEPARTMENTS/PROVINCIAL
ADMINISTRATIONS/PROVINCIAL DEPARTMENTS/ORGANISATIONAL
COMPONENTS**

**PARTICIPATION OF PUBLIC SERVICE ACT EMPLOYEES IN THE FORTHCOMING
MUNICIPAL ELECTIONS**

1. This circular seeks to provide guidance to Departments in managing Public Service Act employees who stand as candidates in the forthcoming municipal elections and who are elected to municipal councils.
2. The legislative framework that regulates the position of employees in the aforementioned regard comprises the provisions elucidated at Annexure A. As will be noted, the Constitution in section 158(1) and 158(2) draws a distinction between the candidature for, and membership of, a municipal council.
3. **Position of employees who are candidates for election to municipal councils**

Section 158(2) determines that an employee may be a candidate subject to any limits or conditions established by national legislation. No such limits or conditions are laid down in national legislation and employees may therefore stand as candidates in municipal elections. However, section 36 of the Public Service Act, 1994 contains certain provisions that limit the activities of employees in this respect and departments must ensure that employees adhere to these provisions.

4. **Position of employees who are elected to municipal councils**

Section 158(1)(b) of the Constitution disqualifies employees from becoming members of municipal councils if such a disqualification is prescribed by national legislation. National legislation prescribes no specific prohibition in this regard, hence it follows that employees are not *per se* excluded from serving on municipal councils. It should nevertheless be borne in mind that councillors will be remunerated and serve in either full-time or part-time capacities on municipal councils. Departments have therefore, in terms of the measures and principles enshrined in section 30 of the Public Service Act, 1994 and the Code of Conduct, a duty to carefully consider the duties and responsibilities of an employee and his/her activities as a councillor. Departments are entitled to review an employee's position and require him/her to either withdraw as a councillor or resign from service.

5. In order to assist departments in managing the position of employees who wish to stand as candidates and who are elected to municipal councils, the following guidelines are provided:

- 5.1 All staff should be informed of the provisions and conditions that regulate their participation and election to municipal councils as indicated in this circular.
- 5.2 Employees wishing to stand as candidates should be required to inform their respective departments of their intentions. In turn, each department should ensure that employees are properly informed of the conditions they will have to comply with.

Should an employee be elected to a municipal council, he/she should be required to inform a designated official of such an election, the nature of his/her duties and responsibilities as a councillor, whether he/she will be required to perform duties during official hours and details of his/her remuneration.


Departments should continuously monitor-

- (a) the nature and extent of the employee's duties and responsibilities as a councillor and whether it could conflict with the employee's official duties;
- (b) the impact that the employee's duties as a councillor will have on his/her attendance and performance of work; and
- (c) the position and activities of the employee to ensure that no conflict of interest arises that could perhaps compromise the department.

Should an employee be elected to a position as a full-time councillor, he/she will have to resign from the Public Service. As regards those who will take up part-time positions, departments should ensure that such employees perform their duties as councillors as far as possible outside official hours of work. Specific approval has to be granted that an employee can retain

his/her remuneration, as required by section 30 of the Public Service Act, 1994.

- 5.6 If an employee has to perform duties as a councillor during his/her official hours of work, departments should require that vacation leave be taken on a basis of one day for every eight hours of absence.


^ DIRECTOR-GENERAL
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STATUTORY MEASURES THAT REGULATE THE PARTICIPATION OF PUBLIC SERVICE ACT EMPLOYEES IN MUNICIPAL ELECTIONS

1. The Constitution, 1996

1.1 Section 158(1)(b):

An employee in service of the State is disqualified from becoming a member of a municipal council if national legislation so prescribes.

1.2 Section 158(2):

An employee may be a candidate for a municipal election, subject to any limits or conditions established by national legislation.

2. Section 21(1) of the Municipal Structures Act, 1998

Every citizen who may vote for a municipal council is entitled to stand as a candidate in a municipal election and if elected, to be a councillor, except persons disqualified in terms of section 158(1)(a), (c), (d) or (e) of the Constitution. (Note: The aforementioned subsections do not apply to Public Service Act employees).

3. Section 30 of the Public Service Act, 1994

An employee must place the whole of his/her time at the disposal of the State. Employees may not perform remunerative work (for instance in the capacity as municipal councillors) outside their employment in the Public Service without the permission of the relevant executing authority or his/her delegate.

4. Section 36 of the Public Service Act, 1994

An employee may be a member and serve on the management of a lawful political party or may attend a public political meeting, but may not preside or speak at such a meeting. An employee may also not draw up or publish any writing or deliver a public speech to promote or prejudice the interests of any political party.

5. 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 interest group. (See parts B2, C2.7, C3.7, C4.5, C4.6, C5.4 and C5.5).

6. **Members of the services (South African Police Service, National Defence Force and Department of Correctional Services), state educational institutions, South African Secret Service and National Intelligence Agency**

The position of such members must be managed in accordance with the applicable legislation that regulate their conditions of service.