

**THE POLITICAL / ADMINISTRATIVE INTERFACE: THE RELATIONSHIP
BETWEEN THE EXECUTIVE MAYOR AND MUNICIPAL MANAGER**

(A dissertation submitted to the University of the Western Cape in partial
fulfillment of the requirements for the degree Magister Legum)

BY

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DECLARATION

I, Fatima Surty, hereby declare that this dissertation titled, *The political / administrative interface: the relationship between the executive mayor and municipal manager*, is my own work and has not been submitted to any other university for the award of a degree and that all sources I have used or quoted have been indicated and acknowledged as complete references.

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Date



KEYWORDS

Executive mayor

Municipal manager

Interface

Roles and responsibilities

Interference

Incompetence

Appointments

Separation of powers

Terms of reference

Municipal Systems Act 32 of 2000

Municipal Structures Act 117 of 1998

Municipal Finance Management Act 56 of 2003

Municipal Systems Amendment Bill, 2010

Municipal Systems Amendment Act 32 of 2000: Disciplinary Code and Procedures for Senior Managers: For public comments



ABBREVIATIONS

ANC	African National Congress
COGTA	Department of Cooperative Governance and Traditional Affairs
DPLG	Department of Provincial and Local Government
EM	Executive Mayor
IDP	Integrated Development Plan
MFMA	Municipal Finance Management Act 56 of 2003
MSA	Municipal Systems Act 32 of 2000
MM	Municipal Manager
TOR	Terms of reference



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Chapter 1: Introduction

1.1. *Background to the study*

Local government is arguably the most significant sphere of government to lay citizens, as it is the point of contact of citizens with their government. Local government enables a direct link between the general public and the basic services that they are entitled to by means of their constitutional and legislatively entrenched rights. It is the only sphere of government that allows and encourages face-to-face engagement between citizens and their governors, providing the necessary platform for interaction, contact and communication. It is imperative therefore that this tier of government operate optimally and competently, as it represents a reflection of the operation of government wholly.

Research unfortunately illustrates that public perceptions of local government are negative, with levels of trust in local government being substantially lower than those in provincial and national governments.¹ The responsibility for failure to perform would lie squarely on the shoulders of those individuals leading any institution. The leading incumbents driving a municipality are the political and administrative heads, i.e. executive mayor and municipal manager.

Whilst legislation² dictates specific as well as self-regulatory duties to both individuals, the lack of required competency; political dominance and power struggles; and lack of effective accountability and oversight structures can and do have detrimental effects on the smooth functioning and competency of municipalities.

¹ Jaap De Visser *The political administrative interface in South African municipalities assessing the quality of local democracies* (2010) 87 and Department of Cooperative Government and Traditional Affairs *State of Local Government in South Africa: Pretoria* (2009).

² Municipal Systems Act 32 of 2000, Municipal Structures Act 117 of 1998 and Municipal Finance Management Act 56 of 2003.

The purpose of the research paper is, in analysing the legislation that shapes the duties of the executive mayor and municipal manager, to assess how, in practice, this legislation falls short when being implemented. The paper will identify the anomalies in the relationship between the executive mayor and the municipal manager in practice and recommend solutions that would create a better rapport between them.

1.2 Problem Statement

Local government is plagued with the misfortune of being void of a distinct dividing line between the political and administrative elements in a municipality. This is typically manifested in one of the two scenarios which relate directly to the overlapping roles of the municipal manager and executive mayor:

- 1) A competent municipal manager is unable to carry out his or her functions effectively due to the constant interference by the executive mayor, who is often instructed by external political structures. While the municipal manager is by law deemed the accounting officer of the municipality, he or she is not in as much control as would be expected, despite being the individual who is ultimately responsible and accountable for municipal affairs.
- 2) A municipal manager holds a senior position in a political party, either locally or regionally. In the situation where the municipal manager is also a politician, this then can result in the administrator unduly interfering in the politics of the council.

In both of the above scenarios there exists an encroachment of functions, where the system of accountability fails.

The prevalent argument in the current discourse suggests that, should the terms of reference³ and delegations⁴ provisions of the Municipal Systems Act be utilized optimally, whereby precise roles and responsibilities, including delegated responsibilities are outlined by municipalities for political office bearers, structures and the municipal manager, this would to a large extent address the interface dilemma.

While it is agreed that there is indeed a need for better defined terms of reference, it is argued that this alone would not suffice in addressing the problem areas in the interface. It is proposed that should certain legislative reform which is currently underway, be implemented together with further suggested institutional changes, this would be beneficial in improving the interface of the municipal manager and executive mayor.

1.3 Scope and objective



The research paper is focused at comparing the objectives set out by legislation to define the roles and responsibilities of the municipal manager and executive mayor, respectively and to compare these to the outcome in practice.

The paper commences with an historical overview of local government in South Africa, its transition over recent years, to the current. A thorough exposition of the roles of the executive mayor and municipal manager, as required by legislation, is provided. Thereafter is a depiction of what practice reveals about the relationship between the executive mayor and municipal manager, which is followed by a discussion and analysis of how the intended legislation differs to practice. An analysis and discussion of the potential effect that legislative reform would have on the interface debacle is provided. A number of further possible solutions to counter the irregularities in practice are suggested in conclusion.

³ S 53 Municipal Systems Act.

⁴ S 50 Municipal Systems Act.

1.4 Methodology

A diverse research approach was utilized, which consisted of the following primary research methods:

1.4.1 Desktop Study

An in-depth study of all legislation relevant to the focus of the research paper was undertaken. A wide array of literature available on the subject was perused.

1.4.2 Interviews

Qualitative, empirical research was conducted in the form of semi-structured interviews that were held with two ex-executive mayors and two ex-municipal managers.

An attempt was made to interview several more executive mayors and municipal managers within the same province as the current interviews were undertaken. However, due to a politically turbulent period experienced in local government within the province, many prospective interviewees declined to be interviewed on the last minute citing the prevailing political circumstances as being inappropriate to discuss matters relating to the subject of the research paper.

Being fully conscious of the limited sample of interviewees, confidence in findings derived from the interviews is confirmed by findings of other reports and studies undertaken within the same area of research.

1.4.3 Previous research undertaken

The paper draws to a large extent on academic research that was undertaken previously, which addresses issues that are analogous to the current. A specific document that was largely relied on in research is a report that was compiled by

the Community Law Centre of the University of the Western Cape, titled *The Quality of local democracies: a study into the functionality of municipal government arrangements*,⁵ where key role players, including the municipal managers and executive mayors were interviewed in four different municipalities. The findings in the *State of Local Government in South Africa* report prepared by the national Department of Cooperative Governance and Traditional Affairs⁶ were further relied on for research purposes.

1.5 Chapter Delineation

The study is divided into six chapters.

Chapter 1 is an introduction, which sets out the background of the study, the focus and objectives of the study, the problem statement and the methodology of the research.

Chapter 2 provides an introduction into local government in South Africa. The chapter provides a contextual outlook of the current scene at local government, within its historical background. The marked characteristics of local government are described, as well as the different systems of operation affecting the role of the executive mayor.

Chapter 3 introduces the executive mayor and municipal manager. Each incumbent's role as provided for in legislation is described, followed by an analysis of how the roles relate to each other. The chapter is concluded by a discussion of relevant case law that has had an effect on the ability of the executive mayor to discipline the municipal manager.

⁵ Jaap De Visser, Annette May and Nico Steytler *The quality of local democracies: a study into the functionality of municipal government arrangements* (2009).

⁶ CoGTA (2009).

Chapter 4 provides an exposition of what practice reveals. This chapter identifies the topical issues that had emerged through research, which affect the relationship between the municipal manger and executive mayor.

Chapter 5 explores the legislative reform that is currently underway, and includes an assessment of the effect that this reform would have on the interface of the executive mayor and municipal manager.

Chapter 6 concludes the study by providing several further recommendations to be instituted in order to facilitate a positive change in the executive mayor / municipal manager interface.



Chapter 2: An introduction to local government in South Africa

2.1 Introduction

In order to fully appreciate the manner in which the functions of the municipal manager and executive mayor relate to each other within the local government domain, it is important to understand the framework within which the two individuals operate. This chapter will provide a background of the local government context within which the two players function, with a peak into the recent history of local government and then an overall depiction of the current status of local government in South Africa. The chapter will then proceed to outline the duties of the political and administrative arms of local government, as collectives. A brief comparison of the executive mayoral and collective executive systems of local government will conclude this chapter.

2.2 The transformation of local government in South Africa

2.2.1 Local government under apartheid

The tone for the recognition of local government within this era was set back in 1910 already, with the establishment of the Union of South Africa, where local government was to be the responsibility of the provinces.⁷ Central government at the time showed little interest in local government or the development thereof. Legislation dealing with local government for cities at the time was the domain of the provinces, while national legislation dealt with the administration of black areas. Local government was the lowest tier of government, with no constitutional protection or significant rights or powers, and was subservient to central government.⁸ Local government was distinctly plagued by an unequal

⁷ E Mavhivha *Leadership and government perspectives in local government administration in South Africa: Limpopo province* (2007) 2.

⁸ Jaap De Visser *Developmental local government: a case study of South Africa* (2005) 58.

distribution of resources along racial lines, where “white” areas were more developed than any other.⁹

2.2.2 Local government post-1994

With the departure of apartheid, local government found a new, fully-fledged status, where an entire chapter of the Constitution is now allocated to entrenching powers and rights to local government. It is recognized as an independent “sphere”, and no longer a “tier” of government.¹⁰ Consequently, the standing of local government is markedly different to what it was under the previous political dispensation. Local government is now seen as a dynamic driver of service delivery and local development, where its independence is given effect to by legislation.

In the case of *Fedsure Life Assurance and Others v Johannesburg Transitional Metropolitan Council*¹¹ the Constitutional Court confirmed that local government is no longer a body that merely exercises delegated powers, but that a municipal council is instead “a deliberative legislative assembly with legislative and executive powers recognised in the Constitution itself”.¹²

2.2.3 Local government presently

As noted above, the newly-founded responsibilities of local government are many and cumbersome. Section 152(1) of the Constitution describes the objects of local government to include: the provision of a democratic and accountable government for local communities; to ensure the sustainable provision of services to communities; the promotion of social and economic development, safe and healthy environment and to encourage the involvement of communities and community organizations in the matters of local government. Needless to

⁹ Nico Steytler and Jaap De Visser *Local government law of South Africa* (2007) 1-8.

¹⁰ Constitution of the Republic of South Africa Act 108 of 1996, Chapter 7.

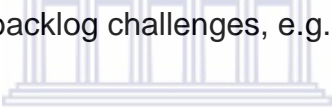
¹¹ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC) para 26 (hereafter *Fedsure*).

¹² *Fedsure* para 26.

say, these expectations require local government to act competently, effectively and efficiently.

However, practice reveals that local government under the current administration is not operating optimally. This state of affairs was alluded to in the working document of the Department of Co-operative Governance and Traditional Affairs, *State of Local Government in South Africa* report, wherein it is unequivocally stated: “From evidence to date, it is clear that much of local government is indeed in distress, and that this state of affairs has become deeply-rooted within our system of governance”.¹³

The following were identified as priority problem areas in service delivery and governance at local government, requiring urgent attention:

- 
- Huge service delivery and backlog challenges, e.g. housing, water and sanitation;
 - Poor communication and accountability relationships with communities;
 - Problems with the political / administrative interface;
 - Corruption and fraud;
 - Poor financial management, e.g. negative audit opinions;
 - Number of (violent) service delivery protests;
 - Weak civil society formations;
 - Intra- and inter-political party issues negatively affecting governance and delivery; and
 - Insufficient municipal capacity due to lack of scarce skills.¹⁴

It can thus be deduced, that while local government now enjoys a significant amount of autonomy and independence, this does not come without a great

¹³ *CoGTA* (2009) 3.

¹⁴ *CoGTA* (2009) 3.

responsibility, competency and management requirements, which evidently are lacking within the system.

Such a negative predicament casts a direct reflection on the people who are in charge of running a municipality. The following is a brief overview of the function of the political and administrative personnel arms of a municipality, of which the executive mayor¹⁵ and municipal manager are the heads, respectively.

2.3 *The political / administrative interface*

2.3.1 The role of politicians in local government administration

Councilors are representatives of the people, who receive their mandate to rule from the people and therefore must rule to the best that they are able.¹⁶ They are further legislators, who also ensure and oversee the execution of their directives as such.¹⁷ Essentially, the political arm of local government is there to formulate by-laws and council decisions, as well as guide and monitor the activities of the municipal administration.¹⁸ For purposes of this paper, the executive mayor is the political head of the municipality. This is to be distinguished from the executive council system of a municipality.

2.3.2 The role of administrators in local government administration

The role of administrators is to understand and coordinate public policy and to interpret policy directives to the operating services, with unwavering loyalty to their political counterparts. This role is essentially to give effect to the decisions undertaken by the politicians. The municipal manager is the head of the administration.

¹⁵ For purposes of this paper, the executive mayor system will be alluded to. This can be distinguished from the executive committee system, wherein the executive committee's role to a large extent emulates that of the executive mayor in an executive mayoral system.

¹⁶ Mahviva (2007) 121.

¹⁷ Mahviva (2007) 121.

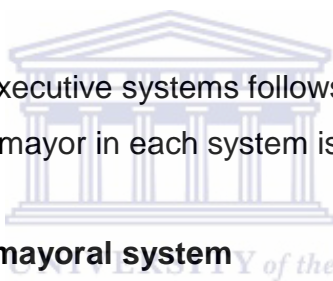
¹⁸ Mahviva (2007) 121.

The relationship between the political and administrative arms of a municipality should not be viewed as a master / servant relationship, but is rather a multi-faceted and complex one.¹⁹ It is against this background that the complicated relationship between the executive mayor and the municipal manager stems.

2.4 The executive systems in local government

The executive arm in local government takes one of two forms, the executive mayoral or the collective executive system. The role of the mayor in each of these systems differs, with the executive mayor being the head of the executive and afforded much authority in the former system and the mayor being stripped of such extensive power in the latter system.

A brief overview of the two executive systems follows below, to the extent that a description of the role of the mayor in each system is provided.



2.4.1 The executive mayoral system

This system allows for the exercise of executive authority through an executive mayor, in whom the executive leadership of the municipality is vested.²⁰ The executive mayor is assisted by a mayoral committee, who he or she appoints. The focus of the paper proceeds on the assumption that a municipality embraces this executive system.

2.4.2 The collective executive system

This system is less popular. The collective executive system allows for the exercise of executive authority through an executive committee, in which the executive leadership of the municipality is collectively vested.²¹ The power and functions that are attributed to the executive mayor within the executive mayoral system are to a large degree similar to those ordained on the executive

¹⁹ C Cameron *Politics-administration interface: the case of the City of Cape Town* (2003) 55.

²⁰ S 7(b) Municipal Structures Act.

²¹ S 7(a) Municipal Structures Act.

committee within the collective executive system.²² Within the collective executive system, the functions of the mayor include presiding at meetings of the executive committee and performing duties which include ceremonial functions and those delegated to him or her by the council or executive committee.²³

2.5 Conclusion

This chapter has provided a concise overview of the system within which executive mayor and municipal manager function. The precise role of each individual, as prescribed by legislation follows in the next chapter.



²² S 44 Municipal Structures Act.

²³ S 49 Municipal Structures Act.

Chapter 3: The executive mayor and municipal manager: their roles in law

3.1 Introduction

The aim of this chapter is to discuss the role of the municipal manager and the executive mayor, and the manner in which each incumbent's role impacts on the others. To achieve this, an exposition of the roles of each, the municipal manager and executive mayor respectively, as prescribed by the relevant local government legislation will be provided. A discussion on the manner in which legislation envisages these roles to interact with each other will follow. A prevalent theme that will emerge from the discussion is that while legislation elaborately defines the roles of each individual, it also to a large extent anticipates the roles and responsibilities of the municipal manager and the executive mayor to be somewhat "self-regulated", especially as these roles relate to each others. To this effect the chapter will discuss the function of the "terms of reference" and "delegations" provisions in the Municipal Systems Act.²⁴ A discussion of relevant case law that has to an extent extended the status of the municipal manager will conclude the chapter.

3.2 The role of the executive mayor in legislation

"The executive mayor has the most robust range of statutorily defined functions... The mayor has the broadest scope of responsibilities and functions under both the Structures Act and the Systems Act."²⁵

The above quotation provides a good reflection of the wide, far-reaching functions that an executive mayor potentially holds. The Municipal Structures Act

²⁴ Ss 50 and 53 Municipal Systems Act.

²⁵ Jaap De Visser and Omolabake Akintan *Institutional tensions between municipal chairpersons and executives: speaking of mayor conflicts* (2008) 9.

posits the executive mayor as the political head of the municipality.²⁶ The executive mayor is also the interface between the council and the administration within a municipality.²⁷ Some of the important responsibilities of the executive mayor are outlined below:

Council is largely dependant on the decisions of the executive mayor in matters of significance within the municipality. This can be attested to in section 30 of the Municipal Structures Act.²⁸ Prior to taking any decisions involving any matter pertaining to section 160(2) of the Constitution,²⁹ the approval or amendment of an integrated development plan³⁰ for the municipality, and the appointment and conditions of employment of a municipal manager or head of department, council must first require the executive mayor to submit to it a report and recommendation on the matter.³¹

The legislated duties of the executive mayor are extensive and far-reaching. In performing his or her duties, the executive mayor must identify the needs of the municipality;³² make recommendations to council on strategies to address such needs³³ and identify and recommend the best strategy to deliver on the strategies.³⁴ The executive mayor must further, in line with the above strategies, develop criteria in terms of which progress and implementation can be measured;³⁵ review the performance of the municipality in view of general improvement³⁶ and oversee the provision of services to communities;³⁷ monitor

²⁶ De Visser and Omolabake (2008) 9.

²⁷ De Visser, May and Steytler (2009) 11.

²⁸ Municipal Structures Act.

²⁹ S 160(2) Constitution includes the passing of by-laws, the approval of budgets the imposition of rates and other taxes, levies and duties and the raising of loans.

³⁰ Hereinafter referred to as IDP.

³¹ S 30(5)(b) Municipal Structures Act.

³² S 56(2)(a) Municipal Structures Act.

³³ S 56(2)(c) Municipal Structures Act.

³⁴ S 56(2)(d) Municipal Structures Act.

³⁵ S 56(3)(a) Municipal Structures Act.

³⁶ S 56(3)(c) Municipal Structures Act.

³⁷ S 56(3)(e) Municipal Structures Act.

the management of the administration;³⁸ perform duties delegated to him or her in terms of council delegations³⁹ as well as perform a ceremonial role.⁴⁰ The executive mayor receives reports from council committees and forwards these reports, together with recommendations to the council, when the matter cannot be disposed of by the executive mayor in terms of the executive mayor's delegated powers.⁴¹

The Municipal Systems Act does not fall short in assigning onerous responsibilities to the executive mayor. The arduous task of managing the drafting of the municipality's IDP lies squarely on the shoulders of its executive mayor.⁴² He or she must assign responsibilities to the municipal manager in this regard, and ultimately is responsible for submitting a draft plan to the council for adoption.

Another significant responsibility of the executive mayor involves the management of the development of the municipality's performance management system.⁴³ Again, the executive mayor is placed in a position where he or she must, in this regard assign responsibilities to the municipal manager,⁴⁴ whereupon the executive mayor must submit the proposed system to the council for adoption.⁴⁵

An important element of the roles and functions within a municipality is the municipality's delegation policy.⁴⁶ In terms of delegation of powers, the Municipal Systems Act restricts two important issues to be delegated to the executive mayor exclusively. Decisions to expropriate immovable property,⁴⁷ and the

³⁸ S 56(3)(d) Municipal Structures Act.

³⁹ S 56(3)(f) Municipal Structures Act.

⁴⁰ S 56(4) Municipal Structures Act.

⁴¹ S 56(1) Municipal Structures Act.

⁴² S 30 Municipal Systems Act.

⁴³ S 39(a) Municipal Systems Act.

⁴⁴ S 39(b) Municipal Systems Act.

⁴⁵ S 39(c) Municipal Systems Act.

⁴⁶ Will be discussed at length below.

⁴⁷ S 60(1)(a) Municipal Systems Act.

determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager⁴⁸ may only be delegated to the executive mayor.

The executive mayor is by no means absolved of financial matters within a municipality. In fact, he or she is deeply entrenched in the fiscal affairs of the municipality. Aside from having the budget preparation process imposed onto him or her,⁴⁹ the executive mayor bears the responsibility of tabling the annual budget before council⁵⁰ and is also responsible for informing the MEC for finance in the province of non-compliance with provisions of the MFMA.⁵¹

He or she bears the responsibility of providing general political guidance over the financial affairs, particularly the budget process of the municipality,⁵² and may monitor and oversee the exercise of responsibilities assigned to the municipal manager and chief financial officer in terms of the MFMA.⁵³ The mayor must further ensure that the municipality perform its functions within the limits of the municipality's approved budget,⁵⁴ must at the end of each quarter report to council on the financial status of the municipality⁵⁵ and must act in accordance with any further delegated duties assigned to him or her.⁵⁶ The mayor bears cumbersome responsibilities in relation to the budget process and matters related thereto within the municipality.⁵⁷ He or she further bears the onus of reporting to the provincial executive, should conditions within the municipality dictate so.⁵⁸

⁴⁸ S 60(1)(b) Municipal Systems Act.

⁴⁹ S 21 MFMA.

⁵⁰ S 16 MFMA.

⁵¹ S 27 MFMA.

⁵² Ss 52(a) and 53(1)(a) MFMA.

⁵³ S 52(b) MFMA.

⁵⁴ S 52(c) MFMA.

⁵⁵ S 52(d) MFMA.

⁵⁶ S 52(e) MFMA.

⁵⁷ S 53 MFMA.

⁵⁸ S 55 MFMA.

3.3 *The role of the municipal manager in legislation*

*“...the municipal manager is a key structure of a municipality and not merely a personnel appointment as contemplated in section 160(1)(d) of the Constitution”.*⁵⁹

The municipal manager is the head of the administration of a municipality and the accounting officer.⁶⁰ As is the case with the executive mayor, the responsibility and role of the municipal manager within the municipality is indeed a critical one. Whilst a large element of the responsibilities to be borne by the municipal manager is determined by council itself,⁶¹ legislation is specific on a wide array of duties that it imposes on the municipal manager. A synopsis of some of the crucial responsibilities to be borne by the municipal manager follows.

Whilst, as noted above, the executive mayor is responsible for the management of the drafting process of the IDP of a municipality and the development of the performance management system, legislation dictates that the executive mayor must assign responsibilities in both regards to the municipal manager.⁶² While the executive mayor is responsible for the management of the processes, the municipal manager is yet responsible for the implementation and monitoring of progress with the implementation of the IDP.⁶³

As head of the administration of the municipality, the municipal manager is, subject to the policy directions of the council, responsible and accountable for the formation and development of an economical, effective, efficient and accountable administration that is equipped to carry out the task of implementing the municipality's IDP, operating in accordance with the municipality's performance

⁵⁹ *Executive council of the Western Cape v Minister for Provincial Affairs and Constitutional Development of the Republic of South Africa; Executive Council of KwaZulu-Natal v President of South Africa and Others* 1999 (12) BCLR 1360 (CC) para 109.

⁶⁰ S 83 Municipal Structures Act.

⁶¹ In terms of delegation and terms of reference documents, which will be discussed in more detail below.

⁶² Ss 30(b) and 39(b) Municipal Systems Act.

⁶³ S 55(1)(c) Municipal Systems Act.

management system and responsive to the needs of the local community.⁶⁴ The municipal manager is thus responsible for the performance of many more people within the municipality than simply him or herself. He or she is responsible for appointment of staff,⁶⁵ their management, effective utilization, training and maintenance of discipline.⁶⁶

Whilst not being involved in the actual decision-making of the council, the municipal manager is tasked with the responsibility of advising the political structures and office bearers of the municipality⁶⁷ and managing communications between the administration and political arms of the municipality;⁶⁸ while at the same time carrying out decisions of the political structures⁶⁹ and implementing by-laws and legislation.⁷⁰

Furthermore and importantly, the municipal manager carries the overall responsibility for the municipality's financial affairs. In properly and diligently complying with municipal finance management legislation, the municipal manager is responsible for all income and expenditure of the municipality; all assets and the discharge of all liabilities of the municipality.⁷¹

The specific requirements in terms of finance management include, amongst others: to administer and be accountable to the council for the municipality's bank accounts.⁷² It is only the municipal manager or the chief financial officer who may withdraw money from the municipality bank accounts under certain listed circumstances.⁷³ The municipal manager is liable for unauthorized

⁶⁴ S 55(1) Municipal Systems Act.

⁶⁵ Other than those referred to in s 56(a) of the Municipal Systems Act.

⁶⁶ S 55(1)(e)-(g) Municipal Systems Act.

⁶⁷ S 55(i) Municipal Systems Act.

⁶⁸ S 55(j) Municipal Systems Act.

⁶⁹ S 55(k) Municipal Systems Act.

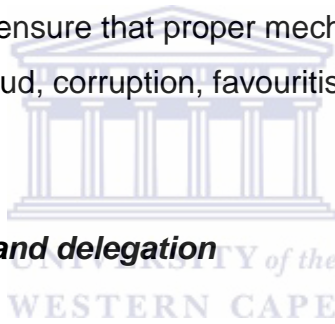
⁷⁰ S 55(l) Municipal Systems Act.

⁷¹ S 55(2) Municipal Systems Act.

⁷² Ss 10(1)(a) and (b) MFMA.

⁷³ S 11(1) MFMA.

expenditure deliberately or negligently incurred by him or herself.⁷⁴ The accounting officer is under an obligation to promptly inform the mayor, MEC for local government and auditor-general of any unauthorized, irregular or fruitless and wasteful expenditure incurred by the municipality.⁷⁵ As manager of the financial administration of the municipality, the municipal manager is responsible for the revenue⁷⁶ and expenditure⁷⁷ management of the municipality. The municipal manager is compelled to report to the speaker of the council any interference by a councilor outside of his or her duties in the financial affairs of the municipality or in the responsibilities of the board of directors of the municipality.⁷⁸ A huge responsibility assigned to the municipal manager is the implementation of the supply chain management policy of the municipality, which responsibility may not be impeded by any person.⁷⁹ The municipal manager must take all reasonable steps to ensure that proper mechanisms are in place to minimize the likelihood of fraud, corruption, favouritism and unfair and irregular practices.⁸⁰



3.4 Terms of reference and delegation

Over and above the above-mentioned vast responsibilities assigned to each, the executive mayor and the municipal manager as outlined, legislation provides a somewhat self-regulatory duty on the municipality as regards the roles of each of the incumbents above. This is to be given effect by two strategic documents in the municipality, which are closely linked to each other, namely the terms of reference and the delegations documents.

⁷⁴ S 32(1)(b) MFMA.

⁷⁵ S 32(4) MFMA.

⁷⁶ S 64 MFMA.

⁷⁷ S MFMA.

⁷⁸ S 103 MFMA.

⁷⁹ Ss 115(1)(a) and (2) MFMA.

⁸⁰ S 115 (1)(b) MFMA.

The terms of reference is a document that outlines the roles and responsibilities of political office-bearers, political structures and the municipal manager.⁸¹ The delegations document represents legal transfers of components of the council's executive and administrative authority to political office bearers, political structures and the administration.⁸²

A brief description of what each of the documents entails follows.

3.4.1 Terms of reference - Section 53 Municipal Systems Act

The Municipal Systems Act makes it compulsory that each relevant person within the municipality be assigned a defined, precise and specific role and area of responsibility, which must be formulated in writing.⁸³ The terms of reference must be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality.⁸⁴

Section 53(4) allows the terms of reference to include the delegation of powers⁸⁵ and duties to the relevant political structure, office bearer or municipal manager. It must be noted that whilst the provision allows for the delegation element in terms of section 59 to be "housed" within the terms of reference document, this does not absolve the municipality of in fact having a terms of reference (which is to be distinguished from the delegations requirement) as required for each relevant person.

The terms of reference provision stipulates the degree to which each respective document is to be detailed. Section 53(5) requires that when defining the respective roles and responsibilities of each particular incumbent, the municipality must determine the relationships amongst those political structures

⁸¹ S 53 Municipal Systems Act.

⁸² S 59 Municipal Systems Act and De Visser (2010) 90.

⁸³ Municipal Systems Act 53 (1) and (2)(a).

⁸⁴ S 53(2)(b) Municipal Systems Act.

⁸⁵ S 59 Municipal Systems Act.

and office bearers and the municipal manager, and the manner in which they must interact. The Act goes further to require that the municipality determine appropriate lines of accountability and reporting for the political structures, political office bearers and the municipal manager.⁸⁶ Mechanisms, processes and procedures for minimizing cross-referrals and unnecessary overlapping of responsibilities between the political structures, office bearers and municipal manager are also to be determined by the municipality,⁸⁷ as well as mechanisms to facilitate dispute resolution.⁸⁸ The municipality is further to put in place systems for interaction between the political office bearers, structures and municipal manager with other staff members of the municipality; and councilor's interaction with the municipal manager and staff members.

Legislation pertaining to local government does not, by any means fall short of placing specific responsibility on each, the executive mayor and the municipal manager. However, should there at all exist a void in regulating the relationship between the two office heads of the municipality, this is taken care of by the terms of reference provision which is pedantic about the detail with which the each incumbent's respective roles n responsibility document be detailed.

3.4.2 Delegations - Section 59 Municipal Systems

Section 59 of the Municipal Systems Act dictates that a municipal council is required to develop a written system of delegation,⁸⁹ in view of maximizing administrative and operational efficiency, and to provide for adequate checks and balances. The delegation system allows the council to either instruct any political structure, political office bearer, councilor or staff member to perform any of the municipality's duties,⁹⁰ and to withdraw such instruction.⁹¹

⁸⁶ S 53(5)(b) Municipal Systems Act.

⁸⁷ S 53(5)(c) Municipal Systems Act.

⁸⁸ S 53(5)(d) Municipal Systems Act.

⁸⁹ S 59(2)(b) Municipal Systems Act.

⁹⁰ S 59(1)(b) Municipal Systems Act – except those duties that legislation expressly forbids it from delegating.

⁹¹ S 59(1)(c) Municipal Systems Act.

3.5 The executive mayor and municipal manager - how their roles relate

Having provided a background of the duties assigned to each, the executive mayor and municipal manager, the paper will proceed to examine more closely certain legislative provisions that directly demand interaction between the two incumbents. An analysis of the relevant provisions contained in the Municipal Systems and Municipal Structures Acts will be followed by an assessment of provisions contained in the MFMA.

3.5.1 Municipal Structures and Municipal Systems Acts

Section 30(5)(c) of the Municipal Structures Act holds that a municipal council requires a report and recommendation on the appointment and conditions of service of the municipal manager, from the executive mayor. Although council ultimately appoints the municipal manager,⁹² this provision provides an element of an employer-employee relationship between the municipal manager and executive mayor, in that the employment of the municipal manager and his or her conditions of service are directly dependant on the opinion of the executive mayor.

A legislative provision that again places the executive mayor in a position of authority over the municipal manager is section 56(3)(d) of the Municipal Structures Act. Albeit not directly creating an interface between the municipal manager and executive mayor per se, the provision indirectly infers the same in that as one of the functions of the executive mayor, he or she is compelled to monitor the management of the municipality's administration in accordance with directives from the council.

A provision protecting the municipal manager from political interference lies in Schedule 5 of the Municipal Structures Act, where it is unequivocally stated that a councilor may not interfere in the management or administration of any

⁹² S 82(a) Municipal Structures Act.

department of the municipal council, unless the law allows or the councilor is mandated to do so by the council.⁹³ Therefore, while the mayor is required to “monitor” and “oversee” the actions of the administration, this may be interpreted to be distinguished from “interfering” in the administration.

Two critical tasks of the municipality include the drafting of the municipality’s IDP and the performance management system. In terms of the applicable legislative provisions, the executive mayor and municipal manager would be required to work closely on these tasks. Whilst the executive mayor is responsible for the management of both these processes, he or she is required to assign responsibilities to the municipal manager in this regard.⁹⁴ Inevitably, this set-up creates a close working relationship between the executive mayor and the municipal manager.

Whilst doing so in a somewhat elusive manner, with no clear “how to” directives, section 51 of the Municipal Systems Act imposes a duty on the municipality to establish and organize its administration. This should be done in a manner that would enable the municipality to establish clear relationships and facilitate co-operation, co-ordination and communication between its political structures, political office bearers and administration. In turn, this would enable the municipality to organize all incumbents in a flexible way in order to respond to changing priorities and circumstances.⁹⁵ The provision goes further in that it requires the municipality to assign clear responsibilities to management,⁹⁶ and requires that the municipality facilitate the administration in such a manner that it may be in a position to hold the municipal manager accountable for the overall performance of the municipality.⁹⁷ The overall tone of section 51 is somewhat analogous to that of the terms of reference provision described above, in that it insists on mechanisms being instituted to facilitate the smooth interaction

⁹³ Schedule 5(11) Code of Conduct: Municipal Systems Act.

⁹⁴ Ss 30 and 39 Municipal Systems Act.

⁹⁵ S 51(e) Municipal Systems Act.

⁹⁶ S 51(h) Municipal Systems Act.

⁹⁷ S 51(i) Municipal Systems Act.

between the political and administrative arms within the municipality. Of course, this has a direct impact on the relationship between the executive mayor and the municipal manager, being heads of the political and administrative arms respectively.

As mentioned above, section 60(1)(b) of the Municipal Systems Act restricts the matter of determining the remuneration and conditions of employment to be delegated to the executive mayor, exclusively. This provision clearly gives the executive mayor authority and leverage over the municipal manager.

As part of the prescribed areas of responsibility assigned to the municipality, in terms of section 55 of the Municipal Systems Act, the municipal manager is responsible and accountable for managing communications between the municipality's administration and its political structures and office bearers.⁹⁸ It can thus be seen that while legislation places a responsibility on the municipality to ensure effective communication in section 51, it similarly places such a duty on the administration of the municipality. It can therefore be deduced that the duty to ensure clear, coherent relationships between the administration and the political structures and bearers within the municipality lies with both, the executive mayor as well as the municipal manager.

3.5.2 MFMA

Perhaps the most sensitive area of interaction and interface between the executive mayor and the municipal manager lies in dealing with municipal finances. The MFMA places large responsibilities on both individuals, often times to the exclusion of the other. Needless to say, such set-ups potentially create tension in an environment that is already laden with power struggles. In a nutshell, the MFMA disallows the executive mayor or political office holders from direct access to municipal finances. This is largely inconsistent with the authority and power accorded to the executive mayor in terms of other legislative

⁹⁸ S 55(1)(j) Municipal Systems Act.

provisions. The paper will proceed to identify several instances where a distinct role of authority of one over the other is prevalent in the relationship between the executive mayor and municipal manager.

Section 11 of the MFMA allows only the municipal manager or CFO ordinarily to withdraw or authorize the withdrawal of money from the municipality's bank account/s. This is to the exclusion of the executive mayor. The same applies as regards setting up a relief, charitable, trust or other fund in the name of the municipality; only the municipal manager may be the accounting officer of such a fund.⁹⁹

Section 32 of the MFMA holds any person - municipal manager, political office bearer or official - responsible for unauthorized or wasteful expenditure, liable for that expenditure. However, if the municipal manager becomes aware that the council or mayor of the municipality has taken a decision, which if implemented, is likely to result in unauthorized, irregular or fruitless wasteful expenditure, the accounting officer is not liable, provided that he or she has informed the council or the mayor as the case may be, in writing that the expenditure is likely to be deemed as wasteful, etc.¹⁰⁰ The accounting officer must inform the mayor, MEC for local government in the province and the Auditor-General in writing of wasteful expenditure incurred.¹⁰¹ This situation has a potentially harmful effect on the relationship of the municipal manager with the mayor. Should the municipal manager have to inform the MEC of a wasteful expenditure incurred by the mayor, this could place much tension and be strenuous in maintaining a good working relationship for the two individuals.

Section 52 of the MFMA outlines the responsibilities of the mayor, which include providing general political guidance over the fiscal and financial affairs of the

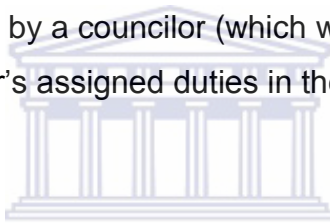
⁹⁹ S 12(1) MFMA.

¹⁰⁰ S 32(3) MFMA.

¹⁰¹ S 32(4) MFMA.

municipality.¹⁰² For the purposes of the current discussion, the provision allows the executive mayor to, in providing general political guidance, monitor and oversee the exercise of responsibilities assigned to the municipal manager. Importantly, he or she may not interfere in the exercise of these responsibilities. It is evident that the drafters foresaw a problem of interference by the mayors. Thus, an attempt was made to eradicate any ambiguity in this provision by expressly stating that the mayor may not “interfere”.

The municipal manager is responsible for managing the financial administration of the municipality.¹⁰³ As such, he or she is obliged to provide guidance and advice on the Act to political structures, office bearers and officials.¹⁰⁴ At the same time, the municipal manager is at liberty to, and should promptly report to the speaker any interference by a councilor (which would include the executive mayor), outside the councilor’s assigned duties in the financial affairs of the municipality.¹⁰⁵



A sensitive issue in local government concerns the supply chain management. This is indeed an area from which, it will be shown below, much of the strain in the relationship between the municipal manager and the executive mayor stems from. The accounting officer is a key person in the supply chain management process, whereas the executive mayor is by law prohibited from being a part of it. In terms of section 115 of the MFMA, the accounting officer is responsible for implementing the supply chain management policy, and no person may impede the accounting officer in carrying out this function.¹⁰⁶

Whilst the municipal manager is entrusted with responsibility of supply chain management, the executive mayor is stripped of it. Section 117 of the MFMA unequivocally states that no councilor (including the executive mayor) of any

¹⁰² S 52(a) MFMA.

¹⁰³ S 62(1) MFMA.

¹⁰⁴ S 60(b) MFMA.

¹⁰⁵ S 103 MFMA.

¹⁰⁶ S 115(1)(a) MFMA.

municipality may be a member of a municipality bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer. Section 118 of the MFMA somewhat reiterates and enforces the previous provision in providing that no person may interfere with the supply chain management system of a municipality.

Having provided an overview of the various legislative provisions that create a direct bearing on the relationship between the executive mayor and the municipal manager, a notable distinction can be drawn between provisions of the Municipal Systems and Structures Acts, and the MFMA. Where provisions in the former pieces of legislation appear to place the municipal manager in a position of subservience to the executive mayor, the opposite is true in terms of provisions in the MFMA. The Municipal Structures Act places the municipal manager in a somewhat docile position, in that the very appointment of the municipal manager is dependant on the executive mayor. A strong focus on oversight of the administration and delegation by the executive mayor to the municipal manager in the Municipal Systems Act emphasizes the hierarchy of a municipal manager serving the executive mayor.

However, the MFMA posits the municipal manager in a position of authority over the executive mayor, in that certain critical matters pertaining to finance and supply chain management are entrusted to the municipal manager, to the explicit exclusion of the executive mayor.

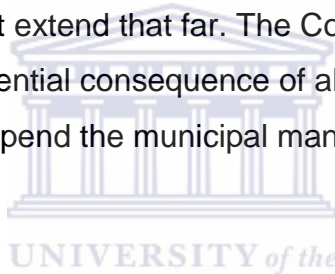
It is thus evident, that while many of the duties, roles and responsibilities of the municipal manager and the executive mayor are distinctly outlined, and even where lacking, the terms of reference and delegations provisions are meant to provide clarity; there are many instances where the paths of the two incumbents cross in a manner that could potentially be destructive to their close relationship, due to the hierarchical effect that legislation has on their relationship.

3.6 *Disciplining the municipal manager*

The case of *Mbatha v Ehlanzeni District Municipality and Others*¹⁰⁷ has been significant in the interface of the executive mayor and municipal manager to the extent of disciplinary proceedings being instituted against the municipal manager.

The issue before the court was whether a council can delegate the power to charge and suspend the municipal manager, to the mayor.

While the court acknowledged that section 60 of the Municipal Systems Act came very close to giving the council authority to delegate the power to discipline the municipal manager, it did not extend that far. The Court neatly deduced its preference by noting the potential consequence of allowing the executive mayor the power to charge and suspend the municipal manager. The court held that it is-



“...inevitable that, in the execution of their statutory duties, a conflict might arise between the municipal manager and mayor. It would not be desirable, in the administration of justice, that the municipal manager must live with the constant fear that, in the event of such conflict, the municipal manager is at the mercy of the a mayor with disciplinary powers.”¹⁰⁸

The court went further in eradicating any supposed “hierarchy” that exists within a municipality, and instead choosing a “just” method of dealing with problems, in the following assertion:

“Justice would be better served, in my view, if both officials involved in a conflict situation, make representations to the council which in turn can,

¹⁰⁷*Mbatha v Ehlanzeni District Municipality and Others* Labour Court of South Africa (1392/2007).

¹⁰⁸ *Mbatha* para 22.

after a deliberation on the matter, decide on whether any disciplinary actions ought to be taken, and if so against whom.”¹⁰⁹

The case of *Mbatha* is therefore liberating for the status of the municipal manager. While it is acknowledged that the decision to discipline or suspend the municipal manager may be *implemented* by the executive mayor, the *decision* to discipline or suspend the municipal manager can only be undertaken by the council itself. The case therefore serves to protect the municipal manager from intimidation of the executive mayor.

3.7 Conclusion

The chapter has provided a detailed account of the duties of each, the executive mayor and municipal manager, as provided for in terms of legislation, as well as a description of the provisions that lead to interaction between the two individuals. Relevant case law that curbed the stance of the executive mayor in disciplinary proceedings against the municipal manager was discussed. The paper proceeds to examine what practice reveals about the relationship between the two leading figures within the municipality.

¹⁰⁹ *Mbatha* para 22.

Chapter 4: The executive mayor and municipal manager: the challenges identified

4.1 Introduction

When assessing the extent to which the legislation delineates the roles of each, executive mayor and municipal manager, it would easily be assumed that the legislation is indeed all-encompassing, addressing every aspect of each individual's roles and also the manner in which the roles relate to each other. However, practice reveals that despite the scope of the legal regulating and facilitating tools, the rapport between the municipal manager and the executive mayor is far from ideal. This chapter will reveal the anomalies of the relationship that were identified in the research undertaken.

This component of the paper relies largely on interviews that were conducted with two ex-executive mayors and ex-municipal managers. The views expressed by the interviewees are supported by the findings in the report compiled by the Community Law Centre of the University of the Western Cape, titled "The quality of local democracies",¹¹⁰ as well as the "State of local government" report compiled by the National Department of Co-operative Governance and Traditional Affairs.¹¹¹

A brief overview of the position of the interviewees is as follows: Both of the previous executive mayors interviewed served at their respective municipalities as executive mayors for an approximate period of four years. Both participants were dismissed at the beginning of 2010 by the ANC's "provincial task team" which was deployed to the province in which they were based. Participants hailed from the same province, yet different municipalities. One of the executive mayors served in a local and the other in a district municipality.

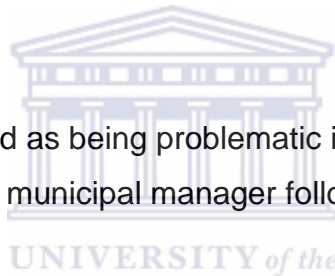
¹¹⁰ De Visser, May and Steytler (2009).

¹¹¹ CoGTA (2009).

Interviews were conducted with two municipal managers, both serving local municipalities within the same district as one of the executive mayors. One of the municipal managers served concurrently with one of the executive mayors interviewed, within the same municipality for the four year duration that the executive mayor was in office. He was not a member to any political party. The second municipal manager served for three years within his local municipality. He was at the time also the regional secretary of the ANC.

Interviews were guided by a set list of questions,¹¹² which were not mechanically adhered to. Interviewees were guaranteed absolute confidentiality, and assured that no reference would be made to their respective identities in the research paper or elsewhere.¹¹³

The areas that were identified as being problematic in the relationship between the executive mayor and the municipal manager follow.



4.2 Executive mayors cannot exercise their supervisory role as required by legal framework due to political deployments

An enormous setback in the interface between the executive mayor and the municipal manager is manifested as a result of political deployments. The politically deployed municipal manager is directly associated with incompetence in the workplace. This, practice reveals, is a result of the municipal manager often ranking highly within the ruling political party, and as consequence, his or her role within the municipality being viewed to be of secondary importance. A further consequence of a politically appointed municipal manager lies in the inability of the executive mayor to discipline the municipal manager. This, again, is a result of the municipal manager ranking higher than the executive mayor

¹¹² Attached hereto as Appendix B.

¹¹³ Refer to Appendix A attached hereto for a description of the confidentiality agreement between writer and participants, in “informed consent form” that participants signed.

politically, and as such leaving the executive mayor in a vulnerable position, often him or herself answerable to the municipal manager, when in fact, in terms of the legal framework, the opposite is required.

The executive mayor is often appointed by the political party. The result of this appointment is that often, the very cumbersome position of the executive mayor is filled by an individual who is simply ill-equipped to carry out the job.

Consequently, the executive mayor is not in a position to exercise supervision over the municipal manager, as is required by law.

Each of the above-mentioned consequences of political deployment will be explored below.

4.2.1 Incompetent municipal managers are appointed

The reality of incompetent municipal managers was highlighted in interviews. This generally appears to be the case where municipal managers are leaders within political organizations. Juggling positions of leadership (within the municipality and within the political party) often creates an issue of “prioritizing” work, where duties within the municipality take a back seat. Once a municipal manager is a leader within the political party, there appears to be a sense of security for the individual as regards his or her position as municipal manager, which in turn results in the individual performing duties to a substandard degree. This is a consequence of the municipal manager being aware that his or her political ranking is high, and that he or she is therefore effectively in control within the municipality. There is thus no pressure to prove his or her ability within the workplace. As a result, politically deployed municipal managers prove to be problematic “employees”, often being absent at their place of work and lacking control in their areas of duty within the municipality.¹¹⁴ The overall effect of this on the relationship between the municipal manager and executive mayor is dire,

¹¹⁴ The negative consequences associated with hiring a municipal manager who is a political deployee is described at length in De Visser, May and Steytler.(2009) 41.

as the executive mayor is dependant on the municipal manager to see to the implementation of practically all of the council's decisions.

An ex-executive mayor interviewed relays his experiences with two municipal managers who were politically deployed, whilst he served as an executive mayor.

Mayor: *The first MM was a political deployee from the ruling party and a very senior leader of the SACP. The challenge that we had was that we could not account fully to National Treasury in relation to municipal grants, to the extent that the municipality had been receiving disclaimers constantly. We could not find documents for the Auditor General and National Treasury. There were times when the MM would be urgently needed; he would not respond to calls, SMS, etc. We charged him and eventually fired him.*

The second one was also a political appointee who used to be a politician in the national assembly. He came in very diligent. We agreed that every Monday we would meet and report to each other on what had happened in the previous week, so that there was a rapport between the offices. He started of very well, but ended up being a case that sometimes he was nowhere to be found. I recommended that he register for an executive course for municipal employees in order to try and build capacity so that he at least worked like within a private sector set-up. This too did not help because I picked up later that he would say that he is attending a course but he never even pitched up in class, so there was a complete fall-out. I had to go to court eleven times in order to fire him.

Executive mayors thus have a difficult experience of municipal managers who are political deployees. It can be confirmed from the above that such municipal managers indeed view their role within the municipality with secondary importance in relation to their roles within their political parties. Incompetence,

inefficiency and simple disregard appears to be directly associated with politically deployed municipal managers, which in turn results in frustrating working conditions for the executive mayor, who is dependant on the municipal manager in many areas.

The effect of having a politically deployed municipal manager in office can be vastly distinguished from one that is not a deployee. Research indicates that where a municipal manager is not affiliated to the ruling party, he or she is committed to their job. A municipal manager that can be entrusted with control of the administration and effectively see to the implementation of policy and directives within the municipality lifts a great deal off the shoulders of the political constituent. Having the ability and competency to carry out the duties and mandate of a municipal manager proves to have a good effect on the working relationship between the municipal manager and executive mayor. It allows for a smooth, cyclical system of efficiency and accountability.

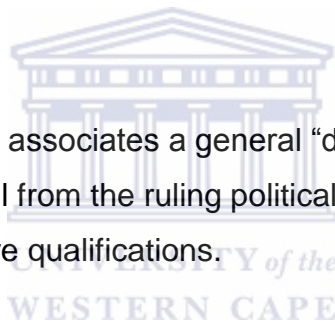
The following ex-executive mayor describes how employing a municipal manager who is not a political employee has numerous positive effects.

Mayor: *My working relationship with the MM was good. He had the capacity - he was part and parcel of the local government sphere for about 19 years and knew what was expected of him. From an administrative point of view he also understood his limitations and his terms of reference. That makes it very easy to start a good rapport - based on what he knows. Within the environment in which he operated, he knew a bit of everything, so I could ask him financial questions and about corporate HR issues, public participation, etc. In spite of all the years, and given the background of politicians, he had a lot of respect for the political side of the municipality, giving the politicians space, especially myself; playing a very good advisory role with regard to what legislation required, he made it easy to work.*

It can thus be seen that where a municipal manager is employed on merit, he or she is indeed focused on “the job”, and is in control of areas within his or her scope of duty. The municipal manager realizes that he or she is employed for no reason but their ability to carry out their functions effectively, and thus have good reason to ensure that their jobs are secure - this they do by working competently.

In certain cases, notwithstanding the impressive résumés that municipal managers may hold, they yet do not have the commitment to their jobs within a municipality. Again, this is seen mostly in cases where the municipal manager is a person of political significance within the leading party, and the stark difference is evident when compared to municipal managers that do not hail from a political party.

A respondent in an interview associates a general “don’t care” attitude with municipal managers who hail from the ruling political party. This is despite the individuals holding impressive qualifications.



Mayor: *It's not that within the ANC you don't have capable comrades - you have degrees all over the show. Most of the MM's that get fired have got your masters and doctorates and when you have an interview with that person, they know their stuff like you won't believe. They are attorneys, members of parliament, etc. It's only after they are employed that you will have problems of incompetence and a "don't-care" attitude".*

It can thus be seen that appointing highly qualified people to the municipal manager position is not a determinant of the competency of the individual, especially when the incumbent is a political deployee. There is a sense that the person appointed to be a municipal manager should, together with qualifications, be somebody who has pride and commitment in the position. This is attested to by an ex-executive mayor who was interviewed.

Mayor: *I agree that the position of the MM must be professionalized. However, the MM must also have the experience, the necessary skill, qualifications and, understanding also that he will always grow within the system...if you get the job, you must have the ability to care for that job.*

It is thus evident that commitment to the position of municipal manager is a vital requirement in the appointment of the municipal manager. Qualifications and experience alone are not conclusive in determining the ability of the municipal manager.

In contrast to incompetency associated with a political appointment, a municipal manager who is not appointed on the basis of political affiliation and has a thorough understanding of his or her area of work proves to be in better control of his or her environment, and as such has a good work ethic. The relationship between the municipal manager and executive mayor is strengthened as a result, with the entire functioning of the municipality inevitably improving. This was confirmed in an interview with an ex-executive mayor, who shared office with a municipal manager who was not a political deployee.

Mayor: *I found somebody who has grown in the organization (the municipality).He comes from a managerial position, ended up being a departmental manager, then a director and in many instances became an acting MM, so he was aware of the environment. He knew the area in and out. You would just call a place and he would tell you what the problems are and how we can solve them. He was and still is good for the job.*

The true test in the appointment of a municipal manager lies in the commitment of the person to fulfilling his or her mandate as a municipal manager, as required, together with an absolute dedication to making the system work effectively. This

becomes challenging to achieve when the municipal manager is a political deployee.

4.2.2 Executive mayors cannot discipline municipal managers

In a situation where the municipal manager is a political deployee, he or she is often always high-ranking within the political party, and almost always is the highest ranking political person within the municipality. Of course the outcome of such a situation is abnormal, in that the oversight role that is to be exercised by the executive mayor over the municipal manager is somewhat reversed, and the executive mayor is unable to discipline the municipal manager, when the need arises. The reason for this is that the municipal manager is placed in a position of authority over the executive mayor, due to his or her political seniority. This creates a power issue, because the municipal manager, although answerable to the executive mayor within the confines of the municipality, knows that beyond the boundary of the municipality, the executive mayor is in fact answerable to him or her. The practical consequence of this is that the executive mayor is placed in a compromising situation when the municipal manager needs to be confronted. Inevitably, this creates disorder in the functioning of the municipality.

In an interview conducted with an ex-executive mayor, he describes the consequences of enforcing views that go against those of the politically deployed municipal manager. Such actions could lead the executive mayor to hot waters, to the extent that the municipal manager could insist that that the executive mayor be removed from office should he or she act against the municipal manager within the confines of the municipality.

Mayor: *In many cases where the MM is a member of the regional executive of the ANC, he is actually the boss to the mayor when it comes to politics; the mayor is only his boss when it comes to the “show”. So you fix him in the office, next thing you hear is that the regional office is no longer happy with you, you must be removed. It should be streamlined in*

terms of party policy and in government; that these guys who hold top positions within the party should not be allowed to be the MM, because he can tell me in the morning at the council meeting, that I, as chairperson instruct you to do so and so, don't listen to me and we will meet in the regional office later.

The effect that a politically appointed municipal manager potentially has on the relationship between the executive mayor and municipal manager can thus be seen being hazardous. The municipal manager is placed in an authoritative position over the executive mayor, which is certainly not what legislation envisaged for the relationship between the two leaders within the municipality.

A further downfall of having a political deployee serving in the office of the municipal manager is experienced when the executive mayor is forced to consult with external political structures when it comes to matters pertaining to the municipal manager, particularly as regards disciplinary proceedings. Where the municipal manager is a political deployee, the executive mayor, instead of being able to discipline the municipal manager by means of internal municipal disciplinary recourse mechanisms, often has to revert to the political party, as the municipal manager is first regarded as a leader within the political party before he or she is regarded as an administrative appointment within the municipality. The consequence of constantly having to consult with people beyond the boundaries of the municipality inevitably leads to encroachment on the autonomy of the municipality. The effect that it has on the relationship between the municipal manager and executive mayor is inevitably frustrating, as the executive mayor is unable to act independently.

The situation is described by an ex-executive mayor who was in office at the time that the municipal manager was a political deployee.

Mayor: *When I started at the municipality, there were quite a number of things that were not going right because of him, but as you know the MM is appointed by the council, he was a political deployee of the party. I therefore had to refer back to the party without being able to reprimand him within the municipality. This was very frustrating.*

Besides encroaching on the autonomy and independence of the municipality and executive mayor particularly; having to constantly refer back to the political party in relation to matters concerning the municipal manager results in time being wasted. Where a matter could be sorted out promptly had it been dealt with immediately within the confines of the municipality, the process is now extended, with politicians making decisions based on political and other factors rather than on merit. In a complex environment where the overall performance of a municipality is to a large degree dependant on the performance of a municipal manager, the inability of the executive mayor to regulate internal affairs without having to involve external structures is indeed frustrating.

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There is therefore a strong existing sentiment that individuals holding high ranking positions within the ruling political party should not be allowed to be appointed as municipal managers.¹¹⁵ It would appear that this would be the most effective manner of addressing the problems experienced in the case where the municipal manager is a political deployee. This opinion was shared by an ex-executive mayor in an interview. The interviewee is of the opinion that municipal managers be appointed solely based on merit, as a huge part of the functioning of the municipality depends of the municipal manager. He or she should therefore be focused on the job.

Mayor: *Until such time that MM appointments are based on professionalism, experience, effectiveness, efficiency and value for money; we will be fighting a losing battle. They should be employed on*

¹¹⁵ This view is supported in section 5 of the Municipal Systems Amendment Bill.

contract where you either produce results or get fired. Once we can do that and ensure that there is no political relation between that position that you hold in the party that you serve, you know that you are there based basically on merit.

The MM is the ultimate decision maker, everybody in supply chain reports to the MM. When we dispense tenders, the MM will get people in who are sometimes brought in on the basis of their particular situation in the struggle, not on their necessary expertise. So they get embroiled in kick-backs and all those peripheral things and ultimately you won't find them in the workplace. They are always extinguishing fires that they have created themselves.

Whilst practice shows a definite negative correlation to appointing a person with political ranking to the position of municipal manager, research conducted illustrates that this is not necessarily a favored opinion across the board. One ex-executive mayor that was interviewed is of the opinion that it is irrelevant if the municipal manager hails from a political party or not. What is relevant, he explains, is the professionalism and integrity that the individual holds.

Mayor: *I agree that you need to professionalize the system with regard to appointments of MM's, but I don't believe that it matters from which political party that person comes. I would not care if a person comes from a political party, or what political party. I find it unnecessary to say that you should hold this position or cannot hold that position- I am actually taken aback in thinking that is it really necessary to go to that extent that we find ourselves saying that you cannot be a bishop in church because you are a MM. So for me, whether you are a leader in the provincial leadership of party A or party X, it is immaterial, as long as you know your professionalism and integrity.*

It is thus evident that while research overwhelmingly suggests that there is a need to remove the element of political affiliation from the position of the municipal manager, there is a dissenting opinion that this would be futile if the individual does not hold integrity, in which case the individual would not be suitable to be the municipal manager anyway.

4.2.3 Ineffectual executive mayor cannot supervise

Executive mayors are often appointed by the ruling political party. Often, the appointment is not determined by the professional caliber of the individual, but instead by political and other factors. The end result is that the executive mayor is ineffective in exercising his or her supervisory role within the municipality.

Whilst there is emphasis on the need to professionalize the position of the municipal manager, it is a fact that the duties entrusted to the executive mayor match those of the municipal manager in terms of requiring technical knowledge which must cover a wide array of areas, in order to effectively carry out same. It must also be borne in mind, that while the municipal manager is an administrative appointment, the executive mayor is a political one, where there exists no requirement of professionalism, or criteria that need to be fulfilled in order to take office. The consequence of this is inevitable. The executive mayor is often simply unable to exercise his or her duties proficiently, as he or she is incapacitated to do so. Since the municipal manager is largely dependant on the executive mayor in many ways, this can and does inevitably lead to frustrations for the municipal manager. The legal duties imposed on the mayor to this effect require the mayor to have technical knowledge in wide and far-reaching areas, as he or she is required to provide oversight, guidance and instruction to the municipal manager. Of course, if the executive mayor is in any way unequipped to do this, it creates volatility in an ideally harmonious state of affairs. The need for an individual who is able and competent to fill the position of the executive mayor is thus imperative. The following extract from an interview with an acting

municipal manager conducted as part of the De Visser, May and Steytler study provides a reflection of a situation where the executive mayor is not ideally equipped to carry out his or her duties

Acting MM: *Today's mayor should also be a technocrat. There is thus a very thin line between the mayor and the MM. There is a clash of roles. The mayor is a political appointment, yet he must oversee the finances. The MFMA is very clear on this. There is a burden on the MM if the mayor cannot do the work. The mayor can't be ceremonial. The fundamental deficiency of the system is that the mayor gets elected because he is popular, but then must assume technocratic functions. There is a constant fighting for turf to control between the mayor and the MM. A municipality thrives where the mayor is a technocrat.*¹¹⁶

The opinion that the position of the executive mayor needs to be filled by a competent person is the general consensus based on research, with executive mayors themselves conceding. An ex-executive mayor interviewed concurs that the position of an executive mayor should be filled by a competent individual, whose role goes beyond a ceremonial one.

Mayor: *It is very important that the mayor is not appointed based on popularity - because he can sing or is known in the community. There have to be certain qualities that he holds. I think, in all fairness you need somebody who can understand and interpret the legislation, not necessarily a lawyer, but he must be able to think and give direction to that municipality. You can't be a push-over. As much as you get a mandate from the party, you have to be sensitive to the fact that you are not the only party; that you have to actually be able to deliver services. You need people who would be able to hold the fort; who have the basic skills.*

¹¹⁶ De Visser, May and Steytler (2009) 28.

It is interesting to note that mayors themselves agree that the position of an executive mayor needs to be filled by a dynamic individual, who is an independent thinker and has the ability to identify the needs of a municipality beyond the mandate received from the political party.

4.3 Executive mayors exceed their prescribed supervisory role and interfere in the administration

While legislation makes the role of the executive mayor, in relation to the municipal manager absolutely clear, in that it is one of “oversight”, which should be distinguished from “interference”, the reality of practice indicates that these concepts are often used interchangeably, where the executive mayor overtly interferes in the municipal manager’s domain of work.

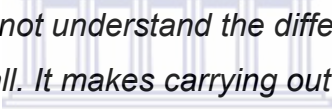
The appointment of a municipal manager is an administrative one. However, it must be noted that the municipal manager is appointed by the council. There is thus a strong sense of indebtedness and obligation that lies with the municipal manager, toward the executive mayor, as the political head of the municipality. A play on the emotions of the municipal manager as a result is common, and often there seems to be an unspoken expectation by the executive mayor of the municipal manager to carry out certain actions that extend beyond the scope concern of the executive mayor. This is attested to in the following extract by an ex-municipal manager who explains how a municipal manager is often at the mercy of his or her executive mayor.

MM: *The relationship between the municipal manager and executive mayor is regulated by a “psychological contract” or a “psychological mandate”. Psychological contracts do not find expression in any legislation or document... for example, there was a tender advertised. The mayor, knowing fully well that she is by law not to be involved in the process at all,*

instructs me to pass the tender onto a certain department to be dealt with. What do I do? There is definitely a constant insecurity that you experience being a municipal manager.

It can thus be seen that in certain instances the municipal manager is placed in a difficult position, having to decide on acting against the wishes of the mayor, or satisfying his or her own will.

On the other hand, there are instances where the executive mayor has no regard for the opinion of the municipal manager, and simply oversteps his or her duty to oversee the functions of the municipal manager, by overtly interfering in the realm of the municipal manager. This is explained by an ex-municipal manager that was interviewed.



MM: *Our mayor does not understand the difference between “oversight” and “interference” at all. It makes carrying out your job as an accounting officer very challenging, when you are constantly inundated with commands from the executive mayor requiring you to carry out certain things that you know are not legitimate. It makes it very frustrating.*

It can thus be seen that while legislation attempts to regulate all aspects of the relationship between the municipal manager and the executive mayor, there is often an underlying understanding between the two incumbents that places the municipal manager in a vulnerable position.

In one interview, an ex-executive mayor himself confirmed that mayors abuse their oversight role, to the point of frustration for the municipal manager:

Mayor: *Sometimes there is excessive interference from the executive mayor, wanting to know who is making tea in the municipality, how many*

sweepers there are, and actually to the extent of bringing a list of the people who must be sweepers.

The extent to which interference by the executive mayor permeates the municipality is thus evident. Executive mayors often have absolute disregard for the law which undeniably forbids interference in the administration. Municipal managers are then left in a catch-22 predicament, where they are fully aware of the illegitimacy of requests of the executive mayor, but for fear of being ostracized or even punished (by suspensions and threats of dismissals) they are forced to act in accordance with the request of the mayor.

4.4 External factors affect the legislatively prescribed relationship between executive mayors and municipal managers

One of the most exasperating as well as damaging influences on the relationship between the municipal manager and executive mayor stems from external political structures. This is generally experienced at two instances, at the time of appointments and when awarding tenders. As the issue of appointments is an extensive one that has many implications for the municipal manager / executive mayor interface, it will be dealt with separately below.

The exact status of the relationship between a political party and its deployees within a municipality is unclear, as attested to by all respondents. The exact status of autonomy of the politicians within the municipality is unknown. Are the councilors expected to accept directives on all matters from their political counterparts outside of the municipality, or is there a cap placed on how much of authority the external party structure holds within a municipality?

What research does indicate is that the participation of external party structures is disparaging on the working in local government. Mayors themselves complain about the effect of external party interference within the municipal domain. An

interviewee who served as an executive mayor for four years describes the extent to which external political structures interfere within the municipality, especially as regards the awarding of tenders.

Mayor: *The tenders...sometimes mayors fall into that trap on the basis of external forces, that sometimes say: "We have seen in the papers that you guys have advertised for X...reverse it because you did not consult with us". You find that you are stunned on the basis that you thought that you had a mandate in the form of the manifesto; how you implement it, you will then work out and streamline your policy, with the end result being a better life for all our people. But once you open your door there are people who come on their own terms- you do not have an understanding of how complex the situation is there. When you draw the line, it is like you are seen as being defiant. People who draw the line are not popular at all.*

It is hereby seen that external political forces have expectations to be involved in every step of procurement proceedings. Executive mayors who defy these instructions by acting unilaterally or who fail to consult with political authorities are not held in high regard.

Another previous executive mayor confirms that the external influences are primarily concerned with personal monetary gain, and involve themselves in municipality affairs to the extent that they ensure personal enrichment.

Mayor: *As much as the legislation is intended to bring things together and say that we must bring stability, professionalism, less politics and come together in a common approach in moving forward, there will always be an influence by the external sphere, because people have their own preferences- it's all about the cookie jar, whose fingers can be in the cookie jar.*

It can thus be seen that while external political influences do not directly affect the relationship of the municipal manager and the executive mayor, the indirect effect that it has is paramount. As the accounting officer, the municipal manager is accountable for the overall functioning of the municipality. He or she is to be guided and overseen by the executive mayor. If the executive mayor is not in a position to guide, instruct or support the municipal manager, in the best interest of the municipality, the entire system of efficiency would be at a threat of collapsing. It is the external party structures that often have a hold on the executive mayor to this effect, as illustrated above. The executive mayor would receive directives from the political party, and then impose them on the municipal manager, or would simply act in a manner that is not in the best interest of the municipality, in order to satisfy the political party. This has a direct influence on the synergy that is to exist within the municipality, and thus a direct impact on the municipal manager who is in charge of implementation of policy.

4.4.1 Appointments made by external political structures frustrates the relationship between municipal managers and executive mayors

An area that directly affects the relationship of the municipal manager and executive mayor is that of appointments - appointments of the municipal manager himself / herself, the executive mayor and that of managers that report directly to the municipal manager. Appointments typically become an issue when they are carried out for reasons that are not tantamount to achieving that which is in the best interest of the municipality, but rather for self-serving, political or other needs. Most often the problems experienced in appointed people are those appointed as a result of influence exercised by external political forces. Once more, as a result, the synergy within the municipality is disturbed where some leaders are focused on achieving the best for their people, and others within the same arena are focused on fulfilling their own personal or party interests.

The consequences of external political dictation in the appointment of the municipal manager go beyond incompetence. Once the individual identified for

the position is aware that he or she is favoured to be the municipal manager by the political party, but not within the municipality, this already creates tension in the working relationship within the municipality, once the individual is in fact appointed. An ex-executive mayor describes the practical consequence of a situation where the municipal manager is not preferred by the municipality, but by the political party.

Mayor: *In our area, one person was recommended as a municipal manager and we were very opposed on the basis that at the time we had also done background checks and found him to be somebody who really cannot be trusted. We decided to go to the political powers and present facts, and give our recommendations. They told us in no uncertain terms that: “you are going to appoint X”. Now already X knows that he was not preferred by this collective. When X comes in, we smile, we welcome him, but X knows: “you did not want me, I’m going to fix you up”, so already there’s a problem. The situation creates tension and will never be smooth moving forward.*

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Evidently, in the above scenario, prior to the incumbent even taking office, tension would exist in the relationship between the executive mayor and the municipal manager, thereby setting a negative tone for a relationship that is, effectively, yet to be established.

As explained above, the position of the executive mayor is a high-pressured one, where despite no formal requirements for serving in office as such existing, the nature of the portfolio of the position requires extensive knowledge and skill across a wide field. This is a result of the executive mayor being the political head of the municipality, and as such being “in charge” of all that happens within the municipality. The choice of individual to fill this position is therefore a critical one. Should the executive mayor be unable to carry out the duties as required of him, this again would frustrate the system of operation within the municipality,

particularly as regards the interface of the executive mayor and the municipal manager, who in terms of legislation are expected to share a close working relationship.

The repercussions of appointing a mayor for reasons that primarily go beyond the individual's ability to effectively see to the running of the municipality once again result in a situation of ineffective local governance. Of course, this leaves the municipal manager in an awkward position, where he or she either acts independently, irrationally, or is bullied into acting illegitimately by a mayor "who does not know any better".¹¹⁷

The manipulation by external political forces involved in appointing executive mayors is spoken of by executive mayors themselves. An ex-executive mayor who was interviewed relates the manner in which political parties deliberately place incompetent, impressionable individuals to act as executive mayors, with the sole purpose of being able to control the influential position of the executive mayor.


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Mayor: *In some places the deployment (of the executive mayor) is done purely so that you have somebody that you can use as a yoyo, somebody that you can manipulate. You cannot sheepishly follow each other on the basis of a party, there has to be a clear difference between the party and the state. If you have somebody who, when the province says: "jump", he says: "how high", we are heading for a very dangerous situation... The party must have a system of carefully selecting the best to occupy that position, who would then be able to cut across all sections of our community, and you don't get shocked when you as a professional are listening to this mayor and say: "oh my, are there no better people amongst us who can do that?"*

¹¹⁷ A full explanation of this dilemma is attested to in De Visser, May and Steytler (2009) 27.

The issue of appointments is thus problematic when it comes to that of the executive mayor as well. Research indicates that often times political parties deliberately appoint individuals who are not necessarily assertive and controlling, in an attempt to hold on to power and control within the municipality. External political interference hinders an already vulnerable system of checks and balances within the municipality from this perspective as well, since an incapable mayor would certainly not be able to exercise effective oversight of the municipal manager, as is required by law.

4.5 Politically appointed section 56 managers disturb the synergy in the relationship between the executive mayor and municipal manager

The appointment of managers who are directly accountable to municipal managers is a highly contentious issue in local government. Although legislation dictates that the council must consult with the municipal manager before appointing these managers, the ultimate appointment lies with council. In practice this does not work well as the municipal manager is in charge of his or her administration, and thus, having politicians determine who will be managers heading the relevant departments that the municipal manager is ultimately responsible for creates a doubt as to whether this is not in fact an encroachment of the area of supervision of the municipal manager.

Research illustrates that there is general discontent about the appointment being made by the council, with an overall opinion that these appointments should be made by the municipal manager, as he or she is the individual to whom these managers are after all accountable to.

Research further illustrates that there is confusion around who should discipline these managers.¹¹⁸ This uncertainty inevitably creates a tension in the

¹¹⁸ De Visser, May and Steytler (2009) 44.

relationship between the municipal manager and executive mayor, as respective heads of the political and administrative sectors of the municipality.

An ex-municipal manager who was interviewed describes the irregularity in the practice of section 56 managers being appointed by the council. He confirms that it is a challenge to exercise control over individuals that have not been appointed by the municipal manager, yet to be responsible for their performance.

MM: *There is a huge problem with the legislation in relation to section 56 appointments. The MM is responsible for the performance of the administration, yet these managers are appointed by council. How do you exercise control over people that you have not appointed, and whose capabilities you know nothing about?*

The same previous municipal manager shares that the section 56 managers appointed are often not the people that the municipal manager would have considered appointing, had the decision been his.

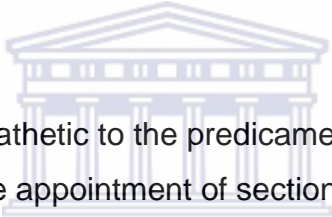
MM: *I would have appointed only ONE of the seven directors, had it been up to me!*

This suggests that managers appointed are often not selected because they may be the best person for the job. Inevitably, being the person “in charge” of these managers, would lead the municipal manager to be discouraged.

Mayors themselves prove to be of the opinion that there would be a much better synergy within the organization of a municipality should the appointments of section 56 managers be made by the municipal manager, with no council involvement. This view is confirmed by an ex-executive mayor who was interviewed.

Mayor: *Section 56 managers should be the municipal manager's domain, because he is the foremost accounting officer. When I deal with the municipal manager's performance, this crowd is not there, he deals directly with their performances. He signs their contracts.*

Legislation puts them next to council, but they are supposed to be disciplined by the MM. Now, the MM tells us that he has a problem with X, then we give him permission to now deal with him. That takes about 3-4 months to discipline. But, he should be able to suspend somebody as soon as he gets the details of their offense... From a cooperative point of view, if I am the MM, I would want the best people, I would head-hunt, because I don't want to fail, it should be the prerogative of the MM to be able to do that.



With mayors too being sympathetic to the predicament that municipal managers are forced into in terms of the appointment of section 56 managers, it is evident that there is a general sense that these managers should be appointed by the individual to whom they are accountable, i.e. the municipal manager.

An ex-executive mayor who had a good working relationship with his municipal manager explains how the politically appointed section 56 managers potentially create problems in the relationship between the mayor and the municipal manager, as well as the mayor and the external political structures. They do so by using the mayor as a point of contact, as opposed to confronting the municipal manager directly, as would be required. When the mayor poses to be resistant to entertaining the manager, he or she would report the mayor to external political structures.

Mayor: *When the MM gives him instructions and he does not obey them, he comes to me, and that's where the problems start between the MM and I or between the 3 of us. I have consistently refused to entertain anybody*

bypassing the MM. I have had lots of people coming to my office with problems, wanting me to lend an ear, I would not accommodate them. Problems have to come to me via the MM and nobody else. But because of their political leverage, people would say things like: "I was in the vicinity so I thought let me check on you". I understood that he does not want to discuss with issue with the MM because his ideas would not fly with the MM. These people would then go to the external structures and say: "That mayor is not cooperative, we have these good ideas but he only listens to the MM, maybe because he is white..." Now it becomes a race issue.

The appointment of section 56 managers by the political arm of the municipality can therefore be seen as a situation that has a significant indirect impact on the relationship between the executive mayor and municipal manager, to the extent that even in a situation where the two individuals have a good working relationship, this is threatened by the involvement of politically appointed managers.

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A suggestion by an ex-municipal manager interviewed on the way forward with regard to municipal managers and the section 56 managers is that they should operate like a board of directors and a CEO, with the CEO appointing and disciplining all those who are accountable to him or her.

MM: *It should be a clear-cut thing, that council appoints the CEO, who is the MM. Like all boards, from there on, all the people that must report to him, he must appoint. So that when he wants to lash out at somebody, he is not afraid, because lots of MM's are afraid to touch on directors because the director has a good relationship with the mayor or the ANC.*

The municipal manager appointing section 56 managers could thus be seen as a means of protecting the municipal manager from political interference in his or

her work, in so far as the municipal manager would be better placed to reprimand underperforming managers, with no fear of him or herself subsequently being reprimanded by the political party.

4.6 Conclusion

The current chapter introduced the problems experienced in the interface of the executive mayor and the municipal manager. The problem areas were identified through research as being circumstances where the executive mayor cannot exercise his or her supervisory role as a result of political deployment; executive mayors exceed their supervisory role by interfering in the work of the municipal manager; the relationship between the executive mayor and municipal manager is circumvented by external political structures and the appointment of section 56 managers being made by the council has an indirect negative effect on the relationship between the executive mayor and the municipal manager. The paper will proceed to discuss legislative reform that is underway, which could possibly address the problems identified.

Chapter 5: Legislative reform

5.1 Introduction

The current chapter will explore legislative reform that is presently underway, which seeks to address some of the identified irregularities that were identified above. Applicable legislation in this regard includes the institution of certain provisions of the Municipal Systems Amendment Bill, 2010 as well as the draft Disciplinary Code and Procedures for Senior Managers.¹¹⁹ The view favoured by the paper is that while the reform of legislation, as proposed, would be effective in grappling with the challenges identified, it would not be sufficient in addressing all of the challenges.

5.2 Institution of certain provisions of the Municipal Systems Amendment Bill, 2010



Whilst not set in stone as yet, the Municipal Systems Amendment Bill, 2010 proves to be a useful tool in assisting to address some of the challenges identified in the relationship between the municipal manager and the executive mayor. The relevant provisions in this regard will follow, with a discussion on how the said provision will improve the interface.

Section 2 of the Bill, which includes the insertion of section 54A to the current Act deals exclusively with the appointment of municipal managers and acting municipal managers. For purposes of the paper, the sub-provisions of section 54A are of concern.

¹¹⁹ Municipal Systems Act: Disciplinary Code and Procedures for Senior Managers: For Public Comment.

Sections 54A(2) and (3) propose that a municipal manager must have the skills, expertise, competencies and qualifications prescribed by regulation,¹²⁰ and should such requirement not be fulfilled and a municipal manager yet appointed, the appointment would be deemed null and void. Should the municipality be unsatisfied with the initial pool of candidates that it attracts, it may re-advertise the position until such time as it finds the appropriate person.¹²¹ The extensive provision of section 54A proves to be a great attempt to do away with external influence in the appointments of the municipal manager as it strongly encourages that only the best person for the job be appointed, as opposed to leaving loopholes in the system, which allows for the appointment of individuals who are not deemed as being ideal for the position. Appointments would, as a result, be effected primarily on merit.

This provision essentially serves to entrench the precedent established in the case of *Vuyo Mlokoti v Amathole District Municipality and Mlami Zenzile*¹²² which holds that meeting the professional competency requirements of the municipal manager cannot, by any means be compromised, even if political authorities prefer so for any reason. The provision further carries an internal punitive measure, which states that any councilor who votes in favour of a decision that is in contravention of section 54A may be held personally liable for any fruitless and wasteful expenditure that the municipality may incur as a result of the invalidity.¹²³ This provision extends the principle set out in the *Mlokoti* case, in that should a councilor take instructions even from superior political counterparts, the councilor would be left personally liable should the appointment be illegitimately made. The consequence of this is that councilors would be weary of receiving instructions from external political structures, and acting on them in an ad hoc manner, for fear of suffering personal liability should they do so.

¹²⁰ The Municipal Systems Act regulations on competency, which would run parallel to the MFMA competency regulations.

¹²¹ S 2(5) Municipal Systems Amendment Bill.

¹²² *Vuyo Mlokoti v Amathole District Municipality and Mlami Zenzile* (2009) 30 ILJ 517 (E).

¹²³ S 2(10) Municipal Systems Amendment Bill.

The same requirements outlined above in relation to the municipal manager are extended to the managers that are directly accountable to the municipal manager, i.e. section 56 managers, in terms of a proposed amendment to section 56 of the Act. This modification serves to again prevent tampering in appointments, especially in cases, as described above, where the politically appointed directors are simply unskilled and ill-equipped to fill their onerous positions. The potential consequence of the institution of these provisions would be an overall, well-capacitated administration.

A critical provision in the Bill is one that disallows a municipal manager or manager directly accountable to a municipal manager to hold political office, in any capacity.¹²⁴ This provision would serve to address many of the qualms noted by respondents in that it would abolish the practice of the appointment of incompetent staff, simply as a result of political standing, who offer secondary preference to their very crucial jobs within the municipality. The practice of having municipal managers and senior managers who rank higher than the executive mayor politically, and are thus controlling of the executive mayor would no longer be. The result of this provision again encourages a single vision for the municipal manager and executive mayor, which is not tainted by political ethos. It thus would enhance a good working relationship, embodied by competency and focus on service delivery.

Section 6 of the Bill, which creates an amendment to section 57 of the current Act extends and promotes the necessity of ensuring entrenched terms of reference to be housed within the employment contract of the municipal manager and senior managers and is to be signed by both parties before the

¹²⁴ S 5 Municipal Systems Amendment Bill. The meaning of “Political Office” is given expression in section 1 of the Bill, where it is stated that “political office” in relation to a political party means the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of the party nationally or in any province, region or other area in which the party operates.

commencement of service.¹²⁵ This provision is important as it ensures compliance with the terms of reference requirement, in that the terms of reference form part of the employment contract which must be signed by both parties *before* commencement of services. This practice would ensure that roles are clearly defined, and committed to writing, so that, especially in the case of the municipal manager and executive mayor, each incumbent would be absolutely certain of the scope of their respective duties, and there would thus be no excuse for failure to perform, or interference within the domain of the other individual's scope of work.

The issue of an overall lack of competence and integrity of employees within the municipality was raised consistently in research. That municipal managers were appointed despite background checks which indicated that they were implicated in misconduct in previous municipalities was raised in interviews. The Municipal Systems Amendment Bill seeks to address this to a degree in that it regulates the employment of dismissed municipal employees from other municipalities and municipal employees who are subject to a disciplinary process.¹²⁶ The history of the employee therefore has to be well established prior to any appointment being made. A value judgment is then to be made in terms of the nature of the misconduct, if any, in deciding on employment. This provision thereby eliminates the possibility of appointing individuals who have a history of incompetence or poor performance.

Should the outlined provisions of the Municipal Systems Amendment Bill, 2010 be promulgated, it would, if implemented together with the other changes that are recommended herein, be greatly beneficial with regard to the interface between the political and administrative arms, specifically in terms of insisting competency of the municipal manager and senior managers, thus facilitating the working relationship with the executive mayor.

¹²⁵ S 6(1)(b) and (c) Municipal Systems Amendment Bill.

¹²⁶ S 7 Municipal Systems Amendment Bill.

5.3 Institution of the draft Disciplinary Code and Procedures for Senior Managers¹²⁷

The draft Code is aimed at effectively disciplining senior management (including the municipal manager), while at the same time protecting the municipal manager from frivolous suspensions. The draft Code further ensures fair and expeditious procedures of disciplinary proceedings. The Code sets out extensive, elaborate disciplinary procedures. It further entails procedures for dealing with substandard performance in management.¹²⁸

Should the draft Code be promulgated, it would serve to address several of the problems in the executive mayor / municipal manager interface identified: the issue again of incompetence of the municipal manager or senior managers would be dealt with, as proper channels would then exist for instituting and carrying out disciplinary proceedings. The flip side of the coin would also be addressed. This is the situation where the municipal manager is vulnerable before the executive mayor in instances where the executive mayor instructs the municipal manager to act in an illegitimate manner, and upon refusal, the job of the municipal manager is threatened. With the introduction of the Code, the municipal manager would have to be subjected to regulated disciplinary proceedings and thereby be afforded a fair opportunity to raise his or her case. The municipal manager would thereby be protected from political exploitation. The promulgation of the Code is therefore an excellent tool to facilitate a good working relationship between the municipal manager and the executive mayor, as it creates clearly defined routes to follow in instances where the executive mayor is displeased with the work of the municipal manager, yet at the same time would result in fairness towards the municipal manager.

¹²⁷ Municipal Systems Act: Disciplinary Code and Procedures for Senior Manages: For Public Comment.

¹²⁸ Municipal Systems Act: Disciplinary Code and Procedures for Senior Manages: For Public Comment Chapter 3: “Substandard performance” means unacceptable or failing to meet the required standard or performing below an established standard.

5.4 Conclusion

It is evident that should the current proposed legislative reform be instituted, this would have definite positive implications for the interface of the municipal manager and the executive mayor, especially in terms of appointments of municipal managers, where political deployments would be a thing of the past, and there would be an insistence on appointing individuals who are fit for the job. Municipal managers would further be protected from frivolous suspensions and politics, and be empowered as a consequence.



Chapter 6: Recommendations and conclusion

6.1 Introduction

While the Municipal Systems Amendment Bill and draft Disciplinary Code would be beneficial in improving the interface of the executive mayor and municipal manager, it is not believed that the institution of these changes alone would serve to address all of the challenges identified.

It is therefore proposed that the following recommendations be instituted, together with the legislative reform, in order to create a thorough overhaul of the current system to the extent that it addresses most of the problems identified in executive mayor / municipal manager interface.

6.2 Section 56 appointments to be made by the municipal manger

A huge problem experienced in the interface of the municipal manager and executive mayor lies in appointments generally, and specifically in the appointments of section 56 managers. These managers are appointed by the council, in consultation with the municipal manager.¹²⁹

Practice has revealed that there is often much manipulation and external influence involved in making these appointments. Often times individuals assigned to these positions are not at all competent and suitable for the position. As is the case with the municipal manager, these appointments are often made to individuals who rank highly within the political party. The consequences are that the municipal manager is left with an incompetent administration. It frequently happens that should the manager not agree on any matter with the municipal manager or be displeased with a directive from the municipal manager, the manager would revert directly with his or her grievances to the executive

¹²⁹ S 56 Municipal Systems Act.

mayor. Should the executive mayor fail to entertain these managers, they proceed to complain to the political party directly, of not only the municipal manager, but the executive mayor as well. Again, the fusion of politics and administration comes into play and creates stumbling blocks within the municipality.

It is the recommendation of the paper that the municipal manager, as head of the administration should be the relevant person to appoint his or her managers, for whom he or she would be responsible. The municipal manager would thus be entrusted to appoint his or her administrators, who would be the best suited persons to carry out their respective functions with no obligation to serve any political interest. To this end, the relationship between the executive mayor and the municipal manager would be strengthened as there would be a decrease in political interference in the appointment of the senior managers, which would serve to abolish the identified frustrations that the municipal manager experiences in this regard. The executive mayor would be in charge of his or her executive committee and the municipal manager of his or her administration, both now fully capacitated powers.

6.3 Recommendations to counter interference of executive mayors

While the suggested legislative reform outlined above is believed to have positive effects on the relationship between the municipal manager and the executive mayor, there are certain peripheral changes and supplementations that, if effected would be highly beneficial to the aforesaid relationship. A topical problem noted in the research is the constant interference of executive mayors within the outlined area of the municipal manager's work. In this regard, there are several recommendations that can be made which would, it is believed, if not abolish the problem, ameliorate it significantly.

Section 11(a) of the Code of Conduct¹³⁰ states that councilors may not interfere in the management or administration of the municipal council, unless mandated to do so by council. This provision is problematic in that it qualifies the requirement of non-interference, by allowing it in circumstances where council does. There exist no justifiable grounds for conditional interference. It is unnecessary to make a proviso as such, as this only creates loopholes for unnecessary meddling, often by the executive mayor in the domain of the municipal manager.

Section 11(b) of the same Code prevents a councilor, which includes an executive mayor, from giving or purporting to give instructions to any employee of the council, except when authorized to do so. This exception of allowing a councilor to give instructions to an employee *when authorized* again opens the provision to abuse, by virtue of its elusive phrasing. It is also unclear on who is to give authority. Is it the mayor? Is it the council? Surely such an elusive provision as regards such an already contentious area opens the floodgates for unnecessary interference. It is therefore held that the condition contained in this provision is again futile, with its implementation having potentially negative effects. It should be fully removed.

Perhaps the gravest case of interference, yet the most prominent form thereof by the executive mayor in the area of work of the municipal manager lies in supply chain management. Section 117 of the MFMA categorically bars councilors of any municipality from being a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor are they allowed to attend any such meetings as observers. Section 118 of the MFMA reinforces this by stating that no person may interfere with the supply chain management system of a municipality; or amend or temper with any tenders, quotations, contracts or bids after their submission.

¹³⁰ Schedule 1: Municipal Systems Act.

Despite these provisions making it clear that the executive mayor is by no means allowed to be a part of supply chain processes, it is often the case that the executive mayor simply instructs the municipal manager on how tenders should be dealt with. Despite being clear that there should be no tampering with the tenders, the provisions relating to supply chain management are silent in terms of how tampering with tenders would be dealt with. Section 173 of the MFMA, which deals with criminal proceedings merely states that a councilor would be guilty of an offense should the councilor interfere in the financial management responsibilities of the municipality, or deliberately influence the accounting officer,¹³¹ an offense for which a guilty person could be jailed or fined.¹³² The legislation fails in expressly addressing the very topical problem of abuse of supply chain management, the effect of which is again the need for an indirect inference to be made in order to bring an offender to book.

The recommendation is that since abuse of supply chain management is as pertinent as it is, it should be an explicit provision within section 173 that abuse of supply chain procedures is a criminal offense,¹³³ the charges of which should not allow the mere payment of a fine, but should include an extended imprisonment period. The consequences of being found guilty should further be extended to the criteria for becoming a councilor, so that these requirements should include a provision stating the following: no person who has previously been found guilty of contravening supply chain management provisions shall be allowed to serve as a councilor in any municipality. It is believed that a harsh stance is required to combat political influence within tender proceedings. Not only will such supplementation in legislation deter the executive mayor from interfering, but such deterrence will enable focus on actual municipal problems and thus strengthen the relationship between the executive mayor and municipal

¹³¹ S 173(4) MFMA.

¹³² S 174 MFMA.

¹³³ This should further be elaborated on- “abuse” should be defined to include “interference”, which should include the mere issuing of instructions as regards the issuing of tenders.

manager, who will no longer experience the constant tension of being faced with providing such “favours” to anybody.

A consequence of interference by the executive mayor in the work of the municipal manager is that the municipal manager is often placed in a compromising situation, of having to carry out the illegitimate “favour” for the mayor, or having the security of his or her job in jeopardy. To counter this problem it is suggested that the possibility of a focus on periodic performance contracts for municipal managers should be explored.¹³⁴ Should this practice be instituted, then in the event that the job of the municipal manager is threatened by politicians, it would be easy to ascertain if the municipal manager has performed in accordance with his or her expectation, and if he or she has performed, then surely this would serve as an effective leverage against political muscle. This practice, implemented together with the elaborate disciplinary proceedings of the draft Code, would protect the municipal manager significantly from political influences, especially in terms of job security.

With the introduction of these simple nips and tucks in legislation, the incidence of the interference by the executive mayor or politicians generally in the domain of the municipal manager and his or her administration would be curbed effectively.

6.4 Establishing competency within the office of the executive mayor

Much has been spoken of the need to instill competency in the office of the municipal manager, with legislative reform underway intended to address the problems associated with the municipal manager. It, however, cannot be denied that although there are currently no formal requirements that need to be met in order to be an executive mayor, by nature, the position requires vast knowledge,

¹³⁴ This would create a focus on the ongoing performance of the municipal manager, as opposed to a fixed contract.

skill, ability and overall competence. Research, however, indicates that this is lacking in most ways. Executive mayors are either “puppets” of their political appointees, uneducated and thus do not appreciate that they have to act within the scope of their duties, or simply behave haphazardly and embody a don’t-care attitude.

Several recommendations are proposed, that, it is believed, if implemented will result in a more competent executive mayor, and thus ensure a healthier interface with the municipal manager.

There are currently only ad hoc training programmes that are in place which executive mayors can undergo,¹³⁵ but no compulsory, standard, regulated training. It is thus suggested that national standards be established for training to be undertaken by all executive mayors, so that there is uniformity in training and thus realistic expectation of executive mayors; and in order to ensure that the relevant areas of practice, such as financial and project management are sufficiently emphasized on. This training should be applied across the country, and in a consistent ongoing manner, so as to ensure that executive mayors are kept abreast of all legal developments, and to create a platform for executive mayors to interact and provide support unto each other.

Mayors should further be subjected to signing a performance management agreement with the council, similar to the requirement imposed on municipal managers. Performance in this regard should be assessed by the office of the Auditor General, so as to avoid any tampering or influences on the process.

Residents should further be encouraged to participate in satisfaction surveys, thereby rating the performance of the executive mayor. This would encourage the accountability of the executive mayor to the people who effectively placed him or her in office and strengthen community leverage in running the

¹³⁵ Various tertiary institutions offer courses designed for local government employees.

municipality, thereby excluding the extent of external political influences on the exercise of the duties of the executive mayor. Mechanisms should further be put in place to enable residents to recall a non-performing mayor.

The institution of the above will capacitate the mayor and insist on competency in the office of the executive mayor.

6.5 Conclusion

The political / administrative interface is a complex one, specifically at local government, where challenges are compounded by an incredibly close working relationship. Unlike within national and provincial governments, problems experienced in each individual municipality are often overlooked, possibly due to the multiplicity of municipalities that exist. This however does not make the challenges faced any less of a problem. The executive mayor and municipal manager are of course at the fore of challenges. Having to deal with and consider conflicting motives, often influenced from beyond the municipality inevitably poses frustration and has a poor effect on the work ethos within the municipality. The paper has provided a detailed synopsis of the relationship between the two incumbents, identified the drawbacks that they experience in practice and provided possible solutions to these problems.

The paper has illustrated how instituting certain provisions of the Municipal Systems Amendment Bill and the draft Disciplinary Code would have a positive impact on the executive mayor / municipal manager interface. Further recommendations beyond the promulgation of the aforesaid legislation were suggested above. It is supposed that should the relevant changes be effected within the local government sphere, as suggested, that the outcome would be effective in improving the relationship between the executive mayor and municipal manager.

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APPENDIX “A”

Informed Consent Form

Title of the Research: Political/ Administrative interface: the relationship between the municipal manager and executive mayor

Researcher: Fatima Surty, University of the Western Cape

Study Purpose

I am currently completing my LLM in Constitutional Litigation. As part of the requirements for the completion of the course I have to write a research paper. My research is focussed on local government law. The aim of the paper is to analyse the relationship between the municipal manager and executive mayor in a municipality, identify the weaknesses, and propose possible solutions to the problems.

I would like to invite you to participate in the research study as I am interested in your opinions as you are one of the relevant incumbents on which the study is based and therefore relating your own experiences to me would be invaluable to my study. I am also interested in hearing any recommendations or suggestions that you may have. You may take some time to think about this consent form before making your decision to be a part of the study.

Procedures

If you agree to join the study, you will be asked to participate in an interview that will last for about 30 minutes. I will make an audio recording of the interview so that I can remember what you say. The recording will not have your name on it.

Confidentiality

The information that I collect from this research project will be kept confidential. Your name will not be written on data collection forms, and your name will not be used in any report coming from this study. Any information that might identify you will be removed.

All consent forms and recordings will be stored in a locked cupboard or with passwords, and only myself and my supervisor will have access to them.

Participation and withdrawal

You do not have to take part in this research if you do not wish to do so. You may stop participating in the interview at any time that you wish without consequence. You are not required to answer any questions that you are not comfortable with.

Who to contact

If you have questions about the study you may ask them now. You can also contact me at any time if you have any further questions about the study.

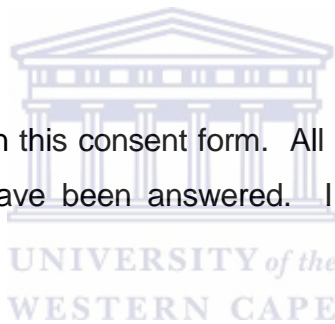
Fatima Surty

Tel: 083 2356 388

Email: fatimasurty@gmail.com

Signature Page

I have read the information in this consent form. All my questions about the study and my participation in it have been answered. I freely consent to be in this research study.



Participant Name (Please print)	Participant Signature	Date
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Interviewer Name (Please print)	Interviewer Signature	Date
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APPENDIX “B”

Interview Guide

Interview No.: _____	
Political/ Administrative Interface: the relationship between the executive mayor and municipal manager	
Interviewers Name _____	Today's Date _____
Time Interview Started _____	Time Interview Ended _____
Has the consent form been reviewed with the participant? _____	Has the consent form been signed by the participant? _____
<p>Thank you for taking the time to speak with me today. For this interview I would like to ask you a few questions about your experience as municipal manager/ executive mayor, especially as it relates to your relationship with the municipal manger/ executive mayor of your municipality.</p>	

Questions posed to municipal managers:

1. How long are you serving as municipal manger?
2. Do you hold a position in any political party? What position?
3. Do you think that a political deployment to an administrative position is problematic in practice? Do you think it should be abolished as a practice?
4. Describe your working relationship with the executive mayor.
5. Identify areas of tension in your relationship with the executive mayor.
6. Does the executive mayor adequately carry out his/her “oversight” role in terms of section 52 of the MFMA? How is this practically distinguished from interference in your work?

7. Do you believe that the executive mayor is sufficiently skilled to carry out an oversight role; deal with budgets and financial affairs; manage the IDP and performance management systems etc?
8. How do unskilled mayors and councilors affect you?
9. Does your municipality have an oversight committee? What is its function?
10. Does your municipality have an elaborate, comprehensive delegations system? How effective is such a system in practice?
11. Does your municipality have a “terms of reference” for each relevant incumbent within the municipality? How effective is this in determining roles and responsibilities, accountability, etc?
12. Performance targets for you: are these set on realistic standards?
13. Are you ever asked to carry out “favours” for the mayor? Does he/she ever try to influence your decisions? How do you deal with these?
14. Have any of your staff members been appointed as a “political” deployment? How does this affect you?
15. Who disciplines section 56 appointments? Are you satisfied with their appointment being made by the council?
16. Are the requirements for directors strictly adhered to in appointments?
17. Does the interference of external political structures (regional, provincial and national) affect you? How?
18. The MFMA disallows the mayor to be involved in procurement processes or financial dealings on a whole. Does the current system within the municipality allow the mayor to get around this? How? What does this mean for you as accounting officer?
19. In terms of section 32(3) of the MFMA, do you often have to report on wasteful expenditure? How is this received by the mayor?
20. Section 60 of the MFMA requires you to provide guidance and advice on compliance with the Act to political structures. Does this happen in practice? How is it received?

21. Do you have any suggestions or recommendations to improve the interface of the executive mayor and municipal manger, or any other final comments?

Questions posed to executive mayors:

1. How long have you been serving as executive mayor?
2. Describe your working relationship with the municipal manager.
3. Identify areas of tension in your relationship with the municipal manager.
4. Is the municipal manager politically deployed/ a senior member of a political party? If yes, how does this affect your relationship with him/her?
5. Would disallowing a senior member of a political party to be appointed to the administration of the municipality improve the working situation for you?
6. Do you find that your municipal manager is too “by the book”?
7. Do you believe that you exercise adequate oversight over the municipal manager? How do you ensure not to cross the “oversight” line and not “interfering”?
8. When you were elected as executive mayor, there was no skill/ professional requirement for your deployment, yet your work involves high skilled competencies, i.e. managing the complex IDP and performance management process, oversight of the municipal manager, working on budgets and technical financial matters. Do you believe that you are skilled enough to carry out these tasks? Would placing an obligation on political parties to deploy skilled individuals to the position of executive mayor result in a more effective system of local government?
9. What is the role of external political structures (regional/ provincial or national) on your decision-making?
10. Do you receive external political directives on staff appointments? How does this affect the performance and working environment within the municipality?

11. How do you suggest external political interference be abolished?
12. Are the legislative requirements of the appointments of municipal managers and directors strictly adhered to?
13. Who disciplines section 56 managers? Do you not think that since they are “managers under the municipal manger”, that it would be more effective if they were appointed by the municipal manger?
14. Does your municipality have a coherent delegations system? Is it effective?
15. Does your municipality have a coherent “terms of reference” document for each respective incumbent? How effective is it in stipulating roles and responsibilities, accountability systems, checks and balances etc?
16. Do you think that the draft disciplinary code and procedures for senior managers would be effective when applied to municipal managers and ameliorate challenges faced in your relationship with him/her?
17. How do you feel about provisions of the new Municipal Systems Amendment Bill? Would they improve the working environment at the municipality, especially in relation to your relationship with the municipal manager?
18. Do have any final comments or suggestions on how to improve the interface of the municipal manger and executive mayor at local government?



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