

CHAPTER 1

STATEMENT OF THE PROBLEM, MOTIVATION, PURPOSE AND PLAN OF THE STUDY

1.1 INTRODUCTION

This study will attempt to analyse those aspects of the Education Affairs Act (House of Assembly) 70 of 1988 and the relevant Regulations made in terms of the Education Affairs Act (70/1988) which have a direct bearing on the functioning of the governing body of the state-aided school as juristic person.

Certain broad problem areas will be identified. These problems will raise the issue of whether or not governing bodies of state-aided schools have a clear understanding of their legal responsibilities arising from the implications of the Education Affairs Act (70/1988).

In exercising the legal powers and responsibilities the governing body will have to give attention to its day to day management practices in the state-aided school.

It will also have to take cognizance of the fact that there are other role-players involved in the management process.

1.2 STATING THE PROBLEM

The Act (70/1988) has effectively transferred the management of state-aided schools to the governing body and it has endowed the governing body with legal powers and responsibilities.

Governing bodies and principals have, according to Knott (1992:4) been placed in an unfamiliar role by the change to the status of state-aided school. This change, as

suggested by Marais (1993:3), will urgently require each governing body to do a thorough situation analysis of itself in order to become an effective school manager within the framework of the Act (70/1988).

Writers such as Van der Westhuizen (ed.) (1991), De Wet (1981) and Nel (1993) all emphasise the need for efficient management in order to ensure the success of the organisation viz. the school and the responsibility of providing education for its pupils. Trewatha and Newport (De Wet, 1981:3) in turn consider management to be the work of all people whose tasks are involved with reaching goals and achieving objects (such as providing education) through a co-ordination of their effort. Chapters 4 - 7 of the Act (70/1988) clearly set out the patrimonial powers and legal aspects of state-aided schools. Section 31(1) of the Act (70/1988) specifically vests the governing body with "executive power". Details of the powers, activities and duties of the governing body are defined in terms of regulation 6 of the Regulations made in terms of the Act (70/1988).

An analysis of the legal status, responsibilities and functions of the governing body suggests that members will have to perform their management duties with great dedication and care or else, as ventured by Bothma (1992:14), they could find themselves in the kind of trouble which could lead to possible prosecution for damages.

According to Paine (1992:5), and from evidence in Mondstuk (1993:8) there is substantial uncertainty among governing bodies regarding the different interpretations being given by various role-players to the Act, the Regulations and other relevant documents. Katzke (1993) confirms that legal action and the convening of boards of enquiry are occurring more frequently, as various role-

players become more aware of their legal rights. The inconsistency in the interpretation of the various documents has also led to a lack of understanding by governing bodies of the extent and limitations of their functions within the school (Paine, 1992:5). Confusion about specific roles has led to judicial difficulties which prompted Mondstuk (Anon., 1992:3) to warn governing bodies to guard against overstepping their area of authority.

It would therefore appear that there is a degree of uncertainty and misunderstanding among governing bodies as to what their legal responsibilities are within the provisions of the Act, the Regulations and as set out in other relevant documents. The following questions arise therefrom:

- * what is a juristic personality?
- * what are the legal implications for the governing body of a state-aided school as juristic person?
- * in practice, how do governing bodies manage the state-aided school within the framework of their statutory responsibilities?

1.3 THE PURPOSE OF THE RESEARCH

The purpose of the research is:

- * to determine what a juristic personality is.
- * to determine what the statutory responsibilities are of the governing body of a state-aided school as juristic person.
- to determine if, in practice, governing bodies meet these requirements.

1.4 METHOD OF RESEARCH

1.4.1 Literature Study

The use of primary and secondary sources in reference books, journal articles and education department publications relevant to education law and the state-aided school as juristic person.

1.4.2 Aims of Literature Study

Information collected from the various sources will be discussed, analysed and evaluated after which certain conclusions will be made. A Dialog search was undertaken with the assistance of library personnel, using the following key words:

education management
juristic person
education law
administrative law
juristic-pedagogical

1.4.3 Empirical Investigation

1.4.3.1 Questionnaire

A structured, standardised questionnaire will be devised and submitted to governing body chairmen and school principals of secondary schools in order to determine to what extent they are knowledgeable about the legal implications of their management task in a state-aided school, and how the state-aided school is managed in practice.

1.4.3.2 Area of Research

The research will be confined to an investigation of aspects relating to the juristic implications for

governing bodies of state-aided schools. The research will be limited to governing body chairmen and school principals of state-aided English- and Afrikaans medium secondary schools, currently falling under the jurisdiction of the Transvaal Education Department.

1.4.3.3 Population and sample

State-aided English- and Afrikaans medium secondary schools in the Transvaal will be used in the research to form the study population ($N = 226$). A random sample selection will be made to choose schools from the study population ($n = 141$).

1.4.3.4 Statistical technique

A suitable statistical technique will be used and selected with the advice of the Statistical Consultants for the Potchefstroom University for Christian Higher Education.

1.5 COMPOSITION OF RESEARCH CHAPTERS

- Chapter 1: Statement of the problem, purpose and method of the study, plan of the study.
- Chapter 2: Statutory provisions relating to the governing body of the state-aided school as juristic person.
- Chapter 3: Personnel management.
- Chapter 4: Pupil management.
- Chapter 5: Financial and property management.
- Chapter 6: An empirical research into the way in which the governing bodies of state-aided schools understand and interpret their responsibilities.
- Chapter 7: Summary, conclusions and recommendations.

1.6 SUMMARY

The aim of the study is:

- * to establish if governing bodies know what a juristic personality is.
- * to establish if governing bodies understand their responsibilities.
- * to establish if governing bodies have the necessary knowledge and understanding of relevant statutory provisions, in order to fulfil their increasingly important education management task in practice.

1.7 STATUTORY PROVISIONS AND THE DEFINITION OF CONCEPTS

1.7.1 Statutory provisions

The publication of the Education Affairs Act (House of Assembly) No. 70 of 1988 as amended by the Education Affairs Amendment Act (House of Assembly) No. 39 of 1992, makes provision for significant changes to the system of formal education within schools under the control of the Department of Education and Culture.

The Act, under section 29(2A), entitles the Minister of Education and Culture to declare a public school to be a state-aided school. Section 29(2B) entitles the Minister to establish a state-aided school at any place.

Section 30 (1) of the Act (70/1988) states that "a state-aided school shall be a juristic person", while

section 31 (1) of the Act (70/1988) states that "subject to the provisions of the Act, the management, control and executive power of a state-aided school shall be vested in the governing body".

1.7.2 Definition of concepts

"State-aided school" is defined in section 1 as an educational institution declared to be a state-aided school for specialized education under section 29(1) or deemed to be so declared under section 29(4), a public school declared to be a state-aided school under section 29(2A) and a state-aided school established under section 29(2B).

Stone (1993:6) describes a state-aided ordinary school as a school where the parent community, through the governing body manages its own school and says that such schools could also be classified as community or parent-aided schools.

"juristic person" is defined by Bothma (1992:15) and Oakes (ed) (1992:349) as "a bearer of the rights and duties that is not a natural person (that is, not a human being) but is given legal personality by the law".

"governing body" is defined in section 31 (1) of the Act (70/1988) as "a governing body in whom the

management, control and executive power of a state-aided school is vested".

"mutatis mutandis" means "with the necessary changes having been made".

1.8 SUMMARY

This chapter has attempted to identify the existence of an uncertainty among the various role-players concerned with the management of the state-aided school as juristic person. The governing body, as one of the most important partners in the management of the state-aided school, has clearly defined responsibilities which are embodied in law.

It is therefore essential that every governing body has a clear understanding of its responsibilities and that these are correctly interpreted in practice.

The aim of this study in the chapters that follow, will therefore be:

- * To analyse certain responsibilities of the governing body in terms of the Education Affairs Act (House of Assembly) 70 of 1988 and according to the Regulations made in terms of this Act (70/1988).

- * To conduct an empirical investigation against the

background of the aforementioned analysis with the following aims:

- to establish if governing bodies know what a juristic personality is;

- to establish if governing bodies understand their responsibilities;

- to establish if governing bodies correctly interpret their statutory responsibilities in the practical implementation of their increasingly important management task.