

CHAPTER 2

STATUTORY PROVISIONS RELATING TO THE GOVERNING BODY OF THE STATE-AIDED SCHOOL

2.1 INTRODUCTION

An identifying characteristic of the law according to Watson (1991:3) is that it brings order to the world in which we live. This order is achieved in a particular way by determining the rights and obligations of the individual in his various relationships with other people ... and "the law orders education as it orders the rest of society" (Watson, 1991:3).

The law, in the context of this study, is embodied in the Education Affairs Act (House of Assembly) No. 70 of 1988. This Act, declares the state-aided school to be a juristic person, and that the governing body shall be constituted to manage and control the state-aided school. This declaration effectively makes the governing body a statutory body, and through the persons of its members, the representatives of the state-aided school as juristic person. The state-aided school is regarded as a legal subject and the governing body is the bearer of rights and responsibilities (Oosthuizen and Bondesio, 1988:36), and it undertakes certain tasks on behalf of the state (Van Schalkwyk, 1986:128).

According to Bray (1993), the system of state-aided schools falls predominantly into the sphere of administrative law. The governing body has been empowered by law to manage, control and exercise its powers in terms of the law and within the ambit of the internal affairs of the state-aided school. The state-aided school therefore is an autonomous legal personality which has decentralized authority to act in what is regarded as a largely "programmed decision-making capacity" (Oosthuizen, et al., 1993:155).

As a statutory body, the governing body is endorsed with certain powers which are stated in the Regulations made in terms of the Act (70/1988). As a consequence there are certain managerial implications for the governing body, as intended in the "management" and "control" aspects of Section 31(1) of the Act (70/1988).

Accepting a composite of the definitions of management to be found in van der Westhuizen (1990:40), the governing body's task can be seen as executing its statutory powers in such a way that its management and control functions utilize the human and material resources in the state-aided school. This utilization of its resources should create a milieu of optimum educational opportunity for the pupils, subject at all times, to the conditions of the Act (70/1988).

It is also within the conditions of the Act (70/1988) that the governing body will have to function in relationship with other role-players in the provision of education for the pupils of the state-aided school. It cannot act in isolation. It is in its interaction with other role-players such as the principal, the professional staff, the administrative staff, the pupils, the parents, parent organizations, the community, the education department, various professional representative and statutory bodies as well as the Minister of Education and Culture that the governing body must be seen to be acting in the service of the community in providing educational opportunities within the legal and professional definitions of its task.

Van Wyk (1986:128) emphasises that the harmonious co-operation among the various role players (in the state-aided school) is only possible if every one of the parties knows what his particular role is and how it is juridically defined. If court cases and litigation are to be avoided, then it is necessary for the governing body to know what

its responsibilities, duties and powers encompass, and when it (the governing body) becomes liable for neglect and other contraventions.

Nel (1993) supports the contention that governing bodies need to have a thorough knowledge of, and to act strictly according to and within, the provisions of the "Act" (70/1988) and the Regulations made in terms of the Act. All decisions that are taken should have as their basis the Act (70/1988) with constant reference to the Regulations and other relevant documents such as education department circulars, gazette notices and school organization manuals. Even the minutes of governing body meetings for example, should be regarded as legal documents which would constitute "proof" in the event of a court case (Katzke, 1993).

It is the way in which governing bodies and other role players interpret the various documents where Paine (1992:5) identifies there to be a substantial degree of uncertainty. Katzke (1993) explains, that the failure of parties to interpret the Act (70/1988) in terms of the "intention" of the Act, can only lead to greater confusion

Oosthuizen et al. (1993:46) describe an the Appeal Court finding in the case du Plessis vs Joubert 1968 (1) SA at 594 which says that the intention of the legislator is that the words of a stipulation of the law must be understood in their usual everyday meaning. Otherwise it must be established that the everyday meaning contradicts the intention of the legislator as seen within the statute as a whole, and against the background of other pertinent circumstances.

In the definitions preceding each chapter in the Regulations made in terms of the Act (70/1988) it is stated that "any word or expression to which a meaning has been assigned in the Act, shall have the meaning as assigned to it ... unless the context otherwise indicates ...".

Another area of uncertainty identified by Paine (1992:5) is that the various role-players, including governing bodies and principals, do not understand the full extent and limitations of their functions within the state-aided school as juristic person. It is essential that all the role-players understand their own part, and the part that each of the other partners has to play, and how these roles should combine "to provide the milieu in which quality education may thrive" (Paine, 1992:5-6).

This chapter will deal specifically with the statutory provisions relating to the powers, composition and functioning of the governing body. Ensuing chapters will deal with statutory matters relating to staff, pupil and financial management and the inter-relationships between various role-players.

2.2 THE GOVERNING BODY

2.2.1 Statutory provisions

The governing body, as is stipulated in section 31(1) of the Act (70/1988), is vested with the management, control and executive power of the state-aided school. It is important to note however, that section 31(2) of the Act (70/1988) states that sections 16 and 19 of the Act (70/1988) shall, with the necessary changes, apply to the governing body.

Section 16 of the Act (70/1988) deals with the meetings of the governing body and the election of office bearers as well as the decision-making process.

Section 19 of the Act (70/12988) sets out the Minister's powers to make regulations relating to the governing body concerning the following:

- the Constitution, duties and functions of the governing body;
- the constituting of the governing body;
- the election and powers of chairmen and vice-chairmen;
- the procedures of and at meetings;
- the dissolution and reconstitution of governing bodies;
- the designation of persons in the service of the Department to perform the work relating to the performance of the functions of governing bodies.

2.2.2 Regulations relating to the management and control of state-aided schools

Section 112(1) (a) of the Act (70/1988) makes provisions for the Minister to make regulations which are not contrary to any law with regard to "the management and control of ...state-aided schools".

Certain regulations therefore have specific bearing on the legal responsibilities of the governing body in terms of its various management and control functions in the state-aided school.

2.2.3 Regulations relating to governing bodies of state-aided schools excluding state-aided schools for Specialized Education (Education Affairs Act (House of Assembly) 70 of 1988)

These regulations made in terms of the above-mentioned section 112(1) (a) of the Act (70/1988) have a direct bearing on governing bodies. Regulation 6 describes the powers, functions and duties of the governing body

as constituted in terms of the Act (70/1988), and which are further described in the sections that follow hereafter.

The Regulations relating to Governing Bodies of State-aided Schools, excluding State-aided Schools for Specialized Education (Education Affairs Act (House of Assembly) 70 of 1988), also have a bearing on governing bodies. Regulation 6 states that the governing body has the responsibility of managing the property of the state-aided school, as well as exercising "control over the state-aided school and its activities". These functions remain subject to the provisions of the Act (70/1988).

2.3 ELECTION OF THE GOVERNING BODY

The members of the governing body shall in terms of Regulation 7 of the Regulations Relating to Governing Bodies of State-aided Schools, be elected by the parents of pupils of the state-aided school concerned.

2.4 MEMBERSHIP OF THE GOVERNING BODY

Regulation 2 of the above mentioned regulations makes provision for the following concerning membership of the governing body:

- a) The principal of the state-aided school concerned shall be a member provided that he is not disqualified therefrom by the sections of the Act dealing with inefficiency or misconduct read together with section 98 of the Act (70/1988);
- b) The number of the other members shall be determined by the Executive Director of the education department concerned but shall not be fewer than four and not

more than twelve. The Transvaal Education Department, for example stipulates in circular 79 (T.E.D. 1991:2) that eight members must be elected onto the governing body, excluding any members nominated by sponsoring bodies;

- c) The members shall be elected by the parents of pupils of the state-aided school and the majority of the members shall at the time of the election be parents of pupils at the state-aided school concerned;
- d) If the state-aided school concerned has a sponsoring body, the Executive Director may approve a maximum of three members to be designated by the sponsoring body. These representatives are appointed to the governing body as additional members to the eight members elected according to regulations 7 and 2(1)(b), giving a possible total of eleven members of the governing body, excluding the principal.
- e) The Minister may grant deviations from the provisions above if there is sufficient reason therefore and subject to conditions determined by the Minister.

2.5 DISQUALIFICATIONS OF MEMBERS OF A GOVERNING BODY

Regulation 3 declares a person to be incompetent to be a member of a governing body for the following reasons:

- a) if he is a minor;
- b) if he is not a South African citizen, unless the Executive Director of the education department declares him competent. According to circular minute 75 (TED, 1992:1) in order to be declared eligible the prospective applicant must follow the procedure as set out:
 - applications together with all other relevant

- documents are to be forwarded to the education department not later than one month before an election is due to take place, by the principal of the state-aided school concerned;
- applications must be made in writing by the person concerned;
 - a short curriculum vitae is to accompany the application;
 - a letter from the principal or the governing body which relates to the application is to accompany the application;
- c) if he has been convicted of an offence for which he was sentenced to imprisonment without the option of a fine unless:
- * he was granted a free pardon; or
 - * the term of imprisonment expired at least three years prior to the date of his election or designation;
- d) if he is mentally ill and has been so declared by a competent court;
- e) if he is an unrehabilitated insolvent;
- f) if he is in the employ of the education department concerned and does not have the permission of the Executive Director to be a member of a governing body of a state-aided school. Circular minute 134 (TED, 1992:1) however draws attention to the fact that persons employed at state-aided schools are not in the employ of the education department but are in the employ of the governing body. It is, therefore, unnecessary for such staff members to obtain permission from the Executive Director to stand for possible election to governing bodies at other schools or institutions. Such persons are "free to take part in the election... and to serve on governing bodies, if they are elected". The interpretation of this statement is that staff members in the employ of a

governing body may stand for election to the governing body of another school but that it is not allowed in terms of Regulation 3(g) as described hereunder for such a person to stand for election to the governing body at the state-aided school where he is employed;

- g) if he, not being the principal of the state-aided school concerned, is in the service of the state-aided school concerned.

2.6 ELECTION OF OFFICE BEARERS

In accordance with Regulation 18 the principal of the state-aided school will convene the first meeting of the governing body within 14 days after he has been notified by the returning officer of the names and addresses of the members of the governing body.

The governing body, at its first meeting:

- * shall elect a chairman and vice-chairman from the members in accordance with section 16(1) of the Act (70/1988), provided that the principal shall not be elected to either of these offices; and it
 - * shall elect a secretary either from the administrative staff of the school or from the members of the governing body.
- The provisions further state:
- * that the chairman and vice-chairman shall, subject to Regulation 4 remain in office for 12 months and may after the expiry of the said term, be re-elected;
 - * that if either of the above offices becomes vacant for any reason the governing body shall

elect one of its members to fill the vacancy for the unexpired period of office of his predecessor;

- * that the principal shall notify the Executive Director of the education department concerned in writing of the name, address and office of each of the persons elected according to the regulation.

2.7 MEETINGS OF THE GOVERNING BODY

Regulation 19 provides for the following:

- * The calling of meetings:
the secretary shall after consultation with the chairman of the governing body notify the members in writing of the date, time and venue of any meeting and also of the matters (agenda) that will be dealt with.
- * Drawing up an agenda:
at the meeting the governing body shall only deal with matters on the agenda or with matters raised by a member with the approval of the meeting.
- * Inviting other persons:
the governing body may invite any person to attend a meeting and to participate in its deliberations, but such a person will not have a vote and will recuse himself if so required.
- * Requiring the presence of staff members:
the governing body "...may require any member of staff attached to the state-aided school concerned to attend a meeting for the purposes of discussion of any matter which falls within the powers of the governing body".

- * The setting of meeting procedures:
the chairman of the governing body shall decide on the order and procedure of a meeting and should a member raise an objection to such decision, the decision shall without further discussion be voted upon and the decision of the meeting shall be final.

2.8 QUORUM

Regulation 20 determines that a quorum shall consist of the majority of the number of members as elected according to regulation 2, for the holding of a meeting. This regulation could be assumed to imply that the number of members of the sponsoring body present, will not exceed the number of elected members of the governing body present at the meeting concerned.

2.9 MINUTES OF PROCEEDINGS OF MEETINGS

Regulation 21 provides for the following procedures:

- * the secretary of the governing body shall keep minutes of the proceedings of every meeting and shall provide the Executive Director of the education department concerned, at his request, with a copy of such minutes;
- * the minutes of governing body or committee meetings shall be submitted for approval at the ensuing meeting and shall at all reasonable times be open for inspection by the members;
- * that upon the expiry of the term of office of the governing body all minutes and documents of such governing body or committee shall be handed to the principal of the state-aided school concerned for safe-keeping. Should the state-aided school concerned be closed, the principal shall hand in all the minutes and other documents to the education department concerned.

Katzke (1993) emphasises the need for detailed and accurate minutes of the proceedings at every governing body or committee meeting to be kept and filed for the following reasons:

- there is a need for continuity particularly with regard to the guidance of and implications for successive governing bodies to familiarize themselves with any applicable medium and long term decisions taken by preceding governing bodies;
- the minutes of governing body and committee meetings can serve as vital evidence and in some cases as the only proof, in the event of any legal action being taken by or against the state-aided school as juristic person;
- minutes of proceedings where applicable may be essential to the Executive Director in cases where his decision is needed regarding any action against persons employed at state-aided schools and/or who are subject to enquiries about inefficiency or misconduct.

2.10 CASUAL VACANCIES ON GOVERNING BODY

Regulation 22(1) states that a casual vacancy shall occur on a governing body whenever a member:

- * resigns in writing;
- * dies;
- * was removed in terms of regulation 4(3);
- * is absent from consecutive meetings without the permission of the governing body; or
- * becomes incompetent as contemplated in regulation 3.

Regulation 22(2)(a) states, that whenever a casual vacancy occurs on the governing body with regard to the sponsoring body membership, the sponsoring body shall designate a competent person to fill the vacancy. In the case of a vacancy caused by an elected member of the governing body

(regulation 22(2)(b) the governing body may fill the vacancy either by means of co-option or by means of an election in terms of the regulations. However the member in whose office the vacancy has occurred must have been a parent of a pupil of the state-aided school at the time of his becoming a member. His successor shall also be a parent of a pupil at the school concerned at the time of his co-option or his election.

The designated, co-opted or elected member shall according to regulation 22(2)(c) remain in office for the unexpired term of office of his predecessor.

2.11 CONSTITUTION AND STANDING ORDERS

Regulation 23 provides for the governing body to draft its own constitution and standing orders "... which shall not be contrary to the Act or to the terms and conditions referred to in section 31 (1) of the Act". The constitution and standing orders shall be submitted to the Executive Director upon finalization.

Examples of proposed constitutions, in the name of the state-aided school concerned, are available, and are given in the Manual for State-aided Schools, Annexure A, and as referred to in circular minute 123 (TED, 1992:1). It is stated in circular minute 123 (TED, 1992:1) that governing bodies may alter or amplify the suggested draft constitution to provide for the needs of each particular state-aided school. Such alterations however must be done within the terms of the Act. The constitution should not be too detailed.

2.12 THE TERM OF OFFICE, DISSOLUTION AND RECONSTITUTION OF GOVERNING BODIES

Regulation 4 deals with the term of office of members of the governing body as determined by the Minister. The Minister or the sponsoring body as the case may be will

also determine the removal from office of a governing body member should there be sufficient reason therefore. Regulation 4(4) states that a governing body shall hold office until such time as a new governing body is constituted.

Regulation 4A deals with the dissolution and reconstitution of governing bodies. Provision is made for the following:

- a) The governing body shall be dissolved if the number of its members falls below the quorum referred to in Regulation 20. Within six weeks a governing body will have to be reconstituted as set out in Regulation 2;
- (b) The governing body shall be dissolved if, at a parents meeting convened for the purpose, a vote of the confidence in the governing body is passed. At least 60 % of all of the parents entitled to vote under Regulation 8(1) will have to support such a motion. It is also necessary for the parents to be given 14 days written notice prior to such a meeting being convened. Within six weeks a governing body will have to be reconstituted as set out in Regulation 2.
- (c) Should at least 20 % of the parents entitled to vote under Regulation 8(1), request in writing such a meeting as contemplated in Regulation sub-section 4A(2), the chairman of the governing body shall convene such a parents meeting within 21 days of the written request.
- (d) During the period from the dissolution of the governing body and its reconstitution, the function of the governing body will be carried out by a management committee. Such a committee in terms of Regulation 4A(4), should consist of no more than four persons appointed by the Executive Director concerned.

In the event of a governing body of a state-aided school being dissolved for whatever reason, the chairman of the governing body concerned or the principal of the state-aided school concerned is advised to consult immediately with the regional director of education. Although not stated in the Regulations, this procedure is recommended in order to follow the correct procedures and correct lines of communication. It is also necessary to arrange with the relevant returning officer for new elections so that the governing body can be reconstituted.

2.13 APPOINTMENT OF COMMITTEES

In terms of Regulation 6(2) and (3) the governing body of the state-aided school may appoint one or more committees to advise it, and, subject to the instructions of the governing body, to perform such functions as the governing body may determine. Outside persons who are not members of the governing body may be appointed to a committee provided that the governing body shall appoint one of its members as chairman of such a committee.

Regulation 6(4) authorises the governing body to "...alter or invalidate any decision of a committee".

In practice, schools have found it best to appoint committees to deal with specific areas of the vast managerial task of the governing body. Reasons for this, as suggested by Ashington (1993) are:

- * the time-factor, where members of governing bodies are restricted by their own full-time careers to give limited after-hours attention to meetings and governing body work;
- * a sub-committee or portfolio division of work allows members to concentrate on specific managerial responsibilities rather than try and

- cope with all the aspects demanding the attention of the whole governing body;
- * the sub-committee system allows the various areas of responsibility to all receive attention without having some areas neglected;
 - * the expertise of outside, non-members can be utilized in a specialist way through the provision of co-option of such persons onto sub-committees;
 - * a specifically laid-down system of report-back from the chairpersons of sub-committees, streamlines the work and decision-making task of the governing body;
 - * the sub-committee system allows for the more economic use of time and for greater efficiency;
 - * it is essential however to ensure that the governing body has the final say over the decisions taken at sub-committee level and that sub-committees do not become independent of the governing body.

2.14 SUMMARY

This chapter has set out the statutory provisions concerning the powers, elections, membership, meetings and

term of office of the governing body. The Regulations Relating to the Governing Body of the State-aided School also provide for the formation of committees to assist it in its management task.

Governing bodies are to be elected and are to function strictly according to the stipulations described in the above-mentioned Regulations, and within the powers vested in them by the Act (70/1988).

Of importance is that governing bodies are aware of the correct procedures to be followed and that they understand the statutory provisions. It is also important that governing bodies are aware of the responsibilities of other role-players in the management structure of the state-aided school.

The following chapter deals consequently with the statutory provisions relating to personnel management within the state-aided school.