

**CHAPTER 7****SUMMARY, CONCLUSIONS AND RECOMMENDATIONS****7.1 INTRODUCTION**

In this chapter, a summary of the overall findings will be made. Conclusions which have been drawn from the results of the empirical research will be put forward. Finally, recommendations relating to the governing body of the state-aided school and its knowledge, understanding and interpretation of its legal responsibility, will be made.

**7.2 SUMMARY**

The consequences of public schools having been declared as state-aided schools by the Education Affairs Act (House of Assembly) No. 70 of 1988, have, inter alia, been that the governing body of the state-aided school is vested with the management, control and executive power of the school.

The authority thus given to the governing body through the provisions of the Act imply that the governing body has certain legal responsibilities which are clearly defined in sections of the Act and in the Regulations. The authority and consequent legal responsibility bestowed upon the governing body represents a new and hitherto unknown role for the governing body of a school.

Chapter 1 sought to identify the judicial role which the governing body would now have to play, that it would have to take into account the various other role players involved in the management of the school, and that it would have to gain a knowledge and understanding of the legal implications of its management task.

The form that the study would take was also discussed.

The second chapter dealt with the governing body itself, and the statutory basis of its status. The need for all the role players in the state-aided school to interpret the Act and the Regulations and other relevant documents correctly was emphasised. The various sections of the Act and the Regulations relating to the constitution and functioning of the governing body were identified and discussed. The need for the governing body to operate on a sub-committee system in order to achieve more efficient management was discussed.

The third chapter dealt with the governing body's responsibility for effective personnel management. The relevant legal provisions relating specifically to the teaching staff of the state-aided school were identified. Attention was given to the correct interpretation by the governing body of its legal authority regarding teachers, particularly as these concern charges of inefficiency and misconduct. The importance of consulting and including other role-players in the decision-making process was emphasised. The appointment of teachers into non-subsidized posts was discussed.

Pupil management formed the basis of discussion in the fourth chapter. Sections of the Act and the Regulations relating to pupils were identified and discussed. A contract between the governing body and the parents of pupils at the school was discussed. Legal provisions governing various punishments of pupils were discussed.

Chapter five covered the statutory aspects of financial and

property management. The ownership of the governing body of movable and immovable property; stock control; subsidies and loans; school fees; other sources of finance; sponsoring bodies; and the aspect of financial records and reporting were all discussed in terms of the provisions set out in the Act.

The analysis of the Act and the Regulations done in chapters two, three, four and five, together with information from other relevant publications and circulars, served as the basis for the literature study. It became apparent that the governing body of the state-aided school is faced with a substantial number of legal provisions and regulations which define and govern its responsibility in managing the state-aided school. Without a good knowledge of these statutory provisions and without the correct interpretation of these provisions, and of procedures to be followed, the governing body could make mistakes which could lead to legal action being taken against the state-aided school concerned.

In chapter six an empirical study of the knowledge, understanding and interpretation of the governing body of a wide range of legal and situational issues, relevant to its management task, was made. The mailed questionnaire, as the measuring instrument used in the study was described, including its advantages and disadvantages. The administrative procedures, the composition of the target group and the statistical technique used in analysing the resulting data were described.

The data obtained from the computer analysis was then tabled in matrix form with percentages. The findings from

each table were described and interpreted individually. The findings from certain tables were compared to those from other tables, and possible explanations for certain patterns were suggested. The knowledge and interpretive ability of governing bodies regarding various aspects of the Act and Regulations was tested.

### 7.3 CONCLUSIONS

From the information obtained in the literature study and from the empirical research, the following conclusions can be made:

#### 7.3.1 Literature study

- \* The authority and responsibilities of the governing body of the state-aided school are directed by a complex framework of legislation, inter alia, the Act (70/1988) and the Regulations made in terms of the Act. The governing body must know and understand what specific legislation affects its management task, and it must interpret such legislation according to the intention of the law-maker (para. 2.1).
- \* The governing body must be aware of, consult with and include other role-players who are involved in or affected by the decision-making process (para. 2.1, 2.14).
- \* The governing body has the responsibility of creating such circumstances within the state-aided school so that quality education can take place (para.3.1).

- \* The governing body has to identify and appoint well qualified and suitable teaching staff, and it must manage the personnel of the school strictly according to the provisions of the Act and the Regulations (para. 3.3.5).
- \* The governing body in its responsibility of providing education for the pupils of the school, must be responsive to the needs of the community and of the pupils (para. 4.1).
- \* The governing body has at least a facet contractual agreement with the parents of pupils (as well as with the teaching personnel) and it must manage pupil affairs according to the provisions of the Act and the Regulations (para. 4.2.3, 4.4). ✓
- \* The governing body is responsible for developing a sound financial policy in order to create a financial foundation upon which the school will function effectively (para. 5.1). It must raise, administer and control all monies required by the school and must submit its books for annual audit (para 5.3, 5.7). The governing body may appoint a sponsoring body to assist it with fund raising (para. 5.3.3). ✓
- \* The governing body must manage the immovable property and the finances of the school according to the provisions of the Act (para. 5.2).
- \* The state-aided school, as juristic person, is liable for any proven delict.

- \* The Minister may withdraw the State subsidy and as a result, the declaration of a school as a state-aided school, should he not be satisfied that the conditions relating to the granting of a subsidy are being met by the state-aided school concerned (para. 5.8).

### 7.3.2 Empirical research

- \* From the research it appears that, in spite of the fact that the majority of respondents have some training in education law, (para 6.3.1.7) there is an equally high percentage of governing bodies who do not have a thorough awareness of the Act and the Regulations and of other relevant pieces of legislation (para. 6.3.3.2). It is disturbing that this lack of awareness of applicable legislation should become evident from the research, especially when compared to the vast number of statutory provisions concerning the governing body which are analysed throughout chapters two, three, four and five of the literature study (para. 2, 3, 4 and 5).

- \* The research reveals that governing bodies (64 % to 78 %) have a reasonable understanding of their legal authority, responsibility and liability (para 6.3.3.4) in spite of the apparent contradiction reflected in the findings (para. 6.3.3.2) set out in the above paragraph. However the higher level of understanding regarding the legal responsibilities could be attributable to the background and training received by the respondents in courses, seminars and symposiums

on education law (para. 6.3.1.7).

\* The level of understanding of governing bodies is further confirmed by the competence of governing bodies in dealing with practical situations such as documents relating to the admission of pupils (para. 6.3.4.2); the procedure concerning building extensions/alterations (para. 6.3.4.4); and procedures connected with the appointment of sponsoring bodies (par. 6.3.4.7).

\* However when it comes to studying certain practical situations (para. 6.3.4.3); and knowing which role players should be involved in cases such as discharging a teacher (para. 6.3.4.6) governing bodies appear to be largely unprepared. This conclusion when read together with the findings regarding the existence of official administrative documents in the school (para. 6.3.5.1) would suggest that most governing bodies are able to handle certain practical situations as they arise or as they are required. Nevertheless their theoretical knowledge of the laws in general is lacking, particularly in situations that may not yet have confronted them.

\* The above-mentioned lack of overall knowledge of governing bodies regarding legal matters of importance to them remains a matter for concern (para. 6.3.6.2). The fact that the respondents only scored an average of 34,2 % in the legal and interpretive statements test (table 6.8B) seems

to confirm the conclusion that while governing bodies may, in many cases, have a reasonably good understanding of certain specific issues, there remains an overall weakness in their awareness and interpretation of many essential elements of the law.

In view of the fact that the study was based on the responses of the principals in their capacity as executive members of the governing body (para. 6.25), there could be a suggestion of one or more of the following possibilities being an influencing factor on the extent of the governing body's knowledge of legal matters:

- \* the principal's knowledge of the law is weak and as a result the governing body is not aware of many legal matters;
- \* the principal and the governing body are not co-operating fully when it comes to studying matters of legal importance;
- \* the principal, while possibly being knowledgeable himself, is not communicating with the governing body on legal matters;
- \* that legal matters simply do not play an important role in the meetings and business of the governing body as a whole;
- \* that because of the complexity of the legal stipulations there is possibly a fear or

avoidance on the part of the governing body to address legal issues;

- \* there is a possibility that some governing bodies do not have a specialist individual person or a sub-committee within the governing body whose task it is to study, interpret and communicate legal information;
- \* that while the majority of governing bodies are said to have a legal advisor, it seems to appear as if such a person is retained purely for possible litigation against the school, and that he/she does not play a significant role in interpreting the law and advising the governing body on its legal responsibilities.

#### 7.4 RECOMMENDATIONS

As a result of the above-mentioned findings, the following recommendations are proposed:

- \* That governing bodies should be more conscious of implementing, in a practical way, the information received from courses, seminars and symposiums, and that principals who have studied education law as a subject, should extend their skills to an analytical study of the Act and the Regulations;
- \* That principals who have not studied education law, should consider enrolling for a course at a tertiary educational institution;

- \* That governing bodies compile a usable <sup>✓</sup> summary of sections of the Act and the Regulations, similar to the summary attached to this study (see Appendix 4), so that they develop a relevant knowledge of legal provisions concerning them, and have, at their disposal, a ready reference to applicable legislation;
  
- \* That governing bodies make a conscious effort to familiarize themselves with: their powers; their responsibilities; other role players who are involved not only in an advisory capacity but also those who have legal decision-making powers; the legal implications of their actions and decisions, particularly as these concern their liability; and correct procedures to be followed;
  
- \* That there is an improved communication between the principal and the governing body especially with regard to the legal responsibilities of the governing body as a whole;
  
- \* That specific attention is given to the correct interpretation of the provisions of the Act and the Regulations and that the intention of the law is observed;
  
- \* That governing bodies attempt to become more proactive in their management style rather than to react to specific situations which arise individually and on an ad-hoc basis;

\* That where required, a "legal committee" be instituted to give on-going attention to inter alia:

- analysing and communicating the provisions of the Act and the Regulations and any amendments made thereto;
- keeping in touch with any other legislation which may have a bearing on the work of the governing body;
- noting and communicating the legal contents of various departmental circulars or notices; articles in educational publications; press reports on relevant court cases or authoritative announcements/responses, and the like;
- noting and communicating information received on relevant lectures, discussions, seminars and symposiums organised by education departments and other interest groups, and ensuring representation at such events;
- verifying the contents of legal contracts between the governing body and parents of pupils, teachers appointed in non-subsidized posts, and any other contractual undertakings.

- acting as the general legal "watch dog" of the governing body.
  
- \* That universities and teacher training institutions accord increasing importance to education law as an essential subject in their courses, and that specific attention be given to familiarizing students with the contents of the Act and the Regulations. Such courses should have a practical component where students are given "hands-on" experience of how to use and interpret legal documents with a greater sense of confidence and ease. This conclusion was also reached by Oosthuizen (1991:93).
  
- \* That principals play a more active and goal-orientated role in helping develop the legal knowledge and understanding of the governing body.

#### 7.5 RECOMMENDATION FOR FURTHER RESEARCH

According to Mabandla (1993) it can be anticipated that, under future governments, there will be a transformation of the existing education and training systems, and a restructuring of education departments. Some changes, such as those relating to the provision of education, the democratization of education, and the qualitative improvement in education and training, will come into effect fairly rapidly once any necessary legislative measures have been introduced. Other changes, and here reference is made to the basic framework of the existing

law as embodied in the Education Affairs Act (70/1988) and the Regulations made in terms of the Act, and which are the subject of this study, will be more evolutionary, implying a more gradual change.

It can be expected (Mabandla, 1993) that a new national education system will be drawn up, but that the exact nature thereof will be determined in a new national education bill by the outcome of the research being done by inter alia the National Education and Training Forum (NETF).

Stone (1994) quotes Wiechers as being of the opinion that the existing interim Constitution is likely to become the new Constitution if it is found to work. By implication therefore the education provisions embodied in the interim Constitution would remain constant. Stone (1994) however mentions that once the departments of education are transferred to the nine provinces, then changes to education systems can be expected within provincial ordinances. The latter implies that some or many of the provisions for education, especially as embodied in the Education Affairs Act (70/1988) could become redundant.

With regard to the present structure of state-aided schools and the management and control thereof, Stone (1994) states that section 247(1) of the interim Constitution makes provision for the powers, functions and authority of the governing body of the state-aided school to remain unaltered. This means that laws relating to education, existing prior to the drafting of the interim Constitution, are to remain, at least for the period of transition. Section 247(4) of the interim Constitution furthermore

makes provision for the National Government, to continue funding inter-alia the state-aided schools on an equitable basis (Stone 1994).

Whatever the nature of future changes, there will nevertheless still be the need for the governing body of the school to be thoroughly conversant with national and/or regional legislation relating to education.

It is anticipated that the findings of this study will remain valid and relevant.

On the basis of the research that was done in this study, the following recommendations for further research can be made:

- \* A situational study of actual occurrences in which the following scheme could apply:
  - a description of a common situation or occurrence;
  - the legal principles involved;
  - the course of action to be followed in dealing with the situation.
  
- \* A study involving the legal responsibilities of the governing body with regard to the new Education Labour Relations Act No. 146 of 1993.
  
- \* A study covering all the aspects of the legal liability of the state-aided school (as represented by the governing body) giving

attention to such matters as:

- areas of liability
- statutory provisions
- legal principles involved
- consequences of proven delict

\* A comparative study encompassing the legal provisions of an act of parliament and the actual, day-to-day, practical implementation thereof as manifested through the process of the delegation of authority.

\* A study on regional education systems and factors influencing the judicial basis of different systems.

## 7.6 CONCLUDING REMARKS

Because of the fact that the governing body of the state-aided school has been vested with profound and far-reaching legal responsibilities, it is disappointing to note how little actual knowledge many governing bodies appear to have of the legislation that directs their legal responsibilities. It would appear as if some governing bodies are as yet largely unaware of the extent of their authority and responsibility, and, as a result, tend to adopt a "reactionary" or "situational" style of management. The factors which could have played a role in the erratic results were not researched, but it remains obvious from the findings of this study that governing bodies need to develop a greater knowledge of relevant legislation, with a sharpened understanding, and a

more accurate interpretation of the provisions of all applicable legislation.

It will be unfortunate if some governing bodies only awaken to their legal responsibilities after they have had to face the harsh reality of litigation or action against the state-aided school which they represent.