

THE GARISSA COUNTY OFFICE OF THE COUNTY ATTORNEY BILL, 2018

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THE GARISSA COUNTY OFFICE OF THE COUNTY ATTORNEY BILL, 2018

A Bill For

AN ACT of the County Assembly to make provisions for the establishment of the Office of the County Attorney, its function and powers; to provide for the appointment, discharge of duties and the exercise of powers of County Attorney; and for connected purposes.

ENACTED by the County Assembly of Garissa as follows—

PART I –PRELIMINARY

Short title and commencement

1. This Act may be cited as the Garissa County Office of the County Attorney Act, 2018 and shall come into operation upon gazettement.

Interpretations

2. In this Act, unless the context otherwise requires—

“County Attorney” means the County Attorney appointed under section 4;

“County Legal Counsel” means a person appointed as such under section 21 and includes the Deputy County Attorney;

"county seal" means the seal as shall be determined by an Act of the County Assembly;

Application

3. This Act shall apply to the County Attorney, the Deputy County Attorney and subordinate officers who perform or discharge legal functions and such other duties as may be assigned to them in the Office of the County Attorney.

PART II—ESTABLISH M ENT OF THE OFFICE OF COUNTY ATTORNEY, FUNCTIONS AND ADMINISTRATION

Establishment of the office of the County Attorney

4. (1) There is established the office of the County Attorney.

(2) The Office of the County Attorney shall consist of-

(a) the County Attorney;

(b) the Deputy County Attorney; and

(c) such other number of County Legal Counsel as the County Attorney may, in consultation with the County Public Service Board, consider necessary.

(3) The County Attorney shall be appointed by the Governor subject to the approval of the County Assembly.

(4) The County Attorney shall hold office for a term of seven years and shall be eligible for reappointment for a further and final term of seven years.

Qualification of the County Attorney

5. A person shall be qualified for appointment as a County Attorney if such person -

- (a) is a citizen of Kenya;
- (b) holds a degree in law from a university recognized in Kenya or equivalent;
- (c) is an Advocate of the High Court of Kenya;
- (d) has had at least five years' relevant professional experience; and
- (e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Functions of the County Attorney

6. (1) The County Attorney—

- (a) is the principal legal adviser to the County Government and as such shall be an ex-officio member of the County Executive Committee;
- (b) Shall be responsible for drafting and publication of legislative proposals for the County Government and advising the County Government and its agencies on legislative and other legal matters;
- (c) Shall be responsible for negotiating, drafting, vetting and interpreting local and international documents, agreements and interpreting international treaties for and on behalf of the County Government and its agencies;
- (d) Shall represent the County Government in court in any legal proceedings arising from county legislation or any other legislation to which the County Government is a party or has interest, other than criminal proceedings;
- (e) Shall, in consultation with the director of public prosecutions, coordinate prosecution of offences resulting from the county legislations.
- (f) Shall be responsible for advising departments and agencies of the county on legislative and other legal matters;
- (g) Shall be responsible for advising the County Government on all matters relating to the Constitution, national legislations and county legislations;
- (h) Shall be the link between the County Government, other County Governments and the National Government on legal matters and shall do so in liaison with the office of the Council of Governors and the Attorney-General of the Republic of Kenya.

- (i) Shall undertake legal audits to ensure that all County and National legislations that are applicable in the county are complied with or enforced;
- (j) Shall be the custodian of county public seal, contracts and other legal instruments of the county;
- (k) shall perform any other functions conferred on the office by an Act of County Assembly , National legislations or by the Governor or as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney.

Powers of the County Attorney

7. (1) The County Attorney shall, in discharging his/her functions under this Act have the power to -

- (a) with leave of the court or tribunal, appear at any stage of proceedings, appeal, execution or any incidental proceedings before any court or tribunal where the subject matter before the court is touching on the County Government or where County Government has interest.
- (b) require any officer in the County Public Service to furnish any information in relation to any matter which is the subject of legal inquiry;
- (c) summon any officer in the public service to explain any matter which is the subject of litigation by or against the County Government.

(2) The County Attorney shall—

- (a) establish such administrative units in the Office of the County Attorney, as may be necessary for the effective discharge of the functions of the office under this Act; and
- (b) perform any other action necessary in the administrative interests of the Office.

(3) The County Attorney may, upon request, appear and advise on any legal matter in any committee of the County Assembly.

(4) In the exercise of the powers and performance of functions of the office, the County Attorney shall not be under the direction or control of any person or authority.

Administration of the office

8. (1) The administration and the discharge of duties of the office of the County Attorney shall be governed by this Act.

(2) The County Attorney shall discharge the mandate of the office specified in this Act either in person or through a subordinate officer to whom the function is delegated.

(3) The County Attorney shall take and subscribe to the oath or affirmation as set out in the First Schedule to this Act before assuming office.

Audience by County Attorney in matters of public interest, etc

9. (1) Despite the provisions of any other written law or in the absence of any other written law, the county attorney shall have the right of audience in proceedings of any suit or inquiry of an administrative body which the county attorney considers to be of public interest or involves an injustice on any resident of the county in contravention of the constitution or involves a minor, county property or a department or agency of the county government.

(2) In the exercise of the powers of the County Attorney under subsection (1), the County Attorney shall -

(a) notify any court, tribunal or any other administrative body of the intention to be enjoined to the suit, inquiry or administrative proceedings; and

(b) satisfy the court, tribunal or any other administrative body of the public interest or County property involved, and comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the office.

(3) Where a suit, inquiry or any other proceedings is pending before a court, tribunal or any other administrative body to which the County Attorney does not have a right of audience, it shall be sufficient for the County Attorney to file a certificate of the intention of the County Attorney to be enjoined in the proceedings.

(4) The court, tribunal or any such administrative body shall, upon receipt of a certificate under subsection (3), enjoin the County Attorney in the proceedings.

Protection from personal liability

10. (1) No criminal proceeding or civil suit shall be brought against the County Attorney, the Deputy County Attorney, County Legal Counsel or any other officer in the office of the County Attorney in respect of any proceedings in a court of law or in the course of discharging of the functions of the County Attorney under this Act.

Private practice prohibited

11. The County Attorney, the Deputy County Attorney and County Counsel shall not engage in any other gainful employment that may result in conflict of interest.

Resignation

12. The County Attorney may resign from office in writing, addressed to the Governor.

Removal from office

13. (1) The Governor may with the approval of the County Assembly, remove the County Attorney from office only for—

(a) serious violation of the Constitution or any other law;

(b) gross misconduct, whether in the performance of functions of the Office of the County Attorney or otherwise;

(c) physical or mental incapacity to perform the functions of office;

(d) incompetence; or

(e) bankruptcy.

(2) Notwithstanding the provisions of subsection (1), the Governor may, upon election under the Constitution, appoint a person who is qualified as County Attorney in accordance with the provisions of this Act.

Delegation by County Attorney

14. (1) The County Attorney may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand delegate to the Deputy County Attorney or any County Counsel all or any of his/her powers and functions under any written law, except this power of delegation.

(2) A power or function delegated under this section may be exercised or performed by the Deputy County Attorney or County Counsel in accordance with the instrument of delegation.

(3) A delegation under this section may be revoked at will and does not prevent the exercise of a power or performance of a function by the County Attorney.

Legal officers in the County Government Departments

15. (1) All County Legal Counsel in any County Government department shall be officers of the County Attorney and shall be answerable to the County Attorney.

(2) The County Attorney shall have the power to issue directions to any County Legal Counsel with regard to the manner of performing the legal functions within their respective departments.

PART III—PERFORMANCE OF FUNCTIONS OF THE COUNTY ATTORNEY

Engagement of consultant.

16. (1) The County Government or any of its departments or agencies shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney without the approval of the County Attorney.

(2) For the purpose of observing standards, maintaining quality or capacity building, the County Attorney may -

(a) direct a County Counsel to participate in the work of the consultant; and

(b) prescribe the terms and conditions for a County Counsel who participates in such consultancy..

Power to issue directives and practice notes

17. (1) The County Attorney shall exercise powers, issue directives or practice notes to any officer to whom this Act applies for the purpose of maintaining standards and uniformity.

(2) The directives or practice notes issued pursuant to subsection (1) shall be in such form and issued in such manner as the County Attorney may determine.

Reference of matter for opinion of the County Attorney

18. (1) All County Government departments and agencies shall seek the opinion of the County Attorney on any matter raising substantial legal or constitutional issues.

(2) A person shall not make any decision or enter into an agreement that binds the County to undertake certain obligations without reference to the County Attorney.

Departments

19. All County Government departments and agencies shall notify the County Attorney of all material litigations within three days upon the service of any pleadings.

PART IV—APPOINTMENT, TERMS AND CONDITIONS OF SERVICE OF COUNTY LEGAL COUNSEL

The Deputy County Attorney

20. (1) The County Public Service Board shall appoint a person to the Office of Deputy County Attorney through a competitive recruitment process.

(2) A person shall be qualified for appointment to the Office of Deputy County Attorney if the person-

(a) has at least five years' experience as an Advocate of the High Court of Kenya; and

(b) meets the requirements of Chapter Six of the Constitution.

(3) The Deputy County Attorney shall be the principal assistant of the County Attorney and shall deputise the County Attorney in the execution of the County Attorney's functions under this Act.

County Legal Counsel.

21. (1) The County Public Service Board shall appoint such number of County Legal Counsel as may be necessary for the proper and efficient discharge of the functions of the Office.

(2) A person qualifies for appointment as a County Legal Counsel under subsection (1) if such person—

(a) is an Advocate of the High Court of Kenya; and

(b) is fit and proper person with due regard to the discharge of his or her duties under this Act.

(3) For the avoidance of doubt, nothing in this Act shall be construed to entitle any officer who is not qualified in law to perform legal functions in the county public service.

Terms and conditions of service.

22. The County Legal Counsel appointed under this Act shall serve on such terms as the County Public Service Board shall, in consultation with the Salaries and Remuneration Commission, determine.

Secondment.

23. (1) The Office of the County Attorney may, upon request, second any County Legal Counsel to any agency, organization or institution on such terms and conditions as the Office may, in consultation with the agency to which the person is being seconded, agree upon.

(2) A County Legal Counsel who is seconded under subsection (1) shall—

- (a) be deemed to be an employee of the agency, organization or institution;
- (b) shall enjoy the same benefits as an employee who is directly recruited by the agency, organization or institution; and
- (c) shall be required to comply with such orders and directions of the agency, organization or institution in the same manner as an employee who is directly recruited by that agency, organization or institution.

Code of Conduct.

24. (1) A County Legal Counsel appointed under Section 21 (1) shall subscribe to and observe the Code of Conduct as set out in the Second Schedule.

(2) The County Attorney may, from time to time by notice in the Gazette, amend the Schedule.

(3) A County Legal Counsel who breaches the Code of Conduct shall be liable to disciplinary action.

Other Staff.

25. (1) There shall be such officers and other members of staff of the Office of the County Attorney as the County Attorney considers necessary for the proper and efficient discharge of the functions of the Office.

(2) The County Attorney may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the County Attorney in the performance of the functions of the County Attorney.

PART V - MISCELLANEOUS PROVISIONS

Prohibition of unauthorized disclosure of information

26. (1) Without prejudice to the provisions of any other written law, an officer or member of staff of the Office of the County Attorney shall not disclose or use any information gained by the

officer or member of staff in the course of the official duties of the officer or member of staff or without the authority of the County Attorney.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Depository of laws and agreements.

27. The office of the County Attorney shall be the depository of all laws and local and international documents and agreements signed for or on behalf of the County Government.

County Public Seal.

28. The County Attorney shall have custody of the public Seal of the County Government.

Accessibility.

29. The County Attorney is entitled to have access to relevant records, documents and property pertaining to civil or any other cases concerning the County for the efficient performance of the duties of the County Attorney.

Facilities.

30. The County Government shall provide adequate facilities for the efficient functioning of the office of the County Attorney.

Funds of the Office.

31. (1) The funds of the Office of the County Attorney shall consist of—

(a) monies that may be allocated by the County Assembly for the purposes of the Office;

(b) such monies or assets as may accrue to the Office in the course of the exercise of its powers or the performance of its functions under the Act; and

(c) all monies from any other source provided, donated or lent to the Office.

(2) The funds of the Office shall be used for administrative expenses of the Office and such other purposes as may be necessary for the discharge of the functions of the Office.

Non Money Bill Status

32. (1) For the avoidance of doubt, nothing in this Act is intended to or may be construed as providing for or dealing with—

(a) taxes;

(b) the imposition of charges on a public fund or the variation or repeal of any of those charges;

(c) the appropriation, receipt, custody, investment or issue of public money;

(d) the raising or guaranteeing of any loan or its repayment; or

(e) matters incidental to any of those matters.

(2) There may be established a fund which shall consist of the monies specified under subsection (3).

(3) Any expenses that may be occasioned in the implementation of this Act shall be provided from—

(a) such gifts, grants or donations as may be given;

(b) such monies as may, in the future, be provided by the County Assembly for defraying the expenses incurred in the implementation of this Act; and

(c) such other monies that may lawfully accrue in the discharge of the functions under this Act, not being monies accruing pursuant to Article 114 of the Constitution.

Annual Report.

33. (1) The County Attorney shall, as soon as practicable after thirtieth June in each year, prepare and furnish to the Governor a report of the operations of the office during the year that ended on thirtieth June.

(2) The report prepared under subsection (1), shall, in respect of the year to which it relates, contain-

(a) the financial statements of the office;

(b) a description of the activities of the office; and

(c) such other information relating to its functions that the office may consider necessary.

(3) The County Attorney shall cause a copy of the report furnished under subsection (1) to be laid before the County Assembly within fifteen days after the day on which the Governor and the Executive Committee has adopted it.

Regulations

34. The County Attorney may make regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

FIRST SCHEDULE (S 8(3))

OATH OF OFFICE FOR THE COUNTY ATTORNEY

I , do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the Office of the County Attorney of County; that I shall diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I shall at all times, when so required, faithfully and truly give my counsel and advice to the Governor of the County; that I shall do justice to all. (So help me God)

SECOND SCHEDULE (S.24(1))

CODE OF CONDUCT

Ethical Values and Principles

1. Application

- (a) This Code of Ethics shall apply to all County Legal Counsel.
- (b) This Code of Ethics shall be supplementary to the Public Service Code of Conduct and the Rules of Professional Conduct and Etiquette of the Law Society of Kenya.

2. Loyalty and Dedication

A County Legal Counsel shall perform the functions of the Office of the County Attorney with complete loyalty and dedication and shall not indulge in any activity that may affect the interests of the county.

3. Responsibility

A County Legal Counsel shall ensure that his personal conduct is consistent with the dignity, image and integrity of the Office of the County Attorney.

4. Honesty

A County Legal Counsel shall act honestly and with propriety in the performance of the County Legal Counsel's duties and functions.

5. Competence

A County Legal Counsel shall-

- (a) perform the functions and discharge duties of the Office in a competent manner;
- (b) handle matters without undue delay, risk or unnecessary expense to the County Government.

6. Quality of service

A County Legal Counsel has a duty to serve the County Government and the public in a conscientious, diligent and efficient manner in order to provide quality service.

7. Fairness and Diligence

A County Legal Counsel shall not make an official decision without first giving due consideration to the matter at hand and the impact it is likely to have on the rights and interests of the people involved.

8. Confidentiality

A County Legal Counsel has a duty to hold in strict confidence all information concerning the business and affairs of the County Government and the public generally where the information is

acquired by virtue of office and except where the disclosure is expressly authorized by the County Attorney, or required by law.

9. Integrity

A County Legal Counsel shall-

- (a) not be influenced in any manner whatsoever by any individual or body of individuals in the discharge of his official duties;
- (b) perform the functions and discharge the duties of the Office with integrity;
- (c) respect and comply with this Act and any other written law and shall conduct himself or herself both in private and official capacities in a manner that promotes public confidence, the integrity of the Public Service, Office of the County Attorney and the legal profession;
- (d) not allow outside interest to compromise or in any way jeopardize the integrity of the legal profession, independence or competence;
- (e) at all times observe a standard of conduct that reflects credit on the legal profession and the public service and administration of justice generally; and
- (f) desist from conduct capable of drawing an impression of being involved in corruption.

10. Selflessness

A County Legal Counsel shall take decisions solely in the interest of the nation and justice and not on any other factor.

11. Transparency

The decisions and actions of a County Legal Counsel shall be made in a transparent manner and the County Legal Counsel shall provide reasons for such decisions.

12. Leadership

A County Legal Counsel shall—

- (a) at all times display high moral values and conduct himself or herself in a manner that reflects credibility on the Office;
- (b) abide by the spirit and letter of the law; and
- (c) adhere to the ethical standards expressed in this Schedule.

13. Rule of law and the administration of justice

A County Legal Counsel has—

- (a) a duty to promote respect for the rule of law and administration of justice;

(b) a duty to treat the court with candour, courtesy and respect and shall not attempt to influence court decisions by use of deceptive or reprehensible methods;

(c) a duty to deal with other lawyers fairly, courteously and in good faith; and

(d) a duty to uphold the integrity and reputation of the legal profession and promoting principles of fairness, justice and honesty.

14. Appropriate presentation and attire

A County Legal Counsel shall at all time in and outside the place of work appear in smart, proper and decent dress and behave in a manner befitting both the public service and the legal profession.

15. Personal Conduct

(a) A County Legal Counsel, shall comply with and execute laws, uphold the administration of justice and protect the integrity of public life.

(b) A County Legal Counsel entrusted with the responsibility to serve the county, shall—

(i) refrain from indulging in habits and behaviour that infringe upon the performance of official duties or tarnish the image of the Office;

(ii) maintain the dignity and decorum of the Office;

(iii) not use County Government resources for personal purposes and benefits;

(iv) be liable for unlawful and improper behaviour or the non-performance of his duties;

(v) not do or direct to be done, in abuse of the office or power, any act prejudicial to the rights of another person knowing that such act is unlawful or contrary to the County Government policy;

(vi) maintain transparency in the policies of the Office and in decisions and actions made;

(vii) not knowingly mislead the County Government on any matter of significance arising from his functions;

(viii) not maintain or operate a bank account in any country outside Kenya;

(ix) not provide information which is detrimental to the interest, territorial integrity and sovereignty of Kenya;

(x) protect and uphold professionalism, render decisions based on merit, and shall prohibit all forms of discrimination; and

(xi) not accept any gifts, presents or benefits.

16. Conflict of Interest

(a) A County Legal Counsel shall ensure that no conflict arises or appears to arise between the County Legal Counsel's official duties and private interests.

(b) A County Legal Counsel shall not—

(i) appear, advise or represent any party against the County Government; and

(ii) be a member of, belong to, or take part in any society the membership of which is incompatible with the functions or dignity of the County Legal Counsel's office.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to establish the Office of the County Attorney for Garissa County. The County Attorney would be the principal legal adviser to the County Government and would be responsible for representing the County Government in any legal proceedings. The Bill provides for the functions and powers of the County Attorney and the appointment of County Legal Counsel.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill establishes the Office of the County Attorney and sets out the functions of the Office. This is an Office that would be instrumental to the functioning of the County Governments. It would provide legal advice to the County Governments and also represent the County Governments in court or in any legal proceedings that may be instituted against the County Governments.

The Bill therefore concerns county governments as it affects the powers and functions of county governments in terms of Article 110(a) of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Clause 32 of the Bill specifically removes the Bill from the ambit of the matters listed under Article 114 of the Constitution. The Bill does not appropriate funds for the implementation of the Act; any appropriation would be effected through separate legislation which would be introduced and enacted in terms of Article 114 of the Constitution.

This Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th March, 2018.

MAHAT OSMAN Leader of Majority, County Assembly of Garissa