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Public School Governance in South Africa

Given the painful, complex and controversial history of schooling in South Africa, it was unlikely that any model chosen for the management and control of our public schools would satisfy all role-players. A model which effectively places significant decision making power over issues such as school fees, admissions and nominations of staff outside the control of state education departments was never going to be acceptable to all. Nevertheless, it is inherent in the partnership which is reflected in the Preamble to the South African Schools' Act of 1996 [SASA] – a partnership involving the state and learners, parents and educators in accepting joint responsibility for the organisation, governance and funding of schools. The nature of this partnership does not imply that all partners have to agree on all issues and that there is no room for contestation on important aspects. In fact, the vigour with which contestation has taken place must be seen at least partly as an indication of the seriousness with which the various parties take their responsibilities. The ongoing incapacity of most provincial education departments to administer public schooling effectively has, of course, not helped the situation. As a result, it is not surprising that over the years:

1. the courts – including the Constitutional Court – in South Africa have played a significant role in defining responsibility for various aspects of schooling, and
2. the legislative and policy framework for schooling has been subjected to a constant process of tinkering.

However, it is not the intention of this article to dwell on ideological considerations of the model of public school governance used in South Africa at present. Instead, the focus is on a few practical considerations of the current system and how School Governing Bodies [SGBs] respond to some of the challenges they are required to manage given their powers and responsibilities as set out in SASA.

Of course, SASA is, on its own, one of these challenges facing SGBs in the execution of their responsibilities. The legislative framework for governance which it sets out is complex and has been open to conflicting interpretations. Certainly there are many instances of both education departments and SGBs getting things

wrong simply because of the difficulty of interpreting what law and policy mean in relation to school governance. A prime example of this was the continued presence of variations in the recent nation-wide elections of new SGBs, despite the existence of a national level task team and equivalent structures in each of the provinces.

However, despite this complexity, there are a number of fundamental principles which underpin the model which are not complex and which, if understood and followed by all parties, provide a workable framework within which to operate. These include – but are not limited to – the following:

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1. Each public school is a juristic person and is therefore able to exercise a number of important functions. Public schools are not merely extensions of the state.
2. These functions are exercised on behalf of the school by the SGB on a basis of trust i.e. within a fiduciary relationship.
3. Most of these powers and functions are original [i.e. they are given to schools in SASA] and are not merely delegated. They cannot therefore be removed by political office bearers and officials on a whim. Even the recent Constitutional Court decision in the Ermelo High School matter makes it clear that there are only restricted circumstances under which the Head of Education may for a limited time only suspend the power of an SGB to determine the language policy of a school.
4. Although governors are elected on a constituency basis [e.g. parents elect parents, teachers elect teachers] once they are elected they are all equal governors of the school. Their responsibility is to govern the school within the framework provided and not to represent the sectoral interests of the group from which they are drawn. This applies equally to pupil members when they are members of the SGB. These pupils cannot be made to withdraw because of the nature of the items under discussion and, if they are 18 and older, they forfeit the liability protection given to minors in section 32 of SASA.
5. It is essential for the healthy and effective functioning of a school to understand and to respect the separation of school governance from the professional management of the same school. While SASA attempts to define these two related but different activities, in real life the distinction is not easy to manage. Apart from the usual contestations that take place between different functions in the same institution, the position is complicated by the fact that the person responsible for the professional management of the school – the Principal – is also ex officio a member of the SGB. In addition, in order for certain activities to be effectively carried out, the SGB and the Principal have to act in tandem. An obvious case in point is the responsibility of the SGB for putting a pupil code of conduct into place, within which framework the Principal and the professional staff of the school manage the day to day discipline of the school. This does not make the SGB responsible for discipline in the school.

No examination of public school governance in South Africa – no matter how limited – would be even adequate without a brief comment on the distinction between what have become known as section 20 and section 21 schools. These descriptors refer merely to the sections in SASA which describe the various functions exercised

by SGBs on behalf of the public schools at which they have been elected. In effect, all public schools are section 20 schools and all SGBs exercise the functions contained in this section of SASA. However, section 21 contains certain additional functions which can be allocated to the SGBs of schools that are seen as having the capacity to perform them. Contrary to popular belief, most of these additional functions are actually additional financial responsibilities and do not add significantly to the powers of SGBs. The really meaningful powers at the disposal of SGBs are available to the SGBs of all public schools and not only schools with a certain history or schools that fell under a particular administration before 1994. In fact, three really significant powers – those which enable SGBs to determine the admission policy and the language policy of a school as well as implement compulsory school fees – are not given to schools in either section 20 or section 21 but elsewhere in SASA.

As the governance system set out in SASA in 1996 has settled down, two major aspects have emerged as real challenges to many public schools. The remainder of this article is devoted to a short examination of these two challenges. These are:

1. funding
2. teaching staff

Funding

SASA imposes a clear responsibility on SGBs to take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school. It is therefore important to have a clear picture of what these resources provided by the State are.

Once the basic physical infrastructure of a school is established, the state's funding of public schools consists of:

- the provision of state paid teaching posts according to a model based essentially on the number of pupils, school phases and curriculum choices. Provision exists for the application of some considerations of equity through a process of top slicing of the total number of posts available and the allocation of additional posts to schools in need. This consideration aside, by and large schools of the same type with similar pupil

numbers and similar curriculum choices receive the same staff allocations.

- The allocation of an equity driven per pupil subsidy to each public school. Schools are divided into 5 equal groups [National Quintiles] based on financial considerations and pupils in schools serving the poorest of communities have to receive an annual subsidy 6 times that paid to pupils in schools serving the better off communities. These allocations as determined by the Minister of Basic Education for the next three years are set out in the table below.

Target table of per capita subsidies for next three years			
	2010	2011	2012
NQ 1	855	901	943
NQ 2	784	826	865
NQ 3	641	675	707
NQ 4	428	451	472
NQ 5	147	155	162
Overall	571	602	630

Given that teaching staff are provided on an equitable basis and can therefore be removed from the equation when comparing schools, in real terms there are many schools that receive through the per pupil subsidy less than 2% of their operational budget from the state e.g. a National Quintile 5 school with 1000 learners will receive R147 000 per year. A significant number of schools have an operational budget of in excess of R10 million per year as a result of the need to improve the quality of education it is possible to offer on the basis of State funding alone.

By and large, the possibilities of income generation available to schools seeking to meet the requirement that they must supplement State resources are as follows:

- School fees.
- Voluntary contributions such as donations and bequests.
- Maximising the core business of the school through using school buildings and resources, offering after care services, running private Grade R or pre-primary facilities, etc.
- Actual business ventures.

Of these four sources available to schools, school fees remain both the most important and the most problematic. They are the most important as school fees still constitute the greater part of a school's income provided schools go about their business properly and enforce the highest possible rate of payment. They are the most problematic because although the State leaves it to communities to decide upon the size of the school fee, the same State decides on and enforces the fee exemption policy across the country.

Currently there is no compensation to schools for state set and legally enforceable school fee exemptions although there has been talk about including such a provision in a review of the existing school funding model.

A simple comparison of aspects of school funding produces an interesting result in that if the proposed per pupil subsidy for 2010 is used for the approximately 12.5 million pupils in the system, the total comes to slightly more than R7 billion. Conservative estimates of school fee payments by parents in the 40% of schools still allowed to determine and collect fees put this source of income at approximately R10 billion.

Although there has been much talk of the scrapping of school fees and then the capping of school fees, the State is very conscious of the fact that as long as these considerable amounts continue to flow into public schools, significant numbers of indigent pupils benefit from them. It is likely, however, that the acceptance of school budgets and the setting of school fees will be subjected to more stringent requirements at some future date.

Teaching Staff

SGBs are painfully aware that much of modern research into school quality indicates that the quality of the outcomes of a school [or a school system] cannot exceed the quality of its teachers. There are two particular challenges to SGBs concerning the staffing of schools. Firstly, there is the persistent shortage of quality teachers – a shortage which becomes chronic in certain subject areas. Secondly, there is the reality that in some communities, parents are simply not prepared to accept the teacher: pupil ratios and limited curriculum choice that would exist if schools were reliant only on state staffing allocations and are prepared to pay higher fees in order to supplement the school staffing.

In order to address this dual challenge, SGBs make full use of at least the following:

- Their right to advertise, interview and nominate the teachers of their choice. This has increasingly led to confrontation between SGBs and provincial education departments seeking to make appointments other than the number one nomination from the SGB.
- The provisions in SASA to employ additional teachers on behalf of the school.
- The fact that SASA allows them to top-up the salaries of state paid teachers in order to be able to compete in an increasingly cut throat market
- Bursary and learnership schemes in order to train teachers to be employed at the school once they are qualified.

An indication of the extent of the involvement of SGBs in this critical area of their responsibilities is to be seen in the following data on the employment of teachers by SGBs on behalf of schools in the various provinces:

PROVINCE	2004	2008
Eastern Cape	3017	4314
Free State	799	1427
Gauteng	5384	14604
KwaZulu-Natal	5367	6022
Limpopo	1451	2205
Mpumalanga	1217	1550
North West	1149	1518
Northern Cape	634	469
Western Cape	4331	4450
TOTAL	23 349	36 559

[Table from SAIRR South Africa Survey 2008/2009]

These figures are for full-time staff only and reveal that the number of these teachers in the employ of schools nationally is greater than the total number of state teachers in 5 of the individual 9 provinces. It is generally agreed that the impact of these additional teachers on the quality of outcomes of these schools and the system is very significant.

Within the confines of this article, it has not been possible to touch on the many other ways in which SGBs contribute to the delivery of meaningful quality education in South Africa. There are many other challenges and there are many other shortcomings. The capacity to govern schools effectively is neither the preserve of wealthy communities nor is it evenly distributed through the country. There are schools serving truly disadvantaged communities in which the level of SGB involvement is outstanding. There are SGBs in wealthy schools that make fundamental mistakes.

However, as pointed out in the latest Education for All: Country Report: 2009: South Africa:

In South Africa, SGB elections are the third largest public elections, with over five million parents having a right to cast a vote for their school governors and

In general, SGBs have become an indispensable part of the South African school environment and vital collaborators in the task of improving learning and teaching.¹

NOTE

¹ Department of Basic Education 2009



In Memoriam Richard Price 1957-2009

Originally the article on Public School Governance in South Africa was to have been jointly written by Richard Price and Clive Roos. Richard Price was killed in October.

It is volunteers like Richard Price who keep the state school system functioning, and whose contribution is often unacknowledged. Richard never joined the chorus of negativity about South African education; instead he put time, energy and expertise into improving things. He served as Gauteng chairman and also national trustee of the Governing Body Foundation. He put hours into training governing body members, and used his considerable financial expertise to ensure that schools were helped to manage their finances properly. He worked hard at bringing under-resourced schools into the Foundation, and building good relationships with the Department of Education.

Richard had three daughters at Parktown High School for Girls, and served on the governing body there for 9 years. As treasurer he controlled the finances meticulously, and ensured that the way the finances were run reflected the values of the school as well as meeting the highest standards of auditing. Families in need of exemptions were not just tolerated, they were welcomed. Families able to pay full fees were informed that it was their privilege to contribute 10% of their fees to cover exemptions and build the diversity of the school. When he died, Richard had just been elected chairman of the school governing body.

His contribution will be sorely missed at school, provincial and national level.

Gillian Godsell