



PARLIAMENT
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LEGAL OPINION
[Confidential]

TO: Adv SP Holomisa, MP
Mr BA Mnguni, MP
Co-Chairperson of the Joint Constitutional Review
Committee

COPY: Mr MB Coetzee
Acting Secretary to Parliament

FROM: Constitutional and Legal Services Office
[Adv G Rhoda – Parliamentary Legal Adviser]

DATE: 29 August 2012

SUBJECT: Legal Opinion on the submission by Ms Nkosinathi to the
Joint Constitutional Review Committee

REFERENCE: 186/2012

CRC Ref: CR12-4

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MEMORANDUM

TO: Mr SP Holomisa, MP
Mr BA Mnguni, MP
Co-Chairperson of the Joint Constitutional Review Committee

COPY: Mr MB Coetzee
Acting Secretary to Parliament

FROM: Constitutional and Legal Services Office
[Adv G Rhoda – Parliamentary Legal Adviser]

DATE: 27 August 2012

REF NO: 186/2012

SUBJECT: Legal Opinion on the submission by Ms Nkosinathi to the Joint Constitutional Review Committee

INTRODUCTION

1. Our Office was requested to advise on the submission by Ms Nkosinathi for constitutional review by the Joint Constitutional Review Committee.
2. From the submission provided, it appears that Ms Nkosinathi is questioning why different provinces have different services conditions and remuneration for public service employees at the same salary levels.

ANALYSIS

3. Section 197(2) of the Constitution, 1996 provides that:

“The terms and conditions of employment in the public service must be regulated by national legislation.”

The national legislation referred to in the above section is the Public Service Act, Proclamation No. 103 of 1994.

4. Section 37(1) of the Public Service Act provides that:

“Employees shall be paid the salaries and allowances in accordance with the salary scale and salary level determined by the Minister in terms of section 3(5).”

5. Section 3(5)(a) of the Public Service Act provides that:


“Subject to the Labour Relations Act and any collective agreement, the Minister may make determinations regarding any conditions of services of employees generally or categories of employees, including determinations regarding a salary scale for all employees or salary scales for particular categories of employees and allowances for particular categories of employees.”

6. As such, the remuneration of public service employees is governed by the Public Service Act and not specifically the Constitution, 1996.

LEGAL ADVICE

7. It is noted that the submission by Ms Nkosinathi does not relate to an amendment to a particular constitutional provision. Ms Nkosinathi's submission should be directed at an appropriate parliamentary committee.

8. It is recommended that the Joint Constitutional Review Committee does not consider the submission for the purpose of an amendment to the Constitution.



Adv G Rhoda
Parliamentary Legal Adviser

Pat Jayiya - SALARY LEVEL IN OUR INSTITUTION ARE NOT EQUALLY TO PROVINCES

From: "NKOSINATHI"
To:
Date: 2012/05/07 12:16 PM
Subject: SALARY LEVEL IN OUR INSTITUTION ARE NOT EQUALLY TO PROVINCES
CC:

HONARABLE MEMBER(S)

I like to ask why administration clerks salary notices are not equally to one another like, Mpumalanga Province Admin clerk compare to Limpopo admin clerk salary are not the same hence we do same duties and task. It the pity that Mpumalanga Province department Health is still running salary level 3 admin clerks but some other department like education, water affairs their advert for the post of admin clerk is salary level 5. Let an example I am admin clerk with accredited papers earning salary level 3 in public service some departments their abet qualification (cleaners) they earn level 3 they exposing us

Thanxs