**THE BUNGOMA COUNTY OFFICE OF THE COUNTY ATTORNEY**

**BILL, 2019**

**ARRANGEMENT OF CLAUSES**

|  |
| --- |
| *Clause* |
| **PART I - PRELIMINARY** |
| 1 — Short title and commencement. |
| 2 — Interpretation. |
| 3 — Application. |
| **PART II: ESTABLISHMENT OF THE OFFICE OF THE COUNTY ATTORNEY, FUNCTIONS AND ADMINISTRATION** |
| 4 — Establishment of the Office of the County Attorney. |
| 5 — Qualifications of the County Attorney. |
| 6. — Functions of the County Attorney. |
| 7. — Powers of County Attorney. |
| 8. — Administration of the office. |
| 9. — Audience by County Attorney in matters of public interest, etc |
| 10. — Protection from personal liability.  11. — County Solicitor. |
| 12. — Private practice prohibited. |
| 13. — Resignation. |
| 14. — Removal from office.  15. —Delegation by the County Attorney. |
|  |
| **PART III - PERFORMANCE OF FUNCTIONS OF THE COUNTY ATTORNEY** |
| 16. — Reserve of matters to the County Attorney. |
| 17. — Engagement of consultant. |
| |  | | --- | | 18. — Reference of matter for opinion of the County Attorney. | |
| 19. — Ministries to notify the County Attorney.  **PART IV — APPOINTMENT AND TERMS AND CONDITIONS OF SERVICE**  **OF COUNTY COUNSELS** |
| 20. — County Legal Counsel. |
| 21. — Terms and conditions of service. |
| 22. — Secondment.  23. —Other Staff.  **PART V – MISCELLANEOUS PROVISIONS** |
| 24. — Prohibition of unauthorised disclosure of information. |
|  |
| 25. — Depository of law and agreements. |
| 26. — County Public Seal. |
| 27. — Accessibility. |
| 28. — Facilities |
| 29. — Funds for the office  30. —Annual report.  31. —Regulations.  32. — Transition. |
|  |

**THE BUNGOMA COUNTY OFFICE OF THE COUNTY ATTORNEY BILL, 2019**

|  |  |
| --- | --- |
| **A Bill for** | |
| **AN ACT of the County Assembly of Bungoma to make provision for the establishment of the Office of the County Attorney, to provide for its functions and powers; to provide for appointment, the discharge of duties and the exercise of powers of County Attorney and for connected purposes.**    **ENACTED** by the County Assembly of Bungoma, as follows **:-** | |
| **PART I – PRELIMINARY** | |
| Short title and Commencement | 1. This Act may be cited as the Bungoma County Office of the County Attorney Act, 2019 and shall come into operation upon assent by the Governor. |
| Interpretation | 1. In this Act, unless the context otherwise requires –   “County Attorney” means the County Attorney appointed under Section 4 herein;  “County Government” means the County Executive Committee, all the County Government entities and Departments but does not include the County Assembly of Bungoma;  “County Legal Counsel” means a person appointed as such under Section 20 herein;  “County Seal” means the seal as shall be determined by an Act of the County Assembly;  “County Solicitor” means a person appointed as such under Section 11 herein; |
| Application | 1. This Act shall apply to the County Attorney, County Solicitor, County Legal Counsel and such other 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: ESTABLISHMENT OF THE OFFICE OF THE COUNTY ATTORNEY, FUNCTIONS AND ADMINISTRATION** | |
| Establishment of the Office of the County Attorney | 1. (1) There is established the office of County Attorney.   (2) The Office of the County Attorney shall consist of;  (a) The County Attorney.  (b) The County Solicitor.  (c) Such other number of County Legal Counsels as the Country Attorney may, in consultation with the County Public Service Board, consider necessary.  (3) The County Attorney shall be appointed by the Governor with the approval of the County Assembly.  (4) The County Attorney shall hold office for a non-renewable term of Seven (7) years.  (5) For the avoidance of doubt the County Attorney shall have the status and rank of a member of the County Executive Committee.  (6) 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. |
| Qualifications of the County Attorney. | 1. 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 reputable university recognized in Kenya;  (c) is an Advocate of the High Court of Kenya;  (d) has had at least ten (10) 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 | 1. (1) The County Attorney—   (a) is the principal legal advisor to the County Executive Committee;  (b) shall attend the meetings of the County Executive Committee as an *ex officio* member of the Executive Committee;  (c) shall represent the County Executive in court or in any other legal proceedings to which the County Executive is a party or has interest, other than criminal proceedings;  (d) shall be responsible for advising the County Government on all matters relating to the Constitution, national legislation, county legislation, international law, human rights, consumer protection and other legal matters;  (e) shall be responsible for drafting and publication of legislative proposals for the County Government;  (f) shall negotiate, draft, vet and interpret agreements, Memorandum of Understanding, treaties and other documents for and on behalf of the County Executive and its agencies;  (g) shall assist and guide the Governor and County departments in handling labour and industrial relation issues;  (h) shall undertake periodic legal audit to ensure that all county and national legislation applicable to the county are complied with and enforced;  (i) shall be responsible for the revision of county laws;  (j) may liaise with the Office of the Attorney-General when need arises;  (k)shall in consultation with the Director of Public Prosecution coordinate prosecution of offences resulting from County legislation;  (l) may liaise with the Office of the County Attorney in other Counties on matters of mutual interest; and  (m) shall perform any other function 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. | 1. (1) The County Attorney shall, in discharging his functions under this Act have the powers to — 2. appear at any stage of any proceedings, appeal, execution or any incidental proceedings before any court or tribunal in which by law the County Attorney's right of audience is not excluded; 3. require any officer in the County public service to furnish any information or record in relation to any matter which is the subject of legal inquiry; 4. summon any officer in the County public service to explain any matter which is the subject of litigation or inquiry by or against the County Government; 5. issue directions to any officer performing legal functions in any County Government Department.   (2) The County Attorney shall—  (a) establish, in consultation with and on the recommendation of the County Public Service Board, such administrative units as directorates, divisions, sections or units, as may be necessary for the effective discharge of the functions of the office of the County Attorney;  (b) coordinate the formulation of policies and plans of the Office; and  (c) 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) The County Attorney shall promote, protect and uphold the rule of law and defend the public interest.  (5) The powers of the County Attorney may be exercised in person or by subordinate officers acting in accordance with the general or special instructions of the County Attorney.  (6) In the execution of the functions conferred by this Act, the County Attorney shall provide efficient and professional legal services to the County Government and the public for the purpose of facilitating, promoting and monitoring the rule of law, the protection of human rights and democracy and in accordance with the Constitution. |
| Administration of the Office. | 1. (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. |
| Audience by County Attorney in matters of public interest, etc. | 1. (1) Despite the provisions 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;   (a) of public interest within the County;  (b) involves public property within the County;  (c) involves an independent department or agency of the County.  (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 such 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 may, upon receipt of a certificate under subsection (3), enjoin the County Attorney in the proceedings. |
| Protection from personal liability. | 1. (1) No criminal proceedings or civil suit shall be brought against the County Attorney, the County Solicitor, County Legal Counsel or any other officer in office of the County Attorney in the course of discharging of the functions of the County Attorney under this Act.   (2) No matter or thing done by the County Attorney, the County Solicitor County Legal Counsel or any other officer in office of the County Attorney, if the matter or thing is done in good faith and in accordance with legal professional guidelines for executing the functions, powers or duties of the office of the County Attorney, render the County Attorney, County Solicitor or County Legal Counsel personally liable to any action, claim or demand whatsoever. |
| County Solicitor. | 1. (1) There shall be a County Solicitor who shall be appointed by the Governor on recommendation of the County Public Service Board upon competitive recruitment and on approval of the County Assembly.   (2) A person shall be qualified for appointment to the office of the County Solicitor if the person —  (a) is a citizen of Kenya;  (b) holds a degree in law from a reputable university recognized in Kenya;  (c) is an Advocate of the High Court of Kenya;  (d) has had at least seven (7) years' relevant professional experience; and  (e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.  (3) The County Solicitor shall be the accounting officer in the office of the County Attorney and will serve at the status and rank of a chief officer within the County.  (4) The County Solicitor shall carry out any function, discharge any duty and exercise any power as may be directed by the County Attorney and shall, —  (a) organise, co-ordinate and manage the administrative and the legal functions of the office;  (b) assist the County Attorney in the performance of his duties as the principal legal advisor to the County Government; and  (c) in consultation with the County Attorney, conduct, or assign and supervise all court cases, including appeals or petitions on behalf of the County Attorney. |
| Private practice prohibited. | 1. The County Attorney and the County Solicitor shall not engage in any other gainful employment. |
| Resignation | 1. The County Attorney or the County Solicitor may resign from office in writing, addressed to the Governor. |
| Removal from Office. | 1. (1) The Governor may, with the approval of the county assembly, remove the County Attorney or the County Solicitor from office only for— 2. serious violation of the Constitution or any other law; 3. gross misconduct, whether in the performance of their functions or otherwise; 4. physical or mental incapacity to perform the functions of office; 5. incompetence; or 6. bankruptcy. |
| Delegation by County Attorney. | 1. (1) The County Attorney may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand delegate to the County Solicitor or any County Legal Counsel all or any of his 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 County Solicitor or County Legal 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. |
| **PART III - PERFORMANCE OF FUNCTIONS OF THE COUNTY ATTORNEY** | |
| Reserve of matters to the County Attorney. | 1. No County Counsel shall render advice in any of the following matters without the written approval of the County Attorney— 2. interpretation of the Constitution; 3. any matter that the County Attorney may from time to time designate; and 4. any matter which the law reserves to the County Attorney. |
| Engagement of consultant. | 1. (1) A ministry or department 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. |
| Reference of matter for opinion of the County Attorney. | 1. (1) All Government ministries 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.  (3) A person or officer who makes any decisions that has legal implications or enters into an agreement on behalf of the County without any reference to the County Attorney shall take personal responsibility if such decision results in County Government incurring liability. |
| Ministries to notify the County Attorney. | 1. All County Government ministries and agencies shall notify the County Attorney of any litigation immediately upon the service of any pleadings. |
| **PART IV — APPOINTMENT AND TERMS AND CONDITIONS OF SERVICE OF COUNTY COUNSELS** | |
| County Legal Counsel. | 1. (1) The County Attorney may, in consultation with, and on the recommendation of the County Public Service Board appoint such number of County Legal Counsels 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 of good standing;  (b) has a current practising certificate; and  (c) is a fit and proper person with due regard to the discharge of his or her duties under this Act.  (3) The County Attorney shall comply with the values and principles under the Constitution in the appointment of County Legal Counsels.  (4) The County Attorney shall cause to be published in the county Gazette, the names of all persons appointed as County Legal Counsel under subsection (1).  (5) The County Legal Counsel appointed under subsection (1) shall perform such functions as may be assigned by the County Attorney.  (6) A person shall not act as a County Legal Counsel unless that person has been appointed as such under subsection (1).  (7) For the avoidance of doubt, nothing in this Act shall entitle any officer who is not qualified in law to perform legal services functions in the county public service. |
| Terms and conditions of service. | 1. The County Legal Counsel appointed under this Act shall serve on such terms as the County Attorney and County Public Service Board may, on the advice of the Salaries and Remuneration Commission, determine. |
| Secondment | 1. (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 County Attorney 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—   1. be deemed to be an employee of the agency, organization or institution; 2. enjoy the same benefits as an employee who is directly recruited by the agency, organization or institution; and 3. 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. |
| Other staff. | 1. (1) There shall be such other 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.  (3) The composition of the staff of the office shall reflect the—  (a) regional and ethnic diversity of the people of the County;  (b) disability and gender equity; and  (c) take into consideration the provisions of the Constitution. |
| **PART V – MISCELLANEOUS PROVISIONS** | |
| Prohibition of unauthorized disclosure of information. | 1. (1) Without prejudice to the provisions of any other written law, an officer or member of staff of the County shall not disclose or use any information gained by the officer or member of staff otherwise than in the course of the official duties of the officer or member of staff or with 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 less than two years, or to both. |
| Depository of laws and agreements. | 1. The Office of the County Attorney shall be the depository of all county and national laws affecting the county, and all local and international documents and agreements signed for or on behalf of the County Government. |
| County Public Seal. | 1. The County Attorney shall have custody of the county public seal, contracts and other legal instruments including logbooks, title deeds e.t.c of the County Government. |
| Accessibility. | 1. The County Attorney shall have access to persons, relevant records, documents and property pertaining to civil or criminal cases in the performance of the duties of the County Attorney. |
| Facilities. | 1. The County Government shall provide adequate facilities for the efficient functioning of the Office of the County Attorney. |
| Funds for the office. | 1. (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. |
| Annual report. | 1. (1) The County Attorney shall, as soon as practicable after the thirtieth of 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. | 1. 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 the carrying out or giving effect to this Act. |
| Transition. | 1. (1) Upon the coming into effect of this Act, members of staff employed by the County Government to perform the functions of the Office under this Act shall – 2. be deemed to be members of staff of the Office in their respective capacities; 3. retain any rights accrued or accruing to them as such staff or contributors; 4. be at liberty to continue to contribute to any superannuation scheme to which they were contributors; 5. be entitled to receive any deferred or extended leave as if they have continued to be such staff of the Office during their service within the County; 6. be entitled to receive any payment, pension or gratuity as if they have continued to be such staff of the Office during their service with the County; and 7. be deemed to be employees of the Office for the purposes of any law under which those rights accrued or were accruing, under which they continue to contribute or by which that entitlement is conferred.   (2) Despite the provisions of subsection (1), a person employed by the County Public Service Board to perform the functions of the County Attorney, County Solicitor or County Legal Counsel at the commencement of this Act shall continue to hold their respective positions in the Office after the coming into effect of this Act only if they meet the qualifications specified in this Act.  (3) The County Public Service Board shall, where a person employed by the county to perform the functions of the County Attorney, County Solicitor or County Legal Counsel does not meet the qualifications specified in this Act, deploy such persons to the highest position that is vacant and to which such person qualifies for appointment. |

**FIRST SCHEDULE (section 4 (6))**

**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 Bungoma 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 Bungoma County; and that I shall do justice to all. (So help me God)

**MEMORANDUM OF OBJECTS AND REASONS**

The principle object of this Bill is to provide for the establishment and administration of the Office of the County Attorney. It provides for the functions and powers of the County Attorney, the performance of the functions of the office of the County Attorney and the appointment of County Counsels. The County Attorney is the principal legal adviser to the County Government and is responsible for representing the county government in any legal proceedings.

Part I deals with preliminary matters including the interpretation of terms used in the Bill and the application of the Bill to persons performing legal functions in the Office of the County Attorney.

Part II provides for the administration of the Office of the County Attorney. Clause 6 provides for functions of the County Attorney while Clause 7 provides for the powers of the County Attorney in relation to the performance of the duties of the County Attorney under the Bill. This Part also confers immunity on the County Attorney and County Counsel in relation to any liability that may arise in the discharge of their functions under the Bill. It also provides for the competitive recruitment and appointment of the County Solicitor and the removal from office of the County Attorney and the County Solicitor.

Part III deals with the performance of the functions of the County Attorney. Clause 16 provides for the matters that can only be dealt with by a County Counsel with the approval of the County Attorney. This Part confers on the County Attorney the power to issue directives and imposes an obligation on County Government departments and agencies to seek the opinion of the County Attorney on matters raising substantial legal or constitutional issues.

Part IV deals with the appointment of County Counsel by the County Attorney in consultation with the County Public Service Board. It outlines the qualifications, required for a person to be appointed as County Counsel and the determination of the terms and conditions of service. Clause 22 empowers the County Attorney to procure the services of other persons for the purpose of assisting in the performance of the functions of the County Attorney.

Part V deals with miscellaneous matters. Clause 23 prohibits the unauthorized disclosure of information by members of staff of the Office other than in the course of their duties without the Authority of the County Attorney. Clause 24 assigns the office of the County Attorney as the depository of all agreements and other legal documents executed on behalf of the County Government while Clause 26 confers a right on the County Attorney to have access to all records and documents relating to civil cases in the performance of the duties under the Bill. This Part also provides for the funds of the Office and confers an obligation on the County Attorney to prepare and furnish to the Governor, a report on the operations of the Office in each financial year. It also confers powers on the County Attorney to make regulations.

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the ………………………..........., 2019.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY EXECUTIVE COMMITTEE MEMBER

PUBLIC SERVICE MANAGEMENT & ADMINISTRATION