



REPUBLIC OF KENYA

COUNTY ASSEMBLY OF BOMET

SECOND REPORT OF THE COMMITTEE ON DELEGATED COUNTY LEGISLATIONS
ON THE BOMET COUNTY EDUCATION REVOLVING FUND REGULATIONS, 2019

MAY, 2019



*Teamed on 25/5/2019
at 9:00am
Gyftm*

*for Gyftm
25/5/2019*

PREFACE

Mr. Speaker Sir,

The Bomet County Education Revolving Fund Regulations, 2019 were tabled in this County Assembly on 30th of April 2019 and pursuant to Standing Order 194 stood referred to the Committee on Delegated County Legislations.

The terms of reference in regards to any Statutory Instrument are set out under Statutory Instruments Act 2013 and Standing Order 194 of the County Assembly Standing Orders.

COMMITTEE MEMBERSHIP

Mr. Speaker Sir, the committee as currently constituted consists of the following members:

1. Hon. Richard Chirchir -----Chairperson
2. Hon. Leonard Ngeny-----Vice-Chairperson
3. Hon. Vincent Mutai- ----- Member
4. Hon. Catherine Chemutai- ----Member
5. Hon. Joseph Kelong ----- Member
6. Hon. Clara Cherotich ----- Member
7. Hon. Augustine Koske -----Member

ACKNOWLEDGEMENT

Mr. Speaker Sir,

On behalf of the Committee Members, I wish to extend our sincere appreciation for the invaluable support accorded to the committee by your office and the office of the Clerk to ensure that the Committee delivers on its mandate.

Mr. Speaker Sir, I would also like to sincerely thank the Members of the Committee on Delegated County Legislations for their commitment during the scrutiny of the regulations and compiling of this report.

I also appreciate the work of our Secretariat in compiling this report.

Finally, Mr. Speaker Sir, it is now my pleasure, on behalf of the Committee to present this report to this County Assembly for adoption.

Hon. Richard Chirchir

Signed..........

Chairperson, Committee on Delegated County Legislations



Ownership of the Report

We, the members of Committee on Delegated County Legislations do append our signatures against our names in this report to affirm the correctness of the contents and support for the report:

1. Hon. Leonard Ngeny.....
2. Hon. Vincent Mutai.....
3. Hon. Catherine Chemutai.....
4. Hon. Joseph Kelong.....
5. Hon. Clara Cherotich.....
6. Hon. Augustine Koske.....

LEGISLATIVE FRAMEWORK

Mr. Speaker Sir,

Article 1 (2) and (3) of the Constitution of Kenya provides that the people shall exercise Sovereign power under this Constitution through democratically elected representatives. The Constitution delegates this people's power to Parliament and the legislative assemblies to the county governments, the national executive and the executive structures in the county governments and the Judiciary and independent tribunals which perform their functions in accordance with the Constitution. The sovereign power of the people is exercised both at the national and the county levels.

Article 94(5) of the Constitution of Kenya provides that no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation. Article 185 of the Constitution provides that the legislative authority of a county is vested in, and exercised by, its County Assembly.

Article 95(6) of the Constitution further provides that an Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.

Section 116 of the Public Finance Management Act, 2012, provides that a County Executive Committee Member for finance may establish other public funds with the approval of the County Executive Committee and the County Assembly.

SCRUTINY OF THE BOMET COUNTY EDUCATION REVOLVING FUND REGULATIONS, 2019

Mr. Speaker Sir,

Section 116(1) of the Public Finance Management Act, 2012, gives power to the County Executive Committee Member responsible for Finance to establish other public funds with the approval of the County Executive Committee and the County Assembly. Pursuant to that section, the County Executive Committee Member presented the draft regulations to the

County Executive Committee and the same were subsequently approved. On 24th April 2019, the Executive Committee Member for Finance forwarded to the County Assembly the Bomet County Education Revolving Fund Regulations, 2019 for consideration with a view of approving them. The regulations were then tabled on 30th April 2019 and subsequently committed to the Committee on Delegated County Legislations pursuant to Standing Order 194(2) of the County Assembly Standing Orders.

The Legal Framework

Public Finance Management Act ,2012

Section 116(1) of the Public Finance Management Act, 2012 provides that a County Executive Committee member for finance may establish other public funds with the approval of the County Executive Committee and the county assembly.

(2) For every county public fund established, the County Executive Committee member for finance shall designate a person responsible for administering that fund.

(3) The administrator of a county public fund shall ensure that the earnings of, or accruals to a county public fund are retained in the fund, unless the County Executive Committee member for finance directs otherwise.

(4) The administrator of a county public fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (3) is spent only for the purposes for which the fund is established.

(7) The administrator of a county public fund shall—

(a) prepare accounts for the fund for each financial year;

(b) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General; and

(c) present the financial statements to the county assembly.

(8) The administrator of a county public fund shall ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

Section 116(11) of the Public Finance Management Act, 2012 provides that the funds and usage of money through the funds shall be published and publicized.

Regulation 197 of the Public Finance Management (County Governments) Regulations 2015 provides that the establishment of a county public Fund shall at the minimum meet the following requirements—

- (a) be initiated through a proposal by the County Executive Committee Member responsible for the county government entity under which the functions of the Fund fall, clearly setting out the justifications and submit it to the County Executive Committee Member;
 - (b) the County Executive Committee Member responsible for the county government entity shall certify in writing that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations;
 - (c) provide a clear justification as to why a Fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the county government entity;
 - (d) the administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund;
 - (e) the County Executive Committee Member responsible for the county government entity functions shall confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the county exchequer;
 - (f) a Fund that has a lifespan of less than two years shall not be approved unless it is for unforeseen and urgent need;
 - (g) the County Executive Committee Member shall grant approval in writing before establishment of the Fund;
 - (h) the County Executive Committee Member responsible for the entity shall demonstrate how the activities of the proposed County Public Fund will fit in the overall Medium Term Plan and County Fiscal Strategy Paper; and
 - (i) the initial approval for establishment of a county public Fund shall be for a maximum period of ten (10) years, beyond which the County Executive Committee and County Assembly approvals shall be sought.
- (2) Despite the provisions of paragraph (1) of this regulation, the County Executive Committee Member may from time to time issue further guidelines on the establishment of county public Funds.

Conformity to the Statutory Instruments Act, 2013 and Standing Order 194

Mr. Speaker Sir,

The Statutory Instruments Act, 2013 provides for several procedural and substantive issues that are required of any Statutory Instrument.

As a matter of procedure, under Section 11(2) of the Statutory Instruments Act, the Instrument is supposed to be forwarded with an explanatory memoranda attached to it as set out in the Schedule. The Explanatory Memoranda should contain Regulatory Impact Statements. The Regulatory Making Authority is also supposed to subject the Instrument to consultation with the persons likely to be affected by the Instrument. The Committee established that the regulations were made after wide consultations with the stake holders. The County Executive has also signed a Memorandum of understanding with the Higher Education Loans Board on how the revolving fund shall be administered.

Mr. Speaker Sir,

Under Section 13 of the Statutory Instruments Act, the Committee is required, while carrying out its scrutiny of any statutory instrument be guided by the principles of good governance, rule of law and shall in particular consider whether the statutory instrument:

- (a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other written law;
- (b) infringes on fundamental rights and freedoms of the public;
- (c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament (County Assembly);
- (d) contains imposition of taxation;
- (e) directly or indirectly bars the jurisdiction of the Courts;
- (f) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- (g) involves expenditure from the Consolidated Fund or other public revenues;
- (h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
- (i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- (j) appears to have had unjustifiable delay in its publication or laying before Parliament (County Assembly);
- (k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- (l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (m) inappropriately delegates legislative powers;
- (n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;

(o) appears for any reason to infringe on the rule of law;
(p) inadequately subjects the exercise of legislative power to parliamentary scrutiny; and (q) accords to any other reason that the Committee considers fit to examine.

Committee findings

Mr. Speaker Sir, based on the above parameters, the committee found out that the Regulations:

- a. are in accord with the provisions of the Constitution, the Public Finance Management Act or other written laws. In particular the Regulations are consistent with the provisions of section 116 of the Public Finance Management Act, 2012 every county public fund established, the County Executive Committee member for finance shall designate a person responsible for administering that fund and that the administrator of a county public fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (3) is spent only for the purposes for which the fund is established.
- b. Do not infringe on fundamental rights and freedoms of the public;
- c. Do not contain a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- d. Do not contain imposition of taxation;
- e. Do not directly or indirectly bar the jurisdiction of the Courts;
- f. Do not give retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- g. Do involve expenditure from the County Revenue Fund appropriated through the Public Finance Management Act 2012 and approved through these Regulations;
- h. Are not defective in their drafting and do not for any reason in their form or purport call for any elucidation;
- i. Do not make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which they are made;
- j. Did not appear to have had unjustifiable delay in their publication or laying before the Assembly;
- k. Do not make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- l. Do not make rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- m. Do not inappropriately delegate legislative powers;

- n. Do not impose a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- o. Do not appear for any reason to infringe on the rule of law;
- p. Do not inadequately subject the exercise of legislative power to the County Assembly scrutiny; and
- q. Do not for any reason in its content or form provide a ground for disapproval.

Mr. Speaker Sir, the Sections 15, 16, 17, 18 and 19 of the Statutory Instruments Act provides for the elaborate procedures of laying before this County Assembly any Instrument that is to be partly or wholly annulled. It is a practice that if an Instrument is approved at the committee level, it is not necessary to subject it to the County Assembly for approval but only for annulment. However, Mr. Speaker Sir, the committee established that these regulations are exceptional in the sense that they are made to establish a fund which must be approved by the County Assembly by dint of Section 116 (2) of the Public Finance Management Act, 2012. Thus, the Committee upon its deliberation agrees with the contents of these regulations and hereby presents them to this County Assembly for approval for the establishment of the Fund.

Committee Recommendations

Mr. Speaker Sir,

The committee upon deliberations recommended the following;

1. **THAT**, the County Assembly **approves** the establishment of the Bomet County Education Revolving Fund in accordance with Section 116 (1) of the Public Finance Management Act, 2012 by approving the Bomet County Education Revolving Fund Regulations, 2019.
2. **THAT**, the County Executive Committee member for finance do correct the typographical errors contained in the regulations.
3. **THAT**, the County Executive Committee member for finance publishes these regulations in the Kenya Gazette in accordance with Article 199(1) of the Constitution of Kenya.