



THE REPUBLIC OF KENYA

LAWS OF KENYA

**PUBLIC APPOINTMENTS (COUNTY
ASSEMBLIES APPROVAL) ACT**

NO. 5 OF 2017

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PUBLIC APPOINTMENTS (COUNTY ASSEMBLIES APPROVAL) ACT

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CRITERIA FOR VETTING OR APPROVAL OF
NOMINEES FOR APPOINTMENT TO PUBLIC
OFFICE BY THE COUNTY ASSEMBLY

NO. 5 OF 2017

PUBLIC APPOINTMENTS (COUNTY ASSEMBLIES APPROVAL) ACT

[Date of assent: 8th March, 2017.]

[Date of commencement: 29th March, 2017.]

AN ACT of Parliament to provide for the procedure for the approval of public appointments by County Assemblies and for connected purposes.

[Act No. 5 of 2017.]

1. Short title

This Act may be cited as the Public Appointments (County Assemblies Approval) Act, 2017.

2. Interpretation

In this Act, unless the context otherwise requires—

"appointing authority" means any person who, under the Constitution or any other law, is required to make an appointment for which the approval of a County Assembly is required;

"appointment" includes any re-appointment to the same body, whether or not in the same capacity;

"candidate" means a person who has been proposed or nominated for appointment to a public office;

"Clerk" means the Clerk of the relevant County Assembly; and

"committee" means the relevant committee of a County Assembly or such other committee as the Speaker of the County Assembly may, for good reason, direct.

3. Objects and purposes

The objects and purposes of this Act are to—

- (a) provide for the procedure for the approval of public appointments by County Assemblies; and
- (b) provide clarity and guidance to the County Assemblies as they exercise their functions of approving public appointments.

4. Exercise of powers of appointment

An appointment under the Constitution or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act.

5. Notification of vetting requirements

(1) An advertisement inviting applications for nomination for appointment to an office to which this Act applies shall specify that the candidate shall be required to appear before a committee of the relevant County Assembly.

(2) An applicant shall not be required to appear before the committee of a County Assembly pursuant to a notice issued under subsection (1) within a period of less than twenty-one days.

6. Notification of nomination

(1) An appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant County Assembly accordingly.

(2) An appointing authority shall, in issuing a notice under subsection (1), notify the members of the public on the proposed nomination through such media and platforms established under section 91 of the County Governments Act, 2012 (No. 17 of 2012) as it considers appropriate.

(3) A notification under subsection (1) shall be—

- (a) in writing;
- (b) lodged with the Clerk of the County Assembly.

(4) A notification of nomination shall be accompanied by information concerning the nominee, having regard to the issues specified under section 7.

(5) For the purposes of this Act, a notification of nomination shall be deemed to be duly given on the day on which it complies fully with subsections (3) and (4).

7. Approval hearing

(1) Following the receipt of the notification of nomination under section 6(3)(b), the Speaker shall report the receipt of the notification to the County Assembly, following which the notification shall be committed to the relevant committee of the Assembly.

(2) Subject to subsection (3), the chair of the committee shall determine the time and place for the holding of the approval hearing which shall not be later than fourteen days from the date of the committal of the notification to the committee.

(3) The approval hearings shall be held in a public place and shall be conducted during working hours.

(4) The Clerk shall notify a candidate of the time and place for the holding of an approval hearing by notice in at least two newspapers of national circulation and by writing and such other form of communication as the Clerk shall consider appropriate.

(5) The committee shall, by notice in at least one newspaper of national circulation, notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing.

(6) Subject to this Act, all committee proceedings on public appointments shall be open and transparent.

(7) Despite subsection (6), a committee may, on its own motion or on the application of a candidate or any other concerned person, determine that the whole or part of its sittings shall be held in camera.

(8) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.

(9) The criteria specified in the First Schedule and the assessment form specified in the Second Schedule shall be used by a committee during an approval hearing for the purposes of vetting a candidate.

(10) Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.

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(11) A candidate shall have a right to be heard on any statement or evidence submitted to the Clerk contesting the suitability of the candidate to hold the office to which the candidate has been nominated.

(12) A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.

8. Issues for consideration

The issues for consideration by the relevant County Assembly in relation to any nomination shall be—

- (a) the procedure used to arrive at the nominee including the criteria for the short listing of the nominees;
- (b) any constitutional or statutory requirements relating to the office in question; and
- (c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.

9. Period for consideration and report

(1) Unless otherwise provided in any law, a committee shall consider a nomination and table its report in the County Assembly for debate and decision within twenty-one sitting days from the date on which the committee first sits to consider the nomination.

(2) At the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the Committee may consider necessary, including a recommendation on whether or not the nominee should be approved for appointment to public office.

10. Rejection of nomination

(1) Where the nomination of a candidate is rejected by a County Assembly, the appointing authority shall submit to the County Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.

(2) A nominating authority shall not resubmit the name of a candidate whose nomination has been rejected by the County Assembly unless the circumstances relied on for the rejection of the appointment of the candidate did not exist or ceased to exist at the time of rejecting the nomination of the candidate.

11. Notification of decision

(1) The Clerk shall notify the appointing authority of the decision of the County Assembly within fourteen days of the decision.

(2) The appointing authority shall, upon the approval of the nominees for appointment by the County Assembly and subject to the applicable written law, appoint the nominee within a period of seven days from the date of notification of the decision of the Assembly under subsection (1).

12. Powers of the committee

(1) The committee shall have power to summon any person to appear before it for the purpose of giving evidence or providing information during the approval hearing.

(2) For the purposes of subsection (1), the committee shall have the same powers as the High Court to—

- (a) enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;
- (b) compel the production of documents; and
- (c) issue a commission or request to examine witnesses abroad.

(3) Any person who is summoned by the committee and who—

- (a) disobeys any order made by a committee for attendance or for production of papers, books, documents or records; or
- (b) gives false or misleading information or refuses to be examined before, or to answer any relevant question put by, a committee;

commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

13. Non-money Bill status

(1) For the avoidance of doubt, nothing in this Act 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 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 National 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.
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FIRST SCHEDULE

[Section 7(9).]

CRITERIA FOR VETTING OR APPROVAL OF
NOMINEES FOR APPOINTMENT TO PUBLIC OFFICE
BY COUNTY ASSEMBLIES QUESTIONNAIRE

Notes:

- (a) This questionnaire applies to appointments to public office arising by or under the Constitution or any other law where the approval of a County Assembly is required.
- (b) The questionnaire shall be used by the relevant committee of a County Assembly to vet a nominee appearing before the committee in the process of approval by the relevant County Assembly.
- (c) The questionnaire shall be filled and submitted by the nominee to the relevant committee of the County Assembly through the Clerk on or before a date set by the committee.
- (d) The submission of false information in the questionnaire shall lead to the automatic disqualification of a nominee.
- (e) Any form of canvassing by a nominee shall lead to disqualification.
- (f) The nominee must answer all the questions.

1. Name: (State full name).

2. Position: (State office to which you have been nominated).

3. Sex:

4. (a) Date of Birth:

(b) Place of Birth:

5. Marital Status:

6. Mobile phone number:

7. Email Address:

8. ID Number:

9. PIN Number:

10. Nationality:

11. Postal Address:

12. Town/City:

13. Knowledge of Languages: (Specify Languages).

14. Education: (List, in reverse chronological order, each university, college, or any other institution of higher education attended and indicate, in respect of each, the dates of attendance, academic award obtained, whether a degree was awarded, and the dates on which each such degree was awarded).

15. Employment Record: (List in reverse chronological order all government agencies, business or professional corporations, companies, firms or other enterprises with which you have been affiliated as an officer, director, partner, proprietor, employee or consultant).

16. Honours and Awards: (List any scholarships, fellowships, honorary degrees, academic or professional honours, honorary society memberships, military awards

and any other special recognition for outstanding service or achievement and in respect of each, state the date of award and the institution or organization that made the award).

17. Professional Associations (where applicable): (List all professional associations of which you are or have a member and give any positions held and the respective dates when each such position was held).

18. Memberships: (List all professional, business, fraternal, scholarly, civic, charitable or other organizations, (other than those listed in response to Question 16) to which you belong or have belonged).

19. Published Writings:

- (a) List the titles, publishers and dates of books, articles, reports letters to the editor, editorial pieces or other published materials you have authored or edited.
- (b) Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of any bar association, committee, conference or organization of which you were a member.

20. Public Office, Political Activities and Affiliations:

- (a) List chronologically any public offices you have held or are currently holding, including the terms of service and whether such positions were elected or appointed.
- (b) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities. Also include any linkage you have to a political party at present.
- (c) Have you ever been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution?
- (d) Have you ever been adversely associated with practices that depict bias, favouritism or nepotism in the discharge of public duties?

21. Deferred Income/Future Benefits: (List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, etc).

22. Outside commitment during service in office: (Do you have any plans, commitments or agreements to pursue outside employment with or without compensation during your service in office? If so explain).

23. Sources of Income: (List sources and amounts of all income received during the calendar year preceding your nomination and in the current calendar year).

24. Tax Status: (Attach your Kenya Revenue Authority Clearance Certificate).

25. Statement of Net Worth: (State your financial net worth).

26. Potential Conflicts of Interest:

- (a) Identify the family members or other persons, parties, categories of litigation or financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you

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have been nominated. Explain how you would address any such conflict if it were to rise.

- (b) Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

27. Pro-Bono/Charity Work/Donations to charity: (Describe what you have done by way of pro bono or charity work, listing specific instances, the amount contributed and the amount of time devoted to each).

28. Have you ever been charged in a court or law in the last three years? If so, specify the nature of the charge, where the matter is ongoing, the present status of the matter, or where the matter is concluded, the judgment of the court, or otherwise, how the case was concluded.

29. Have you ever been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry in the last three years?

30. Have you any objection to the making of enquiries with your present employer/referees in the course of consideration of your nomination? If yes, explain:

31. References: (List three persons who are not your relatives who are familiar with your character, qualification and work).

SECOND SCHEDULE

[Section 7(9).]

ASSESSMENT FORM

Name of Candidate

Interviewer

RATINGS			
	Marks available	Marks awarded	Comments
Work experience (as it relates to the position)	25		
Education/training (relevant to the position)	25		
Interest in and knowledge relating to specific position	15		
Communication skills (written/oral)	10		
Presentation (promptness, neatness of resume/application, appearance)	10		
Decision making/problem solving skills	15		
Total marks	100		

Signature

Date

Note: The relevant experience to be assessed will depend on the job in question
Each panel member should fill in the form independently