

STATE ATTORNEY ACT 56 OF 1957

[ASSENTED TO 20 JUNE 1957] [DATE OF COMMENCEMENT: 28 JUNE 1957]

(Afrikaans text signed by the Officer Administering the Government)

as amended by

General Law Further Amendment Act 93 of 1962
State Attorney Amendment Act 7 of 1966
State Attorney Amendment Act 45 of 1980
Transfer of Powers and Duties of the State President Act 97 of 1986
General Law Third Amendment Act 129 of 1993
General Law Amendment Act 49 of 1996

ACT

To consolidate the laws relating to the establishment of the office of the State Attorney and matters incidental thereto.

1 Establishment of office of State Attorney

(1) There shall be established in Pretoria under the control of the Minister of Justice an office called the office of the State Attorney.

(2) Branches of the State Attorney's office may from time to time and subject to like control, be established at other places in the Republic.

(3) The office of the State Attorney for the Republic, and any branch thereof, existing at the commencement of this Act, shall be deemed to have been established under this section.

2 Appointments in the office of the State Attorney and branches thereof

(1) The Minister of Justice may, subject to the laws governing the public service-

(a) appoint as State Attorney a person admitted and entitled to practise as an attorney in any division of the Supreme Court of South Africa, who shall be in charge of the office of the State Attorney established under this Act;

[Para. (a) substituted by s. 1 of Act 7 of 1966.]

(b) appoint a person qualified as aforesaid to be in charge of any branch of such office, and such other persons as may be necessary for the proper performance of the business of the said office or any branch thereof.

(2) The creation, grading and classification of all posts on the establishment of the State Attorney's office and any branch thereof and the remuneration and conditions of service, including retiring benefits, of all persons occupying such posts shall be governed by the laws governing the public service.

(3) Any person holding office as State Attorney at the commencement of this Act, and any person holding an appointment in the office of the State Attorney or in any branch thereof at such commencement, shall be deemed to have been appointed under this section.

(4) The Minister of Justice may require any person appointed or deemed to have been appointed under this section, to carry out and exercise such powers, duties and functions, in addition to performing the functions hereinafter prescribed, as the said Minister may prescribe and as such person may be qualified to perform.

(5) Anything to the contrary notwithstanding in any law, practice or custom in force or prevailing in any part of the Republic, the State Attorney and any person holding an appointment in the State Attorney's office, or in any branch thereof, may, notwithstanding that he is an attorney, notary or conveyancer, receive a salary in respect of all services rendered or to be rendered by him under his appointment.

3 Functions of State Attorney's office

Cases

(1) The functions of the office of the State Attorney and of its branches shall be the performance in any court or in any part of the Republic of such work on behalf of the Government of the Republic as is by law, practice or custom performed by attorneys, notaries and conveyancers or by parliamentary agents: Provided that the functions in regard to his duties as parliamentary agent shall be subject to the Standing Rules of the respective Houses of Parliament.

(2) There may also be performed at the State Attorney's office or at any of its branches like functions for or on behalf of the administration of any province, and the South African Railways and Harbours Administration, subject to such terms and conditions as may be arranged between the Minister of Justice and the Administration concerned.

[Sub-s. (2) substituted by s. 2 of Act 7 of 1966 and amended by s. 1 of Act 49 of 1996.]

(3) Unless the Minister of Justice otherwise directs, there may also be performed at the State Attorney's office or at any of its branches like functions in or in connection with any matter in which the Government or such an administration as aforesaid, though not a party, is interested or concerned in, or in connection with any matter where, in the opinion of the State Attorney or of any person acting under his authority, it is in the public interest that such functions be performed at the said office or at one of its branches.

[Sub-s. (3) substituted by s. 35 of Act 93 of 1962.]

4 Rights, privileges and duties of persons performing functions under Act

The rights, privileges and duties of an attorney, notary or conveyancer lawfully performing functions described in section 3, shall, except as is specially provided by this Act, include any of the rights, privileges and duties respectively possessed by or imposed on an attorney, notary or conveyancer practising in the division of the Supreme Court of South Africa where such functions are being performed.

[S. 4 substituted by s. 3 of Act 7 of 1966.]

5 Functions of notaries and conveyancers to be performed by notaries and conveyancers only

The said functions, in so far as they are functions which by law, custom or practice can be performed by an attorney, a notary or a conveyancer only, shall be performed by an attorney, a notary or a conveyancer (as the case may be) admitted and entitled to practise in the division of the Supreme Court of South Africa where such functions are being performed.

[S. 5 substituted by s. 4 of Act 7 of 1966.]

6 Recovery of costs when work performed at State Attorney's office

(1) In every application, motion, action, suit or other legal proceedings of a civil

nature in or before any court in or in connection with which the State Attorney, or any person employed in the State Attorney's office or a branch thereof and admitted and entitled to practise as aforesaid, has appeared, or in any matter wherein he or any such person has acted in the performance of any of the said functions, fees and costs may be taxed and recovered in the same manner as if such functions had been performed by a practitioner in private practice.

(2) Notwithstanding anything to the contrary in any law, such fees and costs shall in the case of any such application, motion, action, suit or other legal proceedings include the amount of any stamp duty and fee of office which would have been payable and borne by the Government of the Republic (including any administration referred to in subsection (2) of section *three*) in respect of any document filed, lodged, registered or issued by the State Attorney or by any person employed in the State Attorney's office or any branch thereof, if such document were not exempt from such duty or fee under the provisions of any law.

(3) Notwithstanding anything to the contrary in any law but subject to the provisions of subsection (2), any document filed, lodged, registered or issued by the State Attorney or by any person employed in the State Attorney's office or any branch thereof shall not be subject to stamp duty or any fee of office payable by means of stamps: Provided that any such duty or fee which would but for this subsection be legally payable and borne otherwise than by the Government of the Republic (including any administration referred to in subsection (2) of section *three*), may be recovered from the person concerned by the State Attorney or by any person employed in the State Attorney's office or any branch thereof.

(4) Any duty, fees and costs recovered shall be paid into the Consolidated Revenue Fund.

[S. 6 substituted by s. 36 of Act 93 of 1962.]

7 Right to exercise function at places where no fixed office

Notwithstanding anything to the contrary in any law, practice or custom, the State Attorney and any person employed in his office and admitted and entitled to practise as aforesaid and any person nominated by him and likewise admitted and entitled to practise may, subject to the provisions of sections *four* and *five*, exercise his functions in any court in the Republic though he may have no fixed office or branch office at the place where such court sits.

8 Employment of correspondents by State Attorney and matters incidental thereto

(1) The State Attorney or the person in charge of a branch of the State Attorney's office shall be entitled in the exercise of his functions aforesaid to instruct and employ as correspondent any attorney or other qualified person to act in any legal proceedings or matters in any place in the same way and, *mutatis mutandis*, subject to the same rules, terms and conditions as govern attorneys in private practice, and shall be entitled to receive and recover from such correspondent the same allowances as he would be entitled to do if he were an attorney in private practice.

[Sub-s. (1) substituted by s. 11 (a) of Act 129 of 1993.]

(1) *bis* Notwithstanding anything to the contrary in any law, the provisions of subsections (2), (3) and (4) of section *six* shall *mutatis mutandis* apply in respect of any legal proceedings or matters in which any such attorney or other person has been so instructed and employed.

[Sub-s. (1) *bis* inserted by s. 37 of Act 93 of 1962.]

(2) Any allowances recovered shall be paid into the Consolidated Revenue Fund, and

any such correspondent shall be entitled to accept such employment and make such allowances.

(3) The State Attorney or the person in charge of a branch of the State Attorney's office may delegate any power conferred upon him under this section to any person employed in the State Attorney's office or branch thereof, as the case may be.

[Sub-s. (3) added by s. 11 (b) of Act 129 of 1993.]

9 Regulations

The Minister of Justice may make regulations, not inconsistent with this Act-

- (a) defining the qualifications, powers, duties and jurisdiction of persons who may be appointed under this Act;
- (b) prescribing the places within the Republic at which branches of the office of the State Attorney shall be established and the number of persons who may be employed at any such branch;
- (c) as to the instruction and employment of attorneys, notaries and conveyancers, by or on behalf of the State Attorney;
- (d) providing for-
 - (i) a minimum period for which a person who has completed his service under articles to the State Attorney or a professional assistant in the office, or a branch of the office, of the State Attorney, shall serve the State in such office or in any branch of such office, which period may vary according to the period of service under such articles;
 - (ii) an amount (which may vary according to the period served in such office or in any such branch under such articles or after completion of service thereunder) which any person who fails to complete his service under articles to the State Attorney or such professional assistant, or so to serve the State for the period so provided for, may be required to pay to the State; and
 - (iii) the recovery of any amount which is so required to be paid,

and generally for the better carrying out of the objects and purposes of this Act.

[S. 9 amended by s. 5 of Act 7 of 1966 and by s. 46 of Act 97 of 1986.]

9A Performance by State Attorney's office of work on behalf of government of foreign state

If agreed upon between the Government of the Republic and the government of any other state, the State Attorney's office or any branch thereof may perform such kind of work as is performed under this Act by the said office or any such branch on behalf of the Government of the Republic, for or on behalf of the government of that other state in any court or in any part of the Republic or in that state, subject to such conditions as may be so agreed upon.

[S. 9A inserted by s. 1 of Act 45 of 1980.]

10 (1) Repeals the State Attorney Act 25 of 1925,

the State Attorney Amendment Act 10 of 1955, and section 1 of the State Attorney Amendment Act 31 of 1957.

(2) Any regulation made and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been made or taken under the

corresponding provision of this Act.

11 Short title

This Act shall be called the State Attorney Act, 1957.

STATE ATTORNEY AMENDMENT ACT 7 OF 1966

[ASSENTED TO 12 FEBRUARY 1966] [DATE OF COMMENCEMENT: 3 JANUARY 1967]

(English text signed by the State President)

as amended by

General Law Amendment Act 49 of 1996

ACT

To amend and apply the State Attorney Act, 1957, in the territory of South-West Africa and to provide for matters incidental thereto.

1 and 2 Amend respectively sections 2 and 3 of the State Attorney Act 56 of 1957 .

3 and 4 Substitute respectively sections 4 and 5 of the State Attorney Act 56 of 1957 .

5 Amends section 9 of the State Attorney Act 56 of 1957 .

6 to 9 inclusive

[Ss. 6 to 9 inclusive repealed by s. 1 of Act 49 of 1996.]

10 Short title and commencement

This Act shall be called the State Attorney Amendment Act, 1966, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette* .

STATE ATTORNEY AMENDMENT ACT 45 OF 1980

[ASSENTED TO 28 APRIL 1980] [DATE OF COMMENCEMENT: 13 SEPTEMBER 1979]

(Afrikaans text signed by the State President)

ACT

To amend the State Attorney Act, 1957, so as to make provision for the performance under certain circumstances of work by the State Attorney's office or a branch thereof for or on behalf of the government of a foreign state; and to provide for matters connected therewith.

1 Inserts section 9A in the State Attorney Act 56 of 1957 .

2 Short title and commencement

This Act shall be called the State Attorney Amendment Act, 1980, and shall be deemed to have come into operation on 13 September 1979.