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AND HEAD OF THE PUBLIC SERVICE

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- All Permanent Secretaries/Accounting Officers.
(with sufficient copies for all Chief Executive Officers of State Corporations)
- The Auditor-General, Kenya National Audit Office.
- The Clerk, National Assembly.
- The Chief Registrar, High Court of Kenya.
- The Secretary, Public Service Commission of Kenya.
- The Director General, National Security Intelligence Service
- The Secretary, Teachers Service Commission of Kenya.
- All Provincial Commissioners
(with sufficient copies for all District Commissioners)

RE: POLITICAL NEUTRALITY AND INTEGRITY OF STATE AND PUBLIC OFFICERS

This circular's objective is to guide both state and other public officers who are defined in **Article 260 of the Constitution** in the discharge of their duties so that they can maintain political neutrality and integrity.

Article 10 of the Constitution binds state officers and public officers to act in accordance with, inter alia, the following national values and principles of governance.

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.
- (c) good governance, integrity, transparency and accountability; and

(d) sustainable development.”

In the discharge of their duties, public servants must abide by **Article 47(1)** of the Constitution which provides: “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

Article 73(2)(b) of the Constitution provides that public servants in their work must uphold “objectivity and impartiality in decision making, and (ensure that their decisions) are not influenced by nepotism, favouritism, other improper motives or corrupt practices.” Other pertinent guiding principles of leadership and integrity include: selfless service based solely on the public interest, demonstrated by – (i) honesty in the execution of public duties; and (ii) the declaration of any personal interest that may conflict with public duties; (d) accountability to the public for decisions and actions...” (**Article 73(2)(c)** of the Constitution).

The Constitution proscribes conduct that is unbecoming for a state officer. According to **Article 75(1)** such officer “shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids – a) any conflict between personal interests and public or official duties; (b) compromising any public or official interest in favour of a personal interest; (c) demeaning the office that the officer holds.”

According to **Article 77(2)** any appointed state officer is forbidden from holding office in a political party.

State officers or other public officers are not eligible for election to Parliament (**Article 99(2)** of the Constitution). Under the **Elections Act, 2011 (1)a** state or other public officer is not eligible for nomination as a presidential candidate (**Section 23(2)(b)**); parliamentary candidate (**Section 24(2)(a)**) and; a member of county assembly (**Article 25(2)(a)**).

1. According to the **Elections Act, 2011** a public officer shall not:


- (i) engage in the activities of any political party or candidate or act as an agent of a political party or a candidate in the election (**Section 43(1)(a)**);
- (ii) publicly indicate support for or opposition against any party or side with a candidate participating in an election (**Section 43(1)(b)**);
- (iii) engage in political campaigns or other political activities (**Sect.43(1)(c)**); or

- (iv) use public resources to initiate new development projects in any constituency or county three months before an election in that constituency or county (**Section 43 (1) (d)**).
2. A public officer who intends to contest an election under the Elections Act, 2011 shall resign from public office at least seven months before the date of the election.
 3. Section 68 of the Elections Act forbids the use of public resources for the purpose of campaigning during an election or referendum.
 4. It is the duty of every public officer to cooperate with the Independent Electoral and Boundaries Commission (**Section 105(1)** of the Elections Act.)
 5. Police Officers have a duty in their respective areas of operation to maintain law and order so as to ensure the proper conduct of an election (**Section 105(2)**).
 6. The Independent Electoral and Boundaries Commission can impound any state resources that are being used in an election campaign (**Section 107(3)**).

According to the **Political Parties Act, 2011** a public officer shall not (a) be eligible to be a founding member of a political party (b) be eligible to hold office in a political party; (c) engage in political activity that may compromise or be seen to compromise the political neutrality of that person's office or (d) publicly indicate support for or opposition to any political party or candidate in an election (**Section 12 (1)**).

It must be noted that if public officers infringe the above constitutional and legal provisions, they are liable to penal sanctions. Indeed, breach of the above provisions can lead to dismissal from office and subsequent disqualification from holding any other state or public office (**Article 75(2) and (3)** of the Constitution).

State and other public officers who leave the service so as to comply with the law will be facilitated to do so in the shortest time possible.


AMB. (DR) FRANCIS K. MUTHAURA, EGH
PERMANENT SECRETARY/SECRETARY TO THE
CABINET & HEAD OF THE PUBLIC SERVICE