



THE PRESIDENCY
EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE

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OP/CAB.9/1A

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8th November, 2013

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**All Cabinet Secretaries
Hon. Attorney General
Chief Executive Officers State Corporations
Auditor General**

**PAYMENT OF BOARD SITTING ALLOWANCES TO THE INSPECTOR-GENERAL
(CORPORATIONS) AND MEMBERS OF STAFF**

Section 18 (1) of the State Corporations Act Chapter 446 Laws of Kenya establishes the Office of the Inspector-General (Corporations) in the public service with an oversight function and investigative powers and responsibility to advise the Government on matters affecting running of State Corporations, report periodically to Ministers on management practices in State Corporations and to report cases of misappropriation of funds to the Auditor General.

For purposes of execution of these responsibilities Section 18 (2) (c) empowers the Inspector-General to attend any meeting of the Board and Board Committees where necessary. This does not make the Inspector-General a director of a State Corporation.

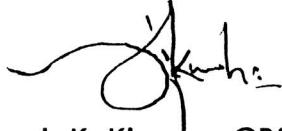
The Attorney General has vide his advisory letter Ref. No. AG/CONF/6/D/73 VOL.I dated 22nd August, 2013 copy attached clarified the matter.

It is noted that currently the Inspector-General (Corporations) and his staff routinely attend virtually all Board and Committee meetings of State Corporations and are paid allowances payable to Board members. In essence these allowances should not be paid as the attendance of the Inspector

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General (Corporations) in meetings are pursuant to his mandate and therefore part of the normal duties of the inspectorate.

Please ensure the advice by the Attorney General is complied with forthwith.



Joseph K. Kinyua, CBS
CHIEF OF STAFF/HEAD OF THE PUBLIC SERVICE

Copy to:

Mrs Alice Otwala, MBS
Secretary
Public Service Commission of Kenya
NAIROBI

Mr. Edward Ngige
Ag. Inspector General
Inspectorate of State Corporations
NAIROBI



THE STATE LAW OFFICE

OFFICE OF THE ATTORNEY GENERAL

OP/SCAC.9/72A

22nd August 2013

Your Ref:

Date:

Our Ref:

AG/CONF/6/D/73 VOL. I

Ms. Jane Mugambi

Secretary

The State Corporation Advisory Committee

Kenyatta International Conference Centre

NAIROBI

Dear

RE: PAYMENT OF BOARD ALLOWANCES TO THE INSPECTOR
GENERAL (CORPORATIONS) ON ACCOUNT OF ATTENDING
BOARD MEETINGS

Reference is made to your letter dated 3rd July 2013 in which you have sought the opinion of my office as to whether the Inspector General is entitled to payment of allowances payable chairpersons and members of Boards of State Corporations whenever the Inspector General or staff of the office attends such meeting in the performance of his functions as provided by section 18 of the State Corporations Act, Cap 446

This request is premised on the query raised by the Auditor General that such allowances are only payable to gazetted members of the Board only.

We have duly considered the matter in light of the relevant provisions of the applicable law and seek to render our opinion as follows;

1. State Corporations are established variously under the law and are therefore governed by the respective constitutive instruments. This is clear from the definition provided of a state corporation under section 2 of the State Corporations Act which provides as follows;

"state corporation" means -

(a) a state corporation established under section 3;

(b) a body corporate established before or after the commencement of this Act by or under an Act of Parliament or other written law but not -

(i) the Permanent Secretary to the Treasury incorporated under the Permanent Secretary to the Treasury (Incorporation) Act;

(ii) a local authority established under the Local Government Act;

(iii) a co-operative society established under the Co-operative Societies Act;

(iv) a building society established in accordance with the Building Societies Act;

(v) a company incorporated under the Companies Act which is not wholly owned or controlled by the Government or by a state corporation;

(vi) the Central Bank of Kenya established under the Central Bank of Kenya Act;

(vii) (Deleted by A 2 of 2002)

(c) a bank or a financial institution licensed under the Banking Act or other company incorporated under the Companies Act, the whole or

the controlling majority of the shares or stock of which is owned by the Government or by another state corporation;

(d) a subsidiary of a state corporation.

It therefore follows that a state corporation may be established pursuant to the State Corporation Act or under a specific legislation or under the Companies Act Cap 486.

2. The composition of the Board of Directors is determined according to the provisions of the constitutive instruments.
For instance, membership of Boards of the State Corporations established pursuant to the State Corporations Act is as provided under **section 6** of the Act.

Section 6 of the Act state as follows;

(1) Unless the written law by or under which a state corporation is established or the articles of association of a state corporation otherwise require, a Board shall, subject to subsection (4), consist of -

(a) a chairman appointed by the President who shall be non-executive unless the President otherwise directs;

(b) the chief executive;

(c) the Permanent Secretary of the parent Ministry;

(d) the Permanent Secretary to the Treasury;

(e) not more than seven other members not being employees of the state corporation, of whom not more than three shall be public officers, appointed by the Minister.

(2) Every appointment under subsection (1)(a) and (e) shall be by name and by notice in the Gazette and shall be for a renewable period of three years or for such shorter period as may be specified in the notice, but shall cease if the appointee -

Similarly, Boards of State Corporation established under specific legislation is as provided under that law i.e Board of Kenya Revenue Authority is as established under **section 6** of the **Kenya Revenue Authority Act, Cap 469** which provides as follows;

(1) There is established a Board of Directors which shall be the governing body of the Authority.

(2) The Board shall comprise of the following -

(a) a chairman to be appointed by the President;

(b) the Commissioner-General;

(c) the Permanent Secretary, Ministry of Finance or his representative;

(d) the Attorney-General or his representative;

(e) six other persons appointed as the chairman of the Board or as a member of the Board under paragraph (e) of subsection (2) if such person is a public officer or has been a public officer within the immediately preceding twelve months.

Lastly, membership of Board of State Corporations established pursuant to **Companies Act, Cap 486** is to be determined in accordance with the provisions of the Articles of Association of the Company.

3. In this regard, the constitute instrument provides for the procedure of conducting board meetings and the remuneration payable to the Chairperson and members attending a board meeting.

For instance, under **section 10** of the **State Corporations Act** the chairperson and members are entitled to payment of such allowances or remuneration as determined by the Board with the approval of the State Corporation Advisory Committee.

Section 10 states thus;

(1) The chairman and members of a Board, other than the chief executive, shall be paid out of the funds of the state corporation such sitting allowances or other remuneration as the Board may, within the scales of remuneration specified from time to time by the Committee, approve.

(2) A Board may, within the scales specified by the Committee, refund travelling and other expenses incurred by the chairman or members of the Board in the performance of their duties.

Similarly, section 7 of the Kenya Revenue Authority Act provides that the remuneration of a member shall be as determined in the instrument of appointment.

(1) A member of the Board, other than an ex-officio member -

(a) shall hold office on such terms and conditions including remuneration as are specified in his instrument of appointment, and for a period not exceeding three years; and

4. In view of the foregoing, it is therefore evidently clear that sitting allowances or other remuneration is only payable to duly appointed chairperson and members of boards attending Board meeting.
5. The Inspector General is an officer in public service whose office is separately established under the State Corporations Act. The functions of the Inspector General is as provided in **section 18** of the State Corporations Act and is mandated inter alia to attend board meetings in a supervisory capacity as part of his regular duties for which he is employed.

The functions of the Inspector General are set out in section 18 of the Act which states;

(1) There shall be an Inspector-General (Corporations) whose office shall be an office in the public service and whose duties shall be –

(a) to advise the Government on all matters affecting the effective running of state corporations;

(b) to report periodically to the Minister on management practices within any state corporation;

(b) to report to the Controller and Auditor-General any cases where moneys appropriated by Parliament are not being applied by state corporations for the purposes for which they were appropriated.

(2) For the purposes of carrying out his duties under subsection (1) the Inspector-General (Corporations) shall have the following powers–

(a) to call for and inspect all books, records, returns and documents which in his opinion relate to the accounts of, or to execution of the functions of any state corporation;

(b) to enter and inspect the premises, including any plant and installation thereon, of any state corporation;

(c) to attend meetings of any state corporation or of a Board or committee thereof if in his opinion it is necessary to do so for the effective carrying out of his duties under this section.

(3) The Committee, or the Controller and Auditor-General may, if they consider it desirable, require the Inspector-General (Corporations) to conduct special investigations of any state corporation on their behalf and to report the findings to them.

(4) There may be appointed such staff whose offices shall be offices in the public service as are necessary to assist the Inspector-General (Corporations) in the performance of his duties under this Act.

6. In view of the above, we are of the considered view that the Inspector General is not entitled to be paid allowances and remuneration payable to the chairperson and board members whenever he attends a meeting of the Board pursuant to his mandate under section 18 (2)(c).

In this respect, the Inspector General is sufficiently covered by the terms and conditions of service as set out in the instrument by which he is appointed.

7. The Inspector General would however be entitled to be paid such allowances and remuneration payable to chairperson and members of a Board if he is duly appointed to a Board under the applicable provision of the constitutive instrument and attends a Board meeting as such.

For instance, the Inspector General may be appointed as a Board member under section 6(1)(e) of the State Corporations Act, in which case the Inspector General may claim allowances and remuneration payable to chairperson and members of a Board in addition to his regular remuneration.

(e) not more than seven other members not being employees of the state corporation, of whom not more than three shall be public officers, appointed by the Minister.

Be guided accordingly.

Yours

A handwritten signature in dark ink, appearing to read 'Githu Muigai', is written over a large, stylized, and somewhat illegible signature that spans across the 'Yours' and the printed name below.

GITHU MUIGAI, EGH, SC
ATTORNEY GENERAL

