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OPINION

TO: SHANNON NAIK

McCINTOSH ATTORNEYS

GEORGE

RE: HARTENBOS COMMUNITY SAFETY FORUM

DATE: 15 JANUARY 2024

1.

Introduction:

1.1 The Consultant is the Hartenbos Community Safety Forum, a voluntary association comprising of business owners / property owners / long lease tenants etcetera, within the Hartenbos area, who as asked for my opinion on certain aspects. For the courtesy of the instructing attorney I am addressing this opinion in English and not Afrikaans.

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1.2 The Consultant asked that I answer two questions:

1.2.1 Whether the Consultant can lawfully collect membership fees / levies from its' members (specifically referring to certain clauses in the constitution provided), and;

1.2.2 Whether the Consultant is subject to the scrutiny of SAPS.

1.3 In providing this opinion I apologize for the delay. It seems that my external hard drive is corrupted and hence I had to have the opinion transferred to another storage device, cleared and resent as you offices firewall threw it out.

2.

Documents provided:

For the purpose of giving this opinion I was provide with a copy of the constitution of the Hartenbos CSF.

Salient background:

The constitution:

- 3.1 The CSF is a non – profit organization of members working together to improve crime prevention and safety in their community.

- 3.2 The CSF has at its' core purpose to facilitate a multi sectoral governmental approach to safety in the community, which includes, but is not limited to SAPS.

- 3.3 The approach goes wider than a community policing forum and seeks to include input from the Department of Justice, Crime prevention and private security outfits, welfare, co-operative governance and various other branches of government.

- 3.4 Whereas a Community Policing Forum (CPF) is jurisdictionally bound to a SAPS station / sector, the CSF goes beyond this and seeks to assist the SAPS / other governmental branches with the work it cannot deliver.
- 3.5 In terms of clause 7.1 people living within, having business, owners etcetera within the original Hartenbos qualify as member of the CSF.
- 3.6 In clause 7.3 it is stated that membership is renewable annually by way of payment of the annual subscription/ membership fee. Clause 13 deals with the annual payment of these amounts.
- 3.7 Clause 8 then deals with financial year end/ accounts etcetera.

4.

The problem it seems, if I understood the discussions with Annalie Gräbe correct, is that SAPS believes that the CSF is CPF and not entitled to charge an annual membership fee from members, and wants to take control of it.

Legal framework applicable:

5.1 Section 18 of the South African Police Service Act 68 of 1995 does not state what a policing forum is but states in the Section:

“18. Objects of community police forums and boards.—*(1) The Service shall, in order to achieve the objects contemplated in section 215 of the Constitution, liaise with the community through community police forums and area and provincial community police boards, in accordance with sections 19, 20 and 21, with a view to—*

(a)

establishing and maintaining a partnership between the community and the Service;

(b)

promoting communication between the Service and the community;

(c)

promoting co-operation between the Service and the community in fulfilling the needs of the community regarding policing;

(d)

improving the rendering of police services to the community at national, provincial, area and local levels;

(e)

improving transparency in the Service and accountability of the Service to the community; and

(f)

promoting joint problem identification and problem-solving by the Service and the community.

(2) This Chapter shall not preclude liaison by the Service with the community by means other than through community police forums and boards."

5.2 Community Policing Forums are established by the Provincial Police Commissioner (Section 19);

5.3 In terms of Section 23(2) of the Act members shall deliver their services on a voluntary basis and no remuneration shall be payable.

5.4 Regulations issued in terms of GN R384 of 11 May 2001 is salient also.

5.5 Regulation 12 reads:

“FINANCIAL PROCESS AND SYSTEM A community police forum, sub-forum or board may raise funds in order to support or perform its activities. (own emphasis)

A community police forum, sub-forum and board must manage its financial affairs in accordance with generally acceptable accounting practices applicable in the Republic and an income and expenditure statement must be presented at each general meeting of the forum, sub-forum or board.

All financial records of a community police forum:, sub-forum and board must be audited by an independent auditor on an annual basis. Community police forums, sub-forums and boards are non-profit, community-spirited bodies that perform their functions in order to achieve the objects, set out in section 18 of this Act, in the interest of the communities in respect of which they were established and membership and participation in the activities of a community police forum, sub- forum or board by any member of a community is voluntary and no member of a forum, sub-forum or board is entitled to any

remuneration on account of his or her membership or participation in the activities of such forum, sub-forum or board. 26 No. 22273 GOVERNMENT GAZETTE, 11 MAY 2001

(5) A community police forum, sub-forum or board may not establish itself as a section 21 company. A section 21 company established by a community police forum, sub-forum or board must function completely independent from such forum, sub-forum, or board.

(6) A member of the Service may not be a director of a section 21 company established by a community police forum, sub-forum, or board. (7) The financial year of a community police forum, sub-forum and board shall commence on 1 April of every year and shall end on 31 March of the next year.”

5.6 I believe however that B Razier on 13 March 2010 issued a “uniform constitution for CPF's in the Western Cape in terms of which a CPF is not entitled to charge membership fees.

6.

Discussion & opinion:

6.1 First I ponder for a second whether it can be said that the CSF is indeed a CPF.

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6.2 The present situation apparently is that the SAPS in Mossel Bay (Commander) believes that the CSF is a CPF and not entitled to claim membership fees and thus acting illegally. Also I am told that SAPS wants to “highjack” the project to bring it within the ambit of a normal CPF, in which instance the funds of the CSF would also fall within the indirect control of the SAPS Mossel Bay. I have also been informed that the local neighbourhood watch became dormant because the SAPS commander believes that they should incorporate into the local CPF.

6.3 I disagree with this contention for various reasons:

6.3.1 Section 18 CPF has as its' sole aim to promote cooperation between the community and SAPS. Nothing else.

6.3.2 At some stage (presumably acting under necessity), members of communities all over South – Africa, started grouping themselves into groups patrolling the streets at night in areas where they saw that the SAPS presence was absent or inept, and so the present day version of

a CPF was born.¹ The present day “CPF patrols” is in my view a dangerous phenomenon which more often than not includes individuals with no training and no legal knowledge, and who are ill equipped. However this situation appears to bear the stamp of approval of the SAPS, and appears to have not become common practice.

6.4 A CSF and also neighbourwatches (such as the Afriforum Buurtwag & Plaaswag models which I am a staunch supporter of), goes far beyond this as it elevates beyond the ambit of what I believe Section 18 envisages, incorporating so – called self provision of services,² which the SAPS has miserably failed at (like most other spheres of government has).

6.5 In theory every Police offices must have a CPF, which is *in essentia* nothing more than a consultative forum with the SAPS. Nothing precludes owners / residents from rather participating in a so – called buurtwag or gemeenskaps veiligheids forum, as these institutions are

¹ The individuals driving around with the notable green flashing lights on their vehicles, who more often than not appears to believe themselves to be police officers.

² Camera monitoring / PSIRA certified security guard back up etcetera.

obliged to honour the role of the SAPS and national and provincial legislation and bylaws, and should not interfere with it, but is not obliged to work with the South – African Police Service. Generally however these institutions closely work with the SAPS.

6.6 From a proper reading of the Constitution of the Hartenbos CSF I believe that whilst it could use some tweaking it clearly elevates itself beyond the ambit of a community policing forum as it seeks to have a multi disciplinary roll incorporating facets not covered by the SAPS Act, and does not merely seek to be a CPF within the ambit of the Act. Therefore, in my view the Hartenbos CSF is not a community policing forum and does not fall under the auspice of the SAPS Act, and is under no obligation to answer to the SAPS, as long as they do not contravene any laws. Nothing precludes a community from monitoring itself and if the police did its' constitutionally mandated job, Hartenbos would not need the CSF.

6.7 Now from a National legislation viewpoint there is simply no support for the contention that a CPF (Community Policing Forum) may not

charge membership fees and / or raise funds from the public. The regulations clearly stipulate otherwise.³

6.8 What the Regulations does specify is that no member of a CPF may be remunerated for their services. This is accepted, but it seems that this leads the general public to believe that it may not raise funds, which is not what the Regulations say.

6.9 I do however understand that the underlying ratio for the regulation is that members of / a section of a community may not be precluded from participating in a CPF because of economic impediments, hence the general accepted view is that a CPF does not charge membership fees. The Brazier notice of 13 March 2010 appear to be a SAPS – Western Cape circular only and is not based on any legislative background from what I could find (neither here nor in the Western Cape). It can therefore not be elevated to legislative status. To this end I am aware of various CPF's around South Africa that charges an annual/ or montly membership fee and thus I do not agree that is a statutory prohibition. Yet the areas where I have found CPF's who

³ In the sense that it may raise funds.

charge (yet a minimal) membership fee, it seems to be middle to upper class areas.

6.9 Yet I accept that whilst it is not in my view legislatively precluded, that CPF's may not charge membership fees, for a good reason, as one does not want to create the impression that member are excluded from membership by reason of financial inability.

7.

7.1 To conclude therefore I do not believe that the CSF qualifies as a CPF within the ambit of Section 18 of the SAPS Act, as its objectives goes beyond that.⁴

7.2 My understanding is that a large amount of money was collected for the acquiring of a camera system which was installed on various buldings, which now lie dormant because the SAPS has stopped the CSF from collecting membership fees and the management of the CSF cannot monitor / operate the cameras without financial backing.

⁴ Although its' objectives overlap to an extent.

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- 7.3 I was also informed that the local “buurtwag” went dormant because the SAPS wanted to force members to incorporate into the local CPF. I disagree with this, for the reasons discussed *supra*.
- 7.4 I would advise that the Hartenbos CSF registers a formal Section 21 non – profit company. This would entirely preclude SAPS from touching any funds secured, and I do not believe that the SAPS can prohibit the CSF from charging membership fees. The question is how and what the funds are used for. As long as the assets acquired remains community property and utilized for the benefit of the community, there is nothing wrong with the model in my view.
- 7.5 Also if the Hartenbos CSF formally organises itself into a neighbourhood watch structure, with equipment purchased by it, I believe that as long as they operate within the legislative prescriptions (i.e. either via a private security contractor, or structures provided and back up by an organisation such as Afriforum), that the SAPS can do nothing to stop them. The principle is the self – provision of services which the government fails to do. Obviously members buurtwag / neighbourhood

watch would need to be properly trained, and to this end I have already spoken with roleplayers at Afriforum whom I know well, who have indicated a willingness to get involved in Hartenbos, should the CSF need their assistance. I think with respect that the main concern of the SAPS is that they do not want a group of members of the public, untrained, roaming the streets and trying to police themselves, thereby causing potentially more problems than solutions.

7.5 Further it would be my advice that the SAPS be engaged in writing via an attorney to secure the following in writing from them:

7.5.1 Explain the underlying objectives of the Hartenbos CSF and also to get it in writing what the basis is upon which the SAPS are making the demands that they are, and;

7.5.2 To, should through a mediated settlement the disputes not be put to bed, that a precise outline be obtained from the SAPS, so as to minimize cost should a court have to be approached for any relief.

7.6 Should the dispute between the Hartenbos CSF and SAPS then not be settled, then one would have to consider approaching the high court for declaratory relief in the following extent:

- (i) That the Hartenbos CSF may charge membership fees from its' members, to enable it to obtain its' objectives, and;
- (ii) That it is not a Community Policing Forum within the ambit of Section 18 of the South – African Police Service Act.

7.8 I trust that the above will be of assistance. Please do not hesitate to call me should I have missed anything in your view, or if this opinion needs to be supplemented.

7.9 With the permission of Mr. Gräbe I am sharing this opinion with my colleagues at Afriforum should they want to provide any input and advice. You are also more than welcome to share this opinion with my colleague Mr. Acker, for his input, and he is welcome to contact me if he wants to discuss the opinion.

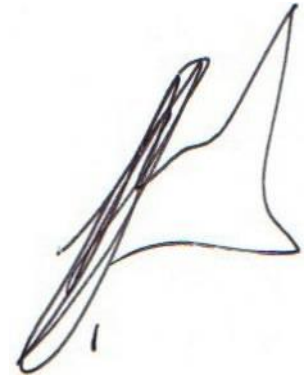
7.10 My nominal invoice is attached.

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_____(SGND)_____

Advocate Z. Francois Kriel

North Gauteng Advocates Chambers

Riviera, Pretoria

7 February 2024

(signed again after supplementation of the opinion)

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