

Help desk



Have your legal questions answered for free!

The law on local government is complex and legal advice is expensive, but subscribers to the *Bulletin* have access to a free telephonic legal advice service. To qualify for free legal advice a question should relate to the content of the *Bulletin* or to the framework legislation for local government, i.e. the Municipal Demarcation Act, Municipal Structures Act, Municipal Systems Act, Property Rates Act or Municipal Finance Management Act. The advice is not a full legal opinion. It is verbal advice, or, if necessary, a short letter of up to 500 words.

Valma Hendricks is the marketing and subscriptions manager. Please direct all questions to Valma, who will refer them to the researchers for answering.

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Q Who calls a meeting of a council when the speaker has been relieved of his/her duties?

A Generally, the rules and orders of the council should determine the procedure to be followed. However, if the rules are silent, then the following is suggested: the same procedure followed in electing the speaker at the first meeting after a council is declared elected should be followed. The first meeting after the council is declared elected is called by the municipal manager. In the absence of a municipal manager, the MEC for local government designates a person to call the meeting.

Q Can a council appoint a municipal manager on a five-year contract if the appointment is made during the term of council?

A No. S 57(6)(a) of the Municipal Systems Act says that the employment contract must be for a fixed term, up to a maximum of five years. However, the term of employment cannot exceed a period ending one year after the election of the next council. This provision thus mentions *two* criteria: the five-year maximum; and the prohibition on the term running for longer than one year after the next election.

Any appointment that allows the term of a municipal manager to run for longer than one year after a new election is therefore not allowed. Any alternative interpretation would result in the municipality being able to appoint a municipal manager shortly before the end of its term and so bind the incoming council to that municipal manager, perhaps even for the better part of his/her five-year term.

Q Must a municipality provide an employee or councillor with legal representation where court proceedings have been instituted against him/her?

A S 109A of the Systems Act provides that a municipality *may* provide legal representation to an employee or councillor if the charges relate to an act or omission committed during the course of their employment. Municipal councils must, however, develop a policy outlining the terms of such assistance.

Q Can a municipality recover unauthorised expenditure from a councillor or municipal official?

A Yes. S 176 of the MFMA says that a municipality may recover unauthorised expenditures from a political office bearer or official of the municipality, or any loss or damage suffered by it, provided that the expenditure is a result of deliberate or negligent unlawful actions by the councillor or official when performing a function of office.