

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. She can be contacted at: vhendricks@uwc.ac.za 021 959 3707



Q Can a council supply a mayor with both a vehicle *and* a vehicle allowance?

A Any allowance paid to a councillor cannot exceed the upper limits of councillors' salaries, allowances and benefits, issued in terms of the Remuneration of Public Office Bearers Act. In this respect, item 6(a)(iv) of the 2008 notice determining the upper limits of councillors' salaries, allowances and benefits (issued in terms of the Remuneration of Public Office Bearers Act) provides that full-time mayors may receive a travel allowance in addition to being entitled to the use of an official vehicle.

Q A Speaker of council receives a motion of no confidence in the mayor. As the mayor is implicated in the motion, is he/she able to vote in the council meeting where the motion will be tabled?

A There is nothing in law that prevents the mayor from casting a vote on that motion. Just as the mayor was not prevented from voting on the motion that nominated him/her for office, he/she is not prevented from voting on the motion that deals with his/her possible dismissal, unless of course, the Rules and Orders adopted by the municipality provide otherwise.

Q A council adopts a collective executive committee system. The entire council comprises 15 councillors (9 ID, 4 DA and 2 ANC councillors). The exco consists of 4 councillors (currently 3 ID and 1 ANC). Is it possible to exclude the opposition party from representation on the exco, but include other parties?

A Section 43(2) of the Municipal Structures Act provides that the composition of the exco must substantially reflect the same parties and interests as represented in the composition of the council (the proportionality requirement). Section 43(3) provides that if the council chooses any other alternate mechanism to populate the exco (other than proportionality) it must comply with section 160(8) of the Constitution. Section 160(8) of the Constitution requires, among other things, that members of the council be enabled to participate in committees (including the executive committee) *in a fair manner that is consistent with democracy*. In the current example, to compose the exco in a manner that includes certain smaller parties to the exclusion of the opposition party would be illegal and contrary to the principle of fairness required by section 160(8) of the Constitution.