

Mayoral committees and council committees

Can a section 79 committee take the place of a section 80 committee? This issue arose when an executive mayor wanted to establish a tender committee. The number of section 80 committees that could be formed (as determined by the number of mayoral committee members) had already been exhausted.

In an attempt to resolve this difficulty, it was suggested that the executive mayor approach the council to establish a section 79 committee that will deal with tenders. This would be done on the proviso that the council will delegate its powers in respect of that committee to the executive mayor.

Can this be done? In our opinion, there must be a clear distinction drawn between committees accountable to the executive mayor or mayoral committee and those accountable to the municipal council. The two committees serve two different purposes and they are accountable to two different entities. The intention of the Act would be defeated and good governance may be jeopardised if a section 79 committee were to assume the role of a section 80 committee.

Recall of district councillors

Can a local council recall a representative to the district council? What is the procedure for the recall and the election of the new representative? In terms of section 27(e) of the Struc-

tures Act, a district councillor loses his or her district council membership when he or she is 'replaced' by the local council.

It appears that the local council can, by resolution, recall a district representative. There is no specific procedure that needs to be followed and no reasons need to be given.

The next question is: how must the vacancy be filled? Item 23, read with item 11 of Schedule 2 to the Act provides that the chief electoral officer (represented by the municipal electoral officer) must declare the 'next in line' on the candidates' list (the list where the recalled councillor was elected from by the local council to the district council, see *LGL Bulletin* 2000(3) p 6) to be elected in the vacancy.

Two-thirds for a budget in terms of the LGTA?

Section 10G of the Local Government Transition Act (LGTA) was preserved in the Structures Amendment Act 33 of 2000. Subsection 10G(3)(a) provides that the budget of a council must be passed by a two-thirds majority.

Did the preservation of this section impact on the constitutional requirement that the budget must be passed by a majority of council members? The Constitution has the last say on this matter and, despite the provisions of 10G, a budget must be passed by a majority of councillors (see *LGL Bulletin* 1999(1) p. 15). The retention of the two-thirds requirement can be ascribed to a mere oversight on the part

of the drafters at the time. It became unconstitutional when the constitutional transitional arrangements were lifted.

Status of grading

The issue of the grading of municipalities for purposes of the determination staff salary structures is still plaguing municipalities.

There is no legislation that allows for the grading of municipalities.

The determination of salary scales is now an internal municipal matter and must be determined internally between local stakeholders. There are, however, moves afoot to provide national guidelines on levels of remuneration.

Full time/part time councillors: Who decides?

Is the MEC for local government in a province compelled to designate as full-time councillors those office-bearers identified by the Minister in the policy framework (see *LGL Bulletin* 2000(2) p 2)? The MEC may designate councillors as full-time but he or she must do so in accordance with the Minister's policy framework. The policy framework of the Minister designated the range of office bearers that *may* be full-time. The MEC then had the discretion as to which of those he or she may want to designate as full time. Importantly, the MEC could not add to the range of office bearers but he or she could choose some or all to be full time.