

Legal Briefs

WHEN DOES A COUNCILLOR VACATE OFFICE MID-TERM?

A councillor vacates office if he or she resigns in writing from the council, is removed from office by the MEC for local government as a consequence of breaching the Code of Conduct, or when he or she holds any of these positions that are incompatible with council membership:

- (a) paid municipal staff members (the MEC can exempt part-time councillors from this disqualification);
- (b) paid provincial or national government staff members who have been disqualified in terms of national legislation;
- (c) members of the National Assembly, National Council of Provinces or any of the provincial legislatures;
- (d) members of another municipal council (this does not apply to representatives of a local municipality on a district council).

Furthermore, anyone who is disqualified from voting for the National Assembly cannot be a councillor nor can any unrehabilitated insolvent or a person declared to be of unsound mind. The same applies to persons convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine.

In addition to these disqualifications, a PR councillor vacates office if he or she ceases to be a member of his or her political party. The same applies to ward councillors; party-aligned ward councillors vacate office if they lose party membership and independent ward councillors vacate office if they become members of a political party. The above does not apply if the requirements for 'crossing the floor' are adhered to. A councillor cannot be forced into vacating his/her office for any other reason. For example, councillors who have been suspended (not expelled) from their political parties do not lose their council membership.

Practitioner's Helpdesk

Have your legal questions answered for free!

The law on local government is complex and legal advice is expensive. This is why the Local Government Project has launched an exciting new feature of the *Local Government Bulletin*: subscribers to the *Bulletin* will have access to a free telephonic legal advice service.

Project researchers will be on hand to answer legal questions. For a question to qualify for free legal advice, it should relate to the content of the *Local Government 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.

The issues addressed through the Practitioner's Helpdesk that may benefit other readers will inform the writing of a regular Legal Briefs section in the *Bulletin* (see above).

Please note that the Practitioner's Helpdesk is available only to paid-up subscribers or councillors and officials whose municipalities are paid-up subscribers. To have your questions answered, please contact Valma Hendricks at vhendricks@uwc.ac.za or call 021 959 3707.

We trust that this Helpdesk will be of use to councillors, officials and other local government stakeholders in their day-to-day work.

021 959 3707

