

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 Must a municipal council still give notice to the public when it convenes a special council meeting?

A Municipal councils sometimes have to convene special council meetings and the public is entitled to be notified of when and where they will take place. Municipalities must thus adopt policies on notification procedures to alert the public. It is only 'when time constraints make it impossible' that a municipality can forgo notice to the public (Section 19 Municipal Systems Act). Decisions taken

by a council meeting for which no prior notice was given are legal decisions until they are set aside by a court. Constitutional Court decisions in *Matatiele* and *Doctors for Life* have even set aside Acts of Parliament for non-compliance with community participation requirements, which includes advanced notification of meetings as well as meaningful opportunity to participate in them.

Q Can an office bearer who sues the municipality recover the costs of litigation from the municipal budget in terms of section 29 of the MFMA?

A Section 29 of the MFMA deals with expenditure on behalf of the municipality that was not foreseen in the budget. In other words, it should relate to an expense that a municipality could *reasonably* be expected to incur. Making provision for an amount for office bearers to sue the council can never form part of a budget. It is not an expenditure on behalf of the municipality. Therefore, section 29 of the MFMA cannot be invoked.

Q Does a municipal manager (MM) have the power to indefinitely postpone bid committee meetings without giving reasons?

A Section 115 of the MFMA states that the MM is responsible for implementing the municipality's supply chain management policy. The MM must also take all reasonable steps to ensure that proper mechanisms and systems are in place in the supply chain management system to minimise fraud and corruption and unfair and irregular practices. However, the MM does not have unlimited discretion and must account for his/her decisions and actions. Section 61(1)(b) of the MFMA provides that the MM must 'disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor'. Regulation 6 of the Municipal Supply Chain Management Regulations provides that 'whenever there are serious and material problems in the implementation of the supply chain management policy, [the municipal manager must] immediately submit a report to the council of the municipality'. The MM therefore has a duty to give reasons for his/her decisions.