

## WHAT HAPPENS IF A POLITICAL PARTY DISSOLVES?

What is the position of a councillor who participated in the 5 December 2000 elections on a 'party ticket' if that party no longer exists?

If a party dissolves, all its councillors would, in terms of the terminology used in section 27 of the Municipal Structures Act (hereafter 'the Act'), 'lose their membership' (see below). Section 27(c) of the Act provides that if a councillor who was elected from a party list is no longer a member of that party, he or she vacates his or her office.

Normally, the 'next in line' on the party list will then be declared elected by the IEC after the party has been given 21 days to supplement or change its list (item 18(1), Schedule 1 of the Act).

Section 27(f) provides that if a councillor was nominated by a political party as a ward candidate and ceases to be a member of that party, he or she also vacates his or her office and a by-election must be held in the ward within 90 days. In sum, both a ward and a proportionally elected (PR) councillor who were elected on a 'party ticket' automatically lose their seats if their party dissolves.

Elections would have to be held for all wards held by the party. Item 17(3)(a)(i) of Schedule 1 to the Structures Act provides that PR vacancies remain unfilled if the party ceases to exist. However, item 17(3)(b) says that, if this results in the council not being able to get a quorum, the seats of the dissolved party are allocated to the other parties in the council.

## WHAT HAPPENS IF A COUNCILLOR LEAVES THE PARTY?

Another interesting scenario arises when a councillor decides to leave a party. If it concerns a ward councillor, he or she loses the seat and a by-election must be

held (s 27(f) of the Act). The (ex)councillor can participate in the by-election, together with any other eligible candidates, under any party banner or as an independent candidate.

If it concerns a PR councillor, he or she also loses the seat and the IEC must fill the vacancy from the party list of the party that he or she is leaving (item 18(1) Schedule 1 of the Act). It is this scenario that the current amendments to the Act attempt to address.

## WHEN DOES A VACANCY OCCUR?

This matter is dealt with in section 27 of the Municipal Structures Act. A vacancy arises if one of the following happens:

- a councillor passes away;
- a councillor resigns from the council;
- a councillor is no longer qualified in terms of section 21 to be a councillor;
- a councillor is expelled from the council after transgressing the Code of Conduct (for example, see p. 15);
- in the case of a district council, a local representative is no longer a member of the local council;
- in the case of a district council, a local representative is replaced by his or her local council (see *LGL Bulletin* 2001(2) p. 9);
- a PR councillor joins another party;
- an independent ward councillor joins a party;
- a party-aligned ward councillor joins another party; or
- a party-aligned ward councillor or PR councillor loses party membership for another reason.

The last four reasons are subject to impending amendments to the Structures Act and the Constitution.

## HOW WILL THE VACANCY BE FILLED?

The responsibilities of the municipal manager, the municipal electoral

officer (MEO) and the Independent Electoral Commission (IEC) when a vacancy arises in the council are as follows:

In the case of a ward vacancy, the municipal manager (not the MEO) must, within 14 days, set a date for a by-election, after consulting the IEC (not the MEO). The date must be publicised in a local newspaper. If the date is not set in time, the MEC for local government sets the date after consulting the IEC (s 25(3) of the Municipal Structures Act) and publicises it in the *Provincial Gazette*. The by-election must be held within 90 days after the vacancy occurred.

After the date has been set the IEC administers the rest of the process, including voting stations, registration, nomination of candidates, voter education, logistics and the by-election itself. The MEO, who acts as an agent for the IEC, compiles and submits a budget to the IEC and administers preparations for the by-election on behalf of the IEC. As an agent for the IEC, the MEO acts under its instructions and authority and derives none of these duties from his or her position as a municipal official and thus receives no instructions from the council or municipal management.

In the case of a PR vacancy, the municipal manager must declare the vacancy to the IEC head office in Pretoria. From that declaration the process is administered by the IEC. The IEC keeps the register of political parties and party lists and will allow the affected party 21 days to change its list (item 18 and 20 of Schedule 1 and item 11 and 13 of Schedule 2).

After that, the IEC will declare the person at the top of the (amended) party list elected as councillor. The MEO does not have any responsibilities in this scenario.