

# Practitioners' 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 is launching 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 Practitioners' Helpdesk that may benefit other readers will inform the

writing of a regular Legal Briefs section in the *Bulletin* (see below).

Please note that the Practitioners' Helpdesk is available only to paid-up subscribers or to councillors and officials whose municipalities are paid-up subscribers. To have your questions answered, please contact Valma Hendricks at [vhendricks@uwc.ac.za](mailto: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



## Legal Briefs

***DOES ITEM 12 OF THE CODE OF CONDUCT FOR COUNCILLORS (SCHEDULE 1 MUNICIPAL SYSTEMS ACT 32 OF 2000) PREVENT COUNCILLORS FROM ACQUIRING MUNICIPAL PROPERTY?***

Item 12 provides that a councillor may not use, take, acquire or benefit from any property or asset owned, control or managed by the municipality to which that councillor has no right. Item 12 should not be interpreted to mean that a councillor can never acquire property from the municipality. What it says is that a councillor is barred from acquiring property if he or she *has no right to it*.

If the acquisition of property by the councillor is effected through the normal proceedings that the municipality is required to apply in these instances, the councillor obtains a right to acquire the property (as any other resident of the municipality would) and therefore does not fall foul of the

Code of Conduct. Needless to say, all systems and procedures for the disposal of capital assets need to be followed. Importantly, these systems and procedures must be applied and discussed on the merits and the fact that a councillor is involved should never be allowed to positively influence the outcome of the decision.

In addition, the municipality is under obligation to ensure that any conflicts of interest and the appearance of conflicts of interest are avoided. The councillor in question should not be part of any discussion or decision making on the issue. This would apply to any discussion in any committee or council meeting.

The councillor should disclose in full to the municipal council or to any committee of which he or she is a member, the details of any interest he or she may have in a matter before council or that committee. Municipalities should ensure a proper and full written record of this disclosure for future reference.