

UNIVERSITY OF THE WESTERN CAPE

LL M IN LOCAL GOVERNMENT

LOCAL GOVERNMENT LAW

2010

Essay 2

Due date: 25 March 2010 (during lecture)

Length: 3000 words

The essay must be typed and presented in the proper format. Submit two hard copies. Indicate the word count on the front cover. Select one of the following topics:

1. Staff matters

The Municipal Manager of Downtown municipality is asking advice on two matters.

Firstly, in her municipality, the Council has adopted a 'monitoring scheme'. Whenever job interviews take place for posts anywhere in the municipal administration, a councillor is assigned by the Speaker to the interview panel with a view to 'monitor' the proceedings. In other words, a councillor sits in as an observer and monitors the job interview taking place. The Municipal Manager experiences this as interference in her running of the administration. The councillors insist on this scheme as they consider it part of their 'oversight' role. They argue that the mandate of the councillor is very clear: he or she is not permitted to speak during the interview and has no voting powers in the interview panel.

Secondly, the Municipal Council wants a quarterly update from the Municipal Manager on what type of disciplinary action has been taken against staff in the municipal administration. They insist on a detailed outline of all disciplinary procedures launched, the names and positions of the relevant staff members, outcomes of the investigation, sanctions imposed, full reports etc. The Municipal Manager, on the other hand, wants to just furnish a broad overview. This overview contains no names of staff members, but a list of initiated and completed proceedings, the alleged transgression and the outcome. She argues that, if the council wants more information, it will receive it upon request but she is not prepared to prepare elaborate briefs on every disciplinary matter.

Advise the Municipal Manager on the legal position with regards to both issues.

2. A shortsighted council

Downtown Municipality has a council of 59 councillors. It has a Speaker, a Council Whip, an Executive Mayor and a 10 member Mayoral Committee. The Municipality has established 10 committees (in terms of section 80 of the Municipal Structures Act).

The members of the Council have complained to the Speaker that they are not able to exercise oversight over the Executive Mayor and his Mayoral Committee. They feel

that they do not have sufficient access to the information discussed at Mayoral Committee level and that they are always “one step behind the executive and the administration”.

The Municipal Manager has been tasked by the Council to investigate ways in which the council could be restructured so as to enable stronger oversight of the council over the executive and the administration. The Council wants the Municipal Manager to “look at all options that are within the Council’s authority”. In addition, the Council wants the Municipal Manager to make an inventory of instruments that could be used by the Council to hold the executive to account.

The Municipal Manager asks you for advice. Please render an opinion, with reference to law and caselaw, where relevant.

3. Bollywood

The community of Bollywood lives within the jurisdiction of the Uptown municipality. The residents come from all walks of life as Bollywood is one of the oldest established townships in the province. Certain residents live within the informal settlement on the outskirts of Bollywood. The conditions in the informal settlement are similar to those found in informal settlements across South Africa. Many of the residents are unemployed and continue to live in abject poverty. In addition, almost every household is impacted by HIV/Aids.

The other residents of Bollywood live within the RDP housing complex closer to the urban hub. Also, because Bollywood is such a bustling community, many businesses have moved into the centre of Bollywood. The result, is that there are areas within Bollywood that could arguably be classified as affluent.

Despite the local economic development taking place, the Uptown municipality continually battles to recover charges for its service provision. It is of the opinion that the culture of non-payment for services is deeply entrenched in the community, as defaulters are not limited to the residents of the informal settlement.

The municipality therefore finds itself in a deplorable financial situation. Added to this burden is the problem of inadequate infrastructure. In particular, water leakages and faulty water meters means that the municipality must bear the financial burden for wasted water. The municipality is therefore considering a number of strategies to enable it to provide sustainable services in a cost-efficient manner.

The municipality is considering:

1. Disconnecting services as a result of non-payment; and
2. Instilling pre-paid water meters.

The municipality is however uncertain of how to pursue these strategies within a legal framework. Of concern to the municipality is the public participation requirements set out in the Municipal Systems Act. Also, the Constitutional Court has handed down key judgments pertaining to both public participation and socio-economic rights.

The municipality approaches you to draft a legal opinion detailing:

1. The rights and duties of the municipality *and* the community in this scenario;
2. The public participation mechanisms that should be pursued; and
3. A description of the manner in which the municipality should pursue the two strategies (i.e. disconnection and pre-paid meters) so that it fits within the “reasonableness” standard set by the Constitutional Court.

4. Disposing of the waste disposal service

Downtown Municipality’s Annual Report indicates that its waste disposal service is not functioning well and suggests that the municipality examines alternative service delivery options. Therefore, Downtown is considering entering into a partnership with Waste Solutions Inc., reputable service provider in the field of waste disposal. In terms of the envisaged partnership, Waste Solutions Inc. would manage the municipality’s waste disposal site, collect refuse from municipal residents and engage in a waste reduction campaign among residents. The municipality would determine the refuse removal tariffs and Waste Solutions would be responsible for collecting the revenue. The Municipal Manager is very enthusiastic about this idea. She asks you for advice, outlining broadly the procedures to be followed and the requirements imposed by law on such partnerships.