

CONTINUED MEETINGS OF THE EXECUTIVE COMMITTEE / MAYORAL COMMITTEE / COUNCIL DURING THE ELECTION PERIOD AND THE EXTENT OF DELEGATION OF POWERS TO HEADS OF ADMINISTRATION DURING THE TRANSITION

Section 26 of the Local Government: Municipal Structures Act, 1998 provides as follows:

26 Term of office of councillors

- (1) *A person-*

 - (a) *is elected as a member of a municipal council for a period ending when the next council is declared elected; or*
 - (b) *is appointed as a representative of a local council to a district council for a period ending when the next local council is declared elected.*

- (2) *A person assumes office as a councillor when declared elected or when appointed, as the case may be.*

From the aforesaid, the terms of office of individual councillors will only commence once such a councillor is declared elected. Current office bearers will retain their positions until the results for the 2016 election are declared, despite the fact that their 5 year terms has terminated. This means that the council and all its political structures can proceed with their day to day functions until the election results for the 2016 election is declared. In practise, however, the office bearers normally proceed with their functions until the election day, being 3 August 2016.

Section 64 of the Local Government: Municipal Electoral Act, 2000 addresses the determination and declaration of the results of the election, and provides as follows:

64 Determination and declaration of result of election

- (1) *On receipt of all the results of the count in respect of all ballots conducted at the voting stations within the municipality, the Commission must-*
 - (a) *determine the result of the election in the municipality;*
 - (b) *record the result on a prescribed form; and*
 - (c) *declare the result in public.*
- (2) *If the Commission is unable to determine and declare the result of an election within the seven-day period required by section 5 of the Electoral*

Commission Act, the Commission may, within that period, apply to the Electoral Court for an extension of the period and must furnish the Electoral Court with good reason for doing so.

- (3) *Despite the provisions of any law, the Electoral Court may, on good cause shown, grant or refuse an application referred to in subsection (2).*

From the aforesaid it is clear that the IEC not only declares individual councillors elected, but also declares the results of the whole municipal election and therefore, the council elected as contemplated in section 24 of the Local Government: Municipal Structures Act, 1998.

The councillors and council are declared elected is when the results are recorded in the prescribed form and declared in public.

Until the declaration of the results the current council structures remain in place and it is recommended that all Council, Mayoral/ Executive Committee meetings and meetings of other political structures continues to ensure that service delivery to communities are not impacted on during the run up to the local government elections.

The first Council meeting of the newly elected council must take place within 14 dates from the date of the declaration of the results of the election, as alluded to above. In terms of the election date of 3 August 2016 it is anticipated that the first council meeting for metropolitan and local municipalities will take place towards the end of August 2016. During the first council meeting, the Speaker, Executive Mayor, Executive Committee and Mayor, Whip of the Council, Chairpersons of the MPAC and other section 79 Committees and, in the case of a local municipality, its representatives to the district municipality are elected. District municipalities should meet within 14 days after the representatives from the local municipalities have been appointed and the meetings are anticipated to take place in the first half of September 2016.

Municipalities must strive to activate the said structures as soon as possible after the declaration of the results and the election of the office bearers to ensure that executive decision can be taken and to ensure that there is no interruption in the delivery of services.

As far as the delegation of functions to the administration is concerned, all delegations and functions of the administrative structures and management of the municipality remain in place during the election period. The system of delegations of each municipality will have to be reviewed by the newly elected council, within one year from taking office, but until this had been done, the delegations remain in place. All administrative actions allowed in terms of legislation and the municipality's system of delegations continues during the transition period, such as the implementation of the Supply Chain Management Policy and process.

Municipal Managers will incur additional functions, such as the arranging of the first council meeting, but a separate guideline on the role of the Municipal Manager

during then transitional period will be developed and made available to Municipal Managers.

In the event where the employment contracts of staff members are linked directly to that of outgoing councillors and office bearers, such contracts will be terminated from the date on which the results of the election is declared. Affected staff will have to be informed of this fact, and contingency arrangements will have to be put in place in this regard. However, this is a general rule and each case will be required to be judged on the specific contract of employment.