

FUNDING OF POLITICAL ACTIVITIES RELATED TO THE 2016 LOCAL GOVERNMENT ELECTION BY MUNICIPALITIES

The Constitution of the Republic of South Africa, 1996, only addresses the funding of political parties on national and provincial level. Section 236 of the Constitution deals with the funding of political parties and provides as follows:

To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.

The Constitution does not provide for the public funding of political parties represented in local government. In the context of South Africa, all the major parties that are represented in the national and provincial legislatures i.e. the African National Congress (ANC), the Democratic Alliance (DA), Economic Freedom Fighters (EFF) and the Congress of the People (COPE), among others would be entitled to funding from public funds. But there are other smaller parties sponsored by residents and ratepayers associations which are represented in local government only and, therefore, do not qualify for public funding in terms of section 236 of the Constitution.

It is thus clear that there is no legislative provision allowing for the funding of any political party at local government level, including funding, in payment or in kind, by the municipality to any political party contesting the local government election.

The above sentiment was confirmed by National Treasury in a circular to municipalities issued prior to the 2011 local government election which stated the following:

National Treasury hereby advises that:

1. The use of municipal funds to make donations or any other form of contribution to political parties will constitute irregular, as well as fruitless and wasteful expenditure, in terms of the MFMA, and therefore must not be incurred.
2. Municipalities that use municipal funds for any functions or purposes related to the local government elections will be acting outside their legal mandate, and consequently such expenditures will constitute irregular, as well as

fruitless and wasteful expenditure, in terms of the MFMA, and therefore must not be incurred.

Any official who instructs either of these categories of expenditures to proceed or approves such expenditure will be liable for the expenditure in terms of section 32 of the Local Government Municipal Finance Management Act, 2003 (MFMA) and may be charged for financial misconduct in terms of the provisions of the MFMA and the Financial Misconduct regulations issued in terms of the MFMA.

The Public Protector in a report, being Report No: 12 of 2008/9 dated 4 August 2008 made the following determinations:

- Neither the Constitution nor the Municipal Finance Management Act permits a municipality to donate public funds to political parties for any purpose. Such expenditure therefore cannot be covered under any vote in the budget of a municipality;
- Unforeseen and unavoidable expenditure, as contemplated by section 29 of the Municipal Finance Management Act, relates to expenditure in connection with the constitutional objectives of the municipality. It cannot justify financial assistance provided to a particular political party in the form of a donation for the establishment of a political structure.
- Such a donation would therefore constitute irregular expenditure.

Municipalities are, therefore, urged not to make any funding, in payment or in kind, available to any political party or any party representative leading up to the local government elections to be held on 3 August 2016.