



## local government & housing

Department of  
Local Government and Housing  
FREE STATE PROVINCE

Presentation to Select Committee on Local  
Government and Administration National  
Council of Province on the intervention in  
the Mohokare Local Municipality in terms  
of Section 139

Presented By MEC:MJ Mafereka  
24 June 2008



# **INTERVENTION IN TERMS OF SECTION 139(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT NO. 108 OF 1996):**

**MOHOKARE LOCAL MUNICIPALITY**



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## Background

A special council meeting with the council of Mohokare was held on 10 March 2008 to discuss:-

- (a) challenges emanating from the contents of a report by a task team to investigate the financial administration,
- (b) challenges experienced by the municipality, as well as
- (c) the contents of the Management Letter by the Auditor-General dated 31 January 2008.

At the meeting it became evident:-

- 1 That the council cannot meet to attend to current municipal financial and other administrative challenges experienced at the municipality;
- 2 That the council is failing to execute an executive obligation due to the failure to meet and resolve matters, and



## Background (Cont.)

- 3 That urgent intervention by the Provincial Executive to intervene in terms of section 139(1)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) to assume responsibility for the relevant obligations in Mohokare to the extent necessary to maintain essential national standards and meet established minimum standards for the rendering of services was necessary .

## Discussion

The council failed to hold any ordinary council meeting during the last quarter of 2007 and various special council meetings convened since December 2007 to February 2008 could not take place due to a split in the council and the postponement of these special meetings by the Mayor/Speaker to prevent her removal as Mayor/Speaker by the council from office. Due to the failure of council to meet, the council could not attend to and resolve the following issues:-

### 1 **Institutional Arrangement:-**

The filling of vacancies of Municipal Manager, Manager Community Services, Manager Technical Services and Chief Financial Officer.

### 2 **Political Impact on the administration:-**

The political tension in the council that has a serious impact on the administration.





## Discussion (Cont.)

### 3 Financial Viability:-

#### **Cash Focus Payment System:-**

The Cash Focus that constitutes a major risk, and the suspension of payments on the system pending:

- The proper cleansing of all creditor data on the system,
- The filling of the necessary vacancies to effect proper segregation of responsibilities and proper system supervision, and
- The resetting of all pass words and revocation of the pass words of previous users as well as the proper re-authorising and re-set of pass words.

### 4 Segregation of duties & effective internal control after the suspension of key staff:-

The current staff situation (critical vacancies) and the fact that key personnel have been suspended that makes the proper segregation of duties and effective internal control virtually impossible.



## Discussion (Cont.)

### 5 **Bank Accounts:-**

The immediate termination of withdrawal of funds from secondary bank accounts per cheque and arrangements for electronic transfers between banks.

### 6 **Overall financial position:-**

- (a) The re-opening of a call account for project related funds, and that the balance of R 2 373 180.71 at hand be invested as such and in future project costs be defrayed against this, and
- (b) The update of Income and expenditure cash books without any further delay and the immediate reconciliation of various bank accounts.





## Discussion (Cont.)

### 7 **Creditor position:-**

The performance of a creditor reconciliation exercise as a matter of urgency, along with the updating of the expenditure cash book and the bank reconciliations, and a search to be undertaken for all stale cheques, which need to be written back.

### 8 **Misappropriation of Project Funds:-**

- The undertaking of an exercise to reconcile all project funds received and appropriated and to determine Council's loss on the respective projects.
- The opening of Project registers for each individual project and the updating thereof with current available information and the future updating thereof.
- The re-opening of a call account for project related funds, and that the balance of R 2 373 180.71 at hand be invested as such and in future project costs be defrayed against this.
- The inclusion of misappropriated project funds in an extended scope for the current Forensic Investigation.



## Discussion (Cont.)

### 9 **Expenditure Control Committee:-**

The prompt establishment of an expenditure control committee under auspices of the Acting Municipal Manager and remaining officials acting in senior positions. This committee must meet on a weekly basis to consider and pre- authorise only the basic, necessary expenditure within the framework of the overall liquidity position.

### 10 **Financial Recovery:-**

- (a) The conduct of a full prognosis at the Mohokare Local municipality by the Department and the Free State Provincial Treasury taking in to account, the findings of the Mohokare Forensic Investigation, previous Reports of the Auditor - General and current prevalent realities.
- (b) The compilation of a problem statement/Situational Analysis Report on the basis of such an exercise.
- (c) The consultation of the National Treasury's Financial Recovery Service on the formulation and implementation of a Financial Recovery Plan on the findings of the Situational Analysis Report.



## Resolution by Executive Committee

The Free State Executive Committee in terms of Cabinet Minute 8.6 of 14 May 2008 resolved to intervene in terms of Section 139(1)(b) of the Constitution at the local municipality of Mohokare by assuming the following functions to ensure that the established minimum standards of service rendering in respect of these services are met, to prevent the council from taking unreasonable action by failing to have council meetings and taking resolutions on all municipal matters, and to maintain economic unity by passing the budget and facilitating the integrated development plan:-

- (a) The full administration of the municipality inclusive of staff, financial and technical functions, and
- (b) The functions of the council to take decisions on Items 1 to 10 inclusive as listed above until such time as the Provincial Executive is satisfied that both the council and the municipal administration is in a position to resume their respective functions.





## Resolution by Executive Committee (Cont.)

The Free State Executive Committee further resolved that:-

- (i) This intervention will not impede on the council's obligation to pass legislation, approval of a budget, the imposition of rates and other taxes, and the raising of loans.
- (ii) That the Head of the Department of Local Government and Housing on behalf of the Provincial Executive Council appoints a person or persons to manage these functions on behalf of the Provincial Executive Council.
- (iii) That this person(s) together with the council within 30 days of invoking of the stipulations of section 139(1)(b) of the Constitution, arrange a council meeting to deal with the approval of the budget and the facilitation of the IDP of the municipality and compile and implement a complete recovery plan and service delivery plan at the local municipality of Mohokare.



## Resolution by Executive Committee (Cont.)

- (iv) That the municipal manager must fully co-operate with this person(s) and must render all reasonable assistance and resources to him/her/them in the carrying out of their functions.
- (v) That the full council and this person meet at least once a month to discuss and resolve matters of mutual interest.
- (vi) That councillors remain competent to carry out its legislative functions.
- (vii) That this person and councillors must carry out their respective duties in a co-operative manner. However, in the event of a dispute between the parties, such dispute must be resolved by mediation by a representative of SALGA Free State. Should the matter remain unresolved after mediation, it must be decided by the MEC for Local Government and Housing of the Free State Provincial Government



## Resolution by Executive Committee (Cont.)

- (viii) That this person must make a full written report on activities to the Council and the Executive Council on the readiness of the council to resume it's functions at least once per month.
- (ix) That this intervention will end as soon as the Executive Council is satisfied that the council is ready and able to perform these duties, obligations and functions.





## Notice of the Intervention

The Minister for Local and Provincial Government as well as the NCOP were duly notified of this intervention.

The Minister of Local and Provincial Government on 20 June 2008 replied as follows: -

Reference: 3/4/2/2

Mr M J Mafereka

MEC for Local Government and Housing

PO BOX 211

BLOEMFONTEIN

9300

Dear Colleague

PROVINCIAL SUPERVISION OF LOCAL GOVERNMENT: INTERVENTION BY THE FREE STATE PROVINCIAL EXECUTIVE COUNCIL INTO THE AFFAIRS OF THE MOHOKARE LOCAL MUNICIPALITY IN TERMS OF SECTION 139(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

Your letter dated 20 May 2008, relating to the: above matter, refers.



## Notice of the Intervention

I have taken note of the Provincial Executive Council's resolution of the 14th of May 2008, relating to the Mohokare Local Municipality. I have also noted that the intervention was approved in terms of section 139(1)(b) of the Constitution, and also that the directive contemplated in section 139(1)(a) of the Constitution has not been issued in this instance.

I have, however, resolved that approval of the intervention be granted in terms of section 139(2) of the Constitution. The approval being given is subject to the following conditions:-

- (a) that the intervention must end immediately after the Provincial Executive Council has satisfied itself that the municipality will be able to administer its own affairs;
- (b) that the intervention is limited only to the executive obligations identified in your letter of the 20th of May 2008, and excludes all the functions referred to in section 160(2) of the Constitution;
- (c) that the MEC regularly informs the Minister about progress made by the Provincial Executive Council regarding the implementation of the intervention; and
- (d) that the MEC initiates criminal investigations relating to possible corruption and the misappropriation of municipal funds, based on the reports of the Auditor-General referred to in your letter.

Kind regards

**F S MUFAMADI**

**MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT**

**DATE: 20 June 2008**



Thank you