



cogta

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BUSINESS UNIT: MUNICIPAL GOVERNANCE AND ADMINISTRATION

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The Speaker

Abaqulusi Local Municipality

P. O. Box 57

Vryheid

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Dear Cllr. M. B. Khumalo

WRITTEN NOTICE: INTERVENTION IN TERMS OF SECTION 139(1)(b) OF THE CONSTITUTION, 1996 AT ABAQULUSI LOCAL MUNICIPALITY

You are hereby notified that on 21 February 2019, the KwaZulu-Natal Provincial Executive Council ("Executive Council"), resolved to intervene in terms of section 139(1)(b) of the Constitution at Abaqulusi Local Municipality.

1. Reasons for intervention:-

- 1.1. The holding of an illegal meeting on 22 January 2019 and the subsequent failure by the Speaker and Council to remedy the situation despite advise from Cogta;
- 1.2. The implementation of illegal decisions taken at the above unlawful meeting and the risk of exposure to serious financial and governance obligations as a result thereof;

- 1.3. The apparent failure by the Abaqulusi Municipal Council to observe the rule of law as prescribed and in compliance with Item 2A of Schedule 1 of the Local Government: Municipal Systems Act No. 32 of 2000;
- 1.4. The failure by the municipality to implement its Tariff Policy as required in section 74 of the Municipal Systems Act;
- 1.5. The failure by the Abaqulusi council to exercise oversight on management with particular reference revenue collection and management of grants;
- 1.6. The continued insistence by the municipality to act beyond the scope of powers assigned to it by the legislative framework by performing and incurring costs for the water function, without a written agreement with the Water Services Authority being Zululand District Municipality;
- 1.7. The provision of security services to certain members of the Council and the administration without threat and risks assessment reports as prescribed;
- 1.8. The failure to take reasonable steps to prevent unauthorized expenditure of R108.46 million and irregular expenditure of R41.86 million in accordance with section 62 (1) (d) of the MFMA;
- 1.9. The failure by the Council to investigate the unauthorized, irregular and fruitless and wasteful expenditure in accordance with section 32 (2) (a) and (b) of the MFMA;
- 1.10. The failure by the municipal council to investigate the appointment of the Director Community Services and to lodge a criminal complaint with the SAPS in that regard; and
- 1.11. The failure by the municipal council to investigate nepotism allegations against the Speaker of Council as prescribed.

2. Legal Matters

An intervention in terms of Sec 139(1)(b) of the Constitution is applicable with immediate effect. The intervention must however end if it is not approved by the Minister responsible for Local Government within 28 days and the National Council of Provinces has not approved it within 180 days.

3. Resolutions of the Provincial Executive Council

Based on the abovementioned reasons, the Provincial Executive Council resolved to –

1. Intervene at Abaqulusi Local Municipality in terms of section 139(1)(b) of the Constitution, 1996 by assuming the functions specified in sections 51, 66 and 67 of the Local Government Municipal Systems Act; and
2. Authorize the MEC for CoGTA to appoint a representative or representatives to be based at the municipality who will prepare and, together with the Provincial Treasury, implement the Recovery Plan Incorporating the following terms of reference on behalf of the Executive Council:
 - a) ensuring the implementation of financial systems, policies and procedures including preparation and implementation of cost cutting measures
 - b) to be a compulsory signatory on the municipality's primary bank account and any other bank accounts that the municipality may operate;
 - c) establishment and acting as chairperson of the Interim Finance Committee (IFC) to monitor and manage the cash flow of the municipality, approve or dis-approve purchase requisitions and to ensure that the municipality's cash position is not overdrawn;
 - d) ensure that the IFC meets regularly and reports fortnightly to the Executive Committee of Council on the cash flow position, payments approved and disapproved and commitments made (via approved purchase orders);
 - e) implement governance systems and procedures including oversight over the administration including ratification of decisions taken by the Municipal Council, the Executive Committee, Committees, Municipal Manager and Section 56 Managers in terms of delegated or original authority;
 - f) ensuring the implementation of findings arising from any investigations into fraud or maladministration or corruption;
 - g) ensuring implementation of remedial action plans dealing with negative findings from the Auditor General;

- h) ensuring the implementation of all projects undertaken by the municipality including unblocking projects that have stalled, within the means of the municipality;
- i) Open and conclude negotiations with creditors of the municipality including Eskom with a view to ensuring that the payment of creditors does not negatively impair the cash position of the municipality; and
- j) Open and conclude negotiations with the Zululand District Municipality in respect of its legal obligations in relation to water provision at Abaqulusi Municipality including the normalization of agreements between the two municipalities within the framework of applicable legislation.

The MEC's Office kindly requests a slot in the Agenda of your next council meeting in order to introduce the intervention as well as the appointed Ministerial Representative. Accordingly, the municipal council is called upon to cooperate with the Ministerial Representative in order to remedy the situation at the Abaqulusi Local municipality as speedily as possible.

Yours in service delivery,



MS. N. DUBE-NCUBE, MPL

KWAZULU-NATAL MEC FOR CO-OPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 21/02/2019