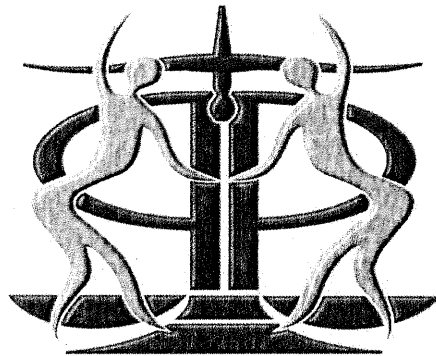


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION  
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH  
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR  
ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO. 1 OF 2009/2010**

**REPORT ON AN INVESTIGATION INTO THE ALLEGED FAILURE BY THE  
NORTH WEST DEPARTMENT OF TRANSPORT, ROADS AND COMMUNITY  
SAFETY TO PAY FOR THE TRANSPORTATION OF LEARNERS TO THE  
CALVYN PRIMARY SCHOOL IN SCHWEIZER-RENEKE**

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## Executive summary

- (i) The Office of the Public Protector (OPP) conducted an own initiative investigation into an allegation published in a newspaper that the North West Department of Transport, Roads and Community Safety (NW Department of Transport) failed to pay Mr A Kabaiya for providing transportation to learners of the Calvyn Primary School in Schweizer-Reneke.
- (ii) It was also alleged in the article that more than 100 learners were unable to write their mid-year examinations because Mr A Kabaiya stopped transporting them to school in a bid to get payment from the NW Department of Transport.
- (iii) From the investigation it was found that:
  - (a) The NW Department of Transport was under no obligation to remunerate Mr A Kabaiya for the transportation that he provided to learners of the Calvyn Primary School as he was not an appointed service provider.
  - (b) There is an urgent need for the learner transport programme of the NW Department of Transport to be improved and for adequate funding to be made available in this regard, failing which a large number of children in the North West Province will be deprived of their constitutional right to education.
- (iv) The Public Protector recommended that:
  - (a) The Speaker of the North West Provincial Legislature takes appropriate steps to ensure that the submission made by the

Deputy Director-General of the NW Department of Transport to the then Portfolio Committee on Transport, Roads and Community Safety on 13 May 2008, regarding the urgent need for funding to enable the NW Department of Transport to transport a large number of children to schools is attended to by the relevant structures of the Provincial Legislature.

- (b) The Member of the Executive Council of the North West Provincial Government responsible for Public Works, Roads and Transport takes appropriate steps to ensure that the urgent need to improve and adequately fund the Learner Transport Programme of the NW Department of Transport is attended to.

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**1. INTRODUCTION**

1.1 This report is submitted in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act) to:

1.1.1 The Speaker of the North West Provincial Legislature;

1.1.2 The Members of the Executive Council of the North West Provincial Government responsible for Public Works, Roads and Transport and Education respectively; and

1.1.3 The Heads of the North West Departments of Public Works, Roads and Transport and Education respectively.

1.2 It relates to an investigation into the alleged failure by the then North West Department of Transport, Roads and Community Safety (the NW Department of Transport) to pay for the transportation of learners to the Calvyn Primary School in Schweizer-Reneke.

## **2. BACKGROUND**

- 2.1 On 15 July 2008, an article entitled “*Driver dumps pupils*” appeared in the Online Edition of the Sowetan newspaper. It was alleged that more than 100 learners from farms in the Mamusa District in the Schweizer-Reneke area were unable to write their 2008 mid-year examinations because their transport provider refused to take them to school as he was not paid by the NW Department of Transport since November 2007.
- 2.2 According to the article, the response of the NW Department of Transport was that the transport provider, Mr A Kabaiya, was not listed on its data base of service providers.
- 2.3 Due to the seriousness of the allegations, it was decided that the OPP should investigate the matter on its own initiative.

## **3. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE ALLEGATION**

- 3.1 Section 182(1) of the Constitution provides that the Public Protector has the power:
- 3.1.1 To investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- 3.1.2 To report on that conduct; and
- 3.1.3 To take appropriate remedial action.

- 3.2 Section 6(4) of the Public Protector Act provides that the Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, *inter alia*, any alleged-
- 3.2.1 Abuse or unjustifiable exercise of power or unfair, capricious, discourteous or improper conduct or undue delay by a person performing a public function; or
- 3.2.2 An act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.
- 3.3 As the allegation of improper prejudice was made against a department of a provincial government, the Public Protector has the powers and jurisdiction to investigate it and to do so on own initiative.

#### **4. THE LEGAL FRAMEWORK AND PRINCIPLES APPLICABLE TO THE INVESTIGATION**

##### **4.1 The Constitution**

- 4.1.1 Section 29(1)(a) of the Constitution provides that everyone has the right to a basic education.
- 4.1.2 Section 7(2) of the Constitution provides that the state must respect, protect, promote and fulfill the rights in the Bill of Rights (found in chapter 2 of the Constitution).

## 4.2 South African Schools Act 84 of 1996

Section 3(1) of the South African Schools Act, 1996 (SA Schools Act) provides:

*" (1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first."*

## 5. THE INVESTIGATION

5.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, and comprised:

5.1.1 Consideration and analysis of the newspaper article in the Sowetan;

5.1.2 Telephonic interviews with:

5.1.2.1 Mr E Molefe, the journalist who wrote the article, to obtain the contact details of the affected parties;

5.1.2.2 Mr A Kabaiya, the transport provider, to obtain additional information regarding his problem with the NW Department of Transport including the names and contact details of officials he had liaised with;

5.1.2.3 Ms L Ngubane, an official of the NW Department of Transport to obtain a response to the allegations in the newspaper article;

5.1.2.4 Mr T J Chope, the principal of Calvyn Primary School;

5.1.2.5 Mr P Motswana, a teacher at the Calvyn Primary School; and

5.1.2.6 Mr S Tladi of the NW Department of Transport.

5.1.3 Correspondence with:

5.1.3.1 Mr A Kabaiya; and

5.1.3.2 Ms L Ngubane and Mr S Tladi of the NW Department of Transport.

## **6. INFORMATION OBTAINED FROM MR A KABAIYA**

6.1 According to Mr A Kabaiya, he voluntarily started transporting the learners concerned from November 2007.

6.2 He applied to the NW Department of Transport to be regarded as a service provider and to be paid for his services from August 2006.

6.3 Mr Kabaiya however, conceded that although there was some indication that he might be paid in the future, there was no agreement between him and the NW Department of Transport in this regard.

## **7. THE RESPONSE OF THE SCHOOL AND THE NW DEPARTMENT OF TRANSPORT TO THE ALLEGATION**

7.1 Assistance with the transportation of learners who have to travel long distances to schools, especially those residing in remote and rural areas, was initially introduced by the provincial Department of Education. It was

regarded as a temporary arrangement to ensure access to education whilst schools in closer proximity to such learners were being built.

- 7.2 This responsibility of the provincial Department of Education was transferred to the NW Department of Transport in 2004.
- 7.3 The appointment of transport providers to assist in the transportation of learners to schools is subject to the normal prescribed procurement processes and procedures of the NW Department of Transport. It is also subject to the availability of funds.
- 7.4 The Deputy Director-General of the NW Department of Transport made a comprehensive submission to the Transport, Roads and Community Safety Portfolio Committee of the North West Provincial Legislature on 13 May 2008, from which it is clear that there is an urgent need for funding to enable the NW Department of Transport to transport a large number of children to schools. The Portfolio Committee was requested to assist the NW Department of Transport in this regard.
- 7.5 The NW Department of Transport was aware that Mr A Kabaiya was transporting learners to school, but there was no agreement for payment in this regard between the Department and him as he was not appointed to do so.
- 7.6 An arrangement was made that the affected learners who were unable to write their mid-year examinations would be given the opportunity to write the exams when the schools reopened in July 2008. However, as the learners did not attend school after Mr A Kabaiya stopped transporting them, they did not complete the school year.

## **8. FINDINGS**

- 8.1 The NW Department of Transport was under no obligation to remunerate Mr A Kabaiya for the transportation that he provided to learners of the Calvyn Primary School as he was not an appointed service provider.
- 8.2 There is an urgent need for the learner transport programme of the NW Department of Transport to be improved and for adequate funding to be made available in this regard, failing which a large number of children in the North West Province will be deprived of their constitutional right to education.

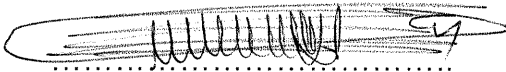
## **9. RECOMMENDATIONS**

- 9.1 In terms of section 182(1)(c) of the Constitution, 1996 and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that:
- 9.1.1 The Speaker of the North West Provincial Legislature takes appropriate steps to ensure that the submission made by the Deputy Director-General of the NW Department of Transport to the then Portfolio Committee on Transport, Roads and Community Safety on 13 May 2008, regarding the urgent need for funding to enable the NW Department of Transport to transport a large number of children to schools is attended to by the relevant structures of the Provincial Legislature.
- 9.1.2 The Member of the Executive Council of the North West Provincial Government responsible for Public Works, Roads and Transport (MEC for Public Works, Roads and Transport) takes appropriate steps to ensure that the urgent need to improve and adequately fund the Learner Transport Programme of the NW Department of Transport is attended to.

**10. CONCLUSION**

10.1 The Speaker of the North West Provincial Legislature and the MEC for Public Works, Roads and Transport should respectively report to the Public Protector on measures taken to implement the above recommendations within 6 months from the date of this report.

10.2 The OPP will monitor the implementation of the above recommendations.



**ADV M L MUSHWANA  
PUBLIC PROTECTOR OF THE  
REPUBLIC OF SOUTH AFRICA**

Date: 29/05/09.

Assisted by: M I Matlawe: Senior Investigator