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

Report No: 51 of 2009/10

REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF THE MISAPPROPRIATION OF PUBLIC FUNDS BY THE FORMER FREE STATE YOUTH COMMISSION

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Executive summary

(i) The Public Protector investigated a complaint lodged by Mr R Jankielsohn, a Member of the Free State Provincial Legislature and the Provincial Leader of the Democratic Alliance in the Free State Province, in connection with the Youth Day celebrations that were held at Selosesha in the Free State Province, on 16 June 2008.

(ii) It was alleged that the former Free State Youth Commission (Youth Commission) funded the said event, which was a political rally of the African National Congress (ANC) and that the expenditure incurred therefore amounted to the misappropriation of public funds.

(iii) The investigation revealed that the Youth Commission planned and organised a Youth Day event for 16 June 2008 that formed part of a programme of the celebration of a *Youth Month* by the Free State Provincial Government. Stakeholders, such as political parties, were invited to participate in the programme.

(iv) It transpired that the African National Congress Youth League (ANCYL) was organising an event in Selosesha, whilst the Youth Commission was aiming to have a celebration at Bothaville on the same date.

(v) The Youth Commission, by direction of the former Premier, decided to join the ANCYL in the event planned for Selosesha. It therefore became a joint effort and involved former the Premier and the Chairperson of the Youth Commission as the main speakers.

(vi) Prominent leaders of the African National Congress also addressed the crowd who attended the event and it drew a substantial amount of media attention.

(vii) The expenditure incurred by the Youth Commission for the event was mainly for transportation advertisement, catering, accommodation and

entertainment, and was not irregular as it was incurred in terms of the Free State Youth Commission Act.

(viii) The Youth Commission would have incurred the expenditure in terms of its involvement in the Youth Day Celebrations, irrespective of where it was held. There is no indication that the ANCYL or the ANC improperly benefitted from the said expenditure incurred by the Youth Commission as the originally planned rally of the ANCYL was not dependent on the Youth Commission's involvement. It would have happened and most probably would have been well attended, anyway.

(ix) It cannot be found that the expenditure incurred by the Youth Commission for the Youth Day celebrations held on 16 June 2008 was made in vain. All indications are that the event focused on the youth, which was the main aim of the involvement of the Youth Commission.

(x) However, it is unfortunate that the platform of the event, which was to celebrate our youth, was used for party political statements by some of the speakers. The view is held that institutions of the State should refrain from joining forces with political parties in the celebration of national events, as it will always have the potential of creating a perception of political bias and an abuse of public resources.

(xi) The Public Protector found that the allegation of the misappropriation of public funds by the Youth Commission was unfounded.

REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF THE MISAPPROPRIATION OF PUBLIC FUNDS BY THE FORMER FREE STATE YOUTH COMMISSION

1. INTRODUCTION

1.1 This report is submitted to:

1.1.1 Mr R Jankielsohn the Complainant in this matter;

1.1.2 The Minister of Women, Youth, Children and People with Disabilities;

1.1.3 The Premier of the Free State Provincial Government; and

1.1.4 The Chairperson of the National Youth Development Agency,

in terms of the provisions 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).

1.2 It relates to an investigation into an allegation of the misappropriation of public funds by the former Free State Youth Commission (the Youth Commission).

2. BACKGROUND

2.1 On 27 May 2008, the former Premier of the Free State Provincial Government, Ms B Marshoff, issued a statement in connection with the activities planned by the Provincial Government to celebrate the 32nd anniversary of the Soweto and the (so called) June 16 uprisings by the youth. The celebrations were also regarded as the last phase in the

adoption of the *Youth Policy Review and Youth Policy for 2008-2013* of the Provincial Government.

2.2 The said activities for the month of June 2008 included the following:

2.2.1 The Premier's Youth Awards;

2.2.2 The Youth Parliament Radio Debate;

2.2.3 Celebration of National Youth Day; and

2.2.4 An anti alcohol abuse march.

2.3 On 16 June 2008, a Youth Day event was held at the Selosesha Stadium in Thaba Nchu in the Free State Province. The Youth Commission and the African National Congress Youth League (ANCYL) were jointly involved in the organisation of the event.

2.4 The large crowd that gathered at the Youth Day celebration was addressed by several prominent and well known persons, such as Mr J Zuma, in his capacity as the President of the African National Congress (ANC), Mr J Malema, the President of the ANCYL, Ms B Marshoff, the former Premier of the Free State Provincial Government.

2.5 Controversial political statements that were made by the President of the ANCYL at the event drew the attention of the media and were widely published. The *Citizen* of 8 August 2008, for example, reported that:

"*Malema said the 'young lions' were prepared to 'kill for Zuma'. He also warned Zuma that if he turned against them, they would remove him from the ruling party leadership position. The 'kill for Zuma' utterances drew a public outcry and the South Africa Human Rights Commission gave Malema a 14-day ultimatum to retract his statement.*"

3. THE COMPLAINT

3.1 Mr R Jankielsohn, a Member of the Free State Provincial Legislature and the Provincial Leader of the Democratic Alliance in the Free State, lodged a complaint in connection with the said Youth Day celebration with the Public Protector, on 7 August 2008. Attached to his letter of complaint was an outline of the expenditure allegedly incurred by the Youth Commission in connection with the event. He stated in this regard:

> "*Attached is an outline of expenditure <u>by the Free State Youth Commission on the ANC Youth Day festivities</u> in Thaba Nchu on 16 June 2008.*
>
> *"The Free State Youth Commission indicated that R 807 670.68 was spent on this event where ANC President, Mr Jacob Zuma and ANC Youth League President, Mr Julius Malema were the main speakers. <u>Since this was an event arranged by the ANC Youth League with ANC speakers</u>, any resources from a state institutions* (sic) *that are meant to be non-political such as the Free State Youth Commission and municipalities could be considered an abuse of state resources for party political purposes."* (emphasis added)

3.2 The Public Protector was requested to investigate the alleged misappropriation of public funds by the Youth Commission.

4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE ALLEGATION

4.1 The Public Protector is one of a cluster of institutions established by Chapter 9 of the Constitution to support the constitutional democracy of the Republic of South Africa.

4.2 Section 182 of the Constitution provides that the Public Protector has the power:

4.2.1 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;

4.2.2 To report on that conduct; and

4.2.3 To take appropriate remedial action.

4.3 Additional powers and functions of the Public Protector are prescribed by the Public Protector Act.

4.4 In terms of section 6(4) of the Act, the Public Protector is competent to investigate any alleged maladministration in connection with the affairs of any public entity as defined in section 1 of the Public Finance Management Act, 1999 (PFMA) or improper conduct by a person performing a public function connected with his or her employment by such public entity.

4.5 The Youth Commission was established in terms of section 2 of the (now repealed) Free State Youth Commission Act, 1996 and was listed as Provincial Public Entity in Part C of the PFMA.

4.6 The jurisdiction of the Public Protector therefore included the Youth Commission and it was afforded the powers to investigate the allegations made by Mr Jankielsohn.

5. THE INVESTIGATION

5.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, 1994, and comprised:

5.1.1 An assessment of the complaint lodged by Mr Jankielsohn;

5.1.2 Correspondence with Mr Jankielsohn;

5.1.3 Assessment and evaluation of media reports relating to the event referred to by Mr Jankielsohn;

5.1.4 Correspondence and consultation with the Chief Executive Officer of the Youth Commission;

5.1.5 Correspondence with the Premier of the Free State Provincial Government;

5.1.6 Assessment and evaluation of the information and official documentation submitted by the Chief Executive Officer of the Youth Commission; and

5.1.7 Application of the relevant provisions of the Constitution, the Public Protector Act, the Free State Youth Commission Act, 1996 and the PFMA.

6. THE POWERS AND FUNCTIONS OF THE FREE STATE YOUTH COMMISSION

6.1 In terms of section 4A of the Free State Youth Commission Act, 1996, the objects of the Youth Commission included:

6.1.1 The co-ordination and implementation of an integrated national youth policy;

6.1.2 The implementation of measures and programmes to redress the imbalances of the past relating to various forms of disadvantage suffered by the youth;

6.1.3 The promotion of a uniformity of approach by all organs of state to matters involving the youth; and

6.1.4 The maintaining of close liaison with institutions, bodies or authorities similar to the Youth Commission in order to foster common policies and practices and to promote co-operation.

6.2 Section 5 of the relevant Act provided that the Youth Commission was mandated, inter alia, to:

6.2.1 Develop and monitor the implementation of a provincial youth policy; and

6.2.2 Liaise and interact with any organization which actively promoted youth matters and other sectors of civil society to further the objects of the Commission.

7. INITIAL RESPONSE OF THE CHIEF EXECUTIVE OFFICER OF THE YOUTH COMMISSION

7.1 The the initial response of the Chief Executive Officer of the Youth Commission (CEO) to the complaint lodged by Mr Jankielsohn, indicated that the Youth Commission indeed incurred expenditure of R 807 670,68 in respect of the Youth Day event, most of which was paid for services such as advertisement, transport, catering, accommodation and entertainment.

7.2 The CEO denied that the main speakers at the event were leaders of the ANC, but claimed that Messrs Zuma and Malema were invited as guest speakers. The main speakers were the former Premier and the Chairperson of the Youth Commission.

7.3 When asked during the investigation, why political leaders were invited to address what was supposed to have been a neutral event organized for the youth of the Free State Province, he stated that:

"As part of the consultation process, the Commission met and discussed with different parties and interest groups about the June Month Program. During this consultation process the Commission presented the June Month Program to a meeting of civil society based youth organizations that included different political organizations. By so doing the Commission was extending a platform for creative and different partnerships. This consultative meeting took place on the 9th May 2008 at FSYC Offices and even the DA Youth was part of the participants.

During this meeting different organizations pledged their support to the program as conceptualized and further committed to revert to the Commission about ideas on how best they can contribute to and strengthen the program. Among the organizations that subsequently reverted to the Commission with their feedback and proposal on the program was the ANC Youth League.

From the input of the ANCYL the Commission noted that the ANCYL was equally planning a rally in the Free State on 16 June 2008. The implication would then be that the two rallies (the Provincial Government led by the Youth Commission and that of the ANCYL) would then be held on the same day and thus contest for audience, media coverage and other material resources. In order to mitigate the undesirable effects of this likelihood, the Commission therefore agreed to a discussion with the ANCYL on how the two rallies could co-exist. This is how the idea of allowing the guest speakers was conceived. What should be noted, as a matter of emphasis, is that the same opportunity was extended to all other organizations, including the DA Youth to approach the Provincial Government through the Free State

Youth Commission on any collaborative ideas regarding the celebration of Youth Month." (emphasis added)

7.4 According to the CEO, only the ANCYL responded to the invitation to be involved in the activities relating to the said celebrations.

7.5 The CEO further explained that the ANCYL did not make any direct financial contribution towards the costs of the event under discussion. Its contribution mainly consisted of the distribution of posters and leaflets advertising the event, the distribution of T-shirts and making available 300 volunteers that assisted with different tasks at the event.

7.6 The official branding of the event was, according to the CEO, in government colours and logos, but social partners of the Youth Commission, such as the ANCYL, were also afforded space for their colours and logos.

8. THE CHALLENGES FACED DURING THE INVESTIGATION TO OBTAIN MORE INFORMATION FROM THE CEO

8.1 It took more than 7 months to obtain additional information from the CEO that was required for the investigation. He was absent from his office for some time and the person who acted in his position, could not respond to many of the enquiries. It was not possible to reach the CEO directly, because he was not responding to messages and his whereabouts, during his absence, could not be determined.

8.2 In terms of the Free State Youth Commission Act, 1996 the Youth Commission reported to the Premier and resided in the Premier's Office. It was therefore eventually decided to request the Premier's intervention to assist in the investigation, following which and a response was provided by the CEO, who had by that time, returned to his position.

9. FURTHER INFORMATION SUBMITTED BY THE CEO

9.1 Referring to the relevant records of the Youth Commission, the CEO indicated that the initial plan was to hold the 2008 Youth Day celebrations at Bothaville, in the area of the Nala Local Municipality. However, it later transpired that the ANCYL was planning a Youth Day Rally at Selosesha. The Youth Commission was concerned that the attendance at its planned event in Bothaville would be negatively affected by the event that would at the same time be held by the ANCYL in Selosesha.

9.2 The Youth Commission had learned from previous experience where Youth Day events of the ANCYL adversely affected the events planned by the Commission for the same day.

9.3 The CEO further explained that the ANCYL approached the former Premier with a request that a joint event should be held at Selosesha by the ANCYL and the Youth Commission. The Premier acceded to this request. The minutes of a Special Executive Committee Meeting of the Youth Commission, held on 4 June 2008, recorded the following in this regard:

- *"The Office has been given directive by the Premier that the June 16 Rally be moved from Wesselsbron* (sic) *to Mangaung Local Municipality and Nala Municipality has been engaged about the change of plan.*
- *The Premier directed the Commission to work closely with the Youth League and further involve them in the preparatory process to ensure a massive and successful rally.*
- *The Commission should allow the Youth League particularly through mobilization work and this is applicable also for affiliates of the SAYC."*

9.4 Asked how the objects of the Youth Commission were achieved by the holding of a joint event with a political entity, the CEO responded that:

"*June 16 Rally is part of the Commemorative Days, which are celebrated as part of the Provincial Government's Programme of Action. However, since this day is celebrated in memory of the young people who fought in resistance against an inferior education imposed by a repressive government, the Youth Commission therefore leads the coordination of this celebration.*
The primary objective of the Celebration (sic) *is for the Youth Sector in particular and the broader community to be updated on Government's different programmes and interventions aimed at Youth Development and this is done both by the Premier and the Chairperson of the Free State Youth Commission. The activity was therefore a success in that regard.*"

10. THE RELEVANT PROVISIONS OF THE PUBLIC FINANCE MANAGEMENT ACT,1999

10.1 The Youth Commission was a Provincial Public Entity listed in Part C of Schedule 3 to the PFMA.

10.2 In terms of sections 49 and 51 of the PFMA, the CEO was responsible for the financial administration of the Youth Commission and had to take steps to prevent unauthorised, irregular and fruitless and wasteful expenditure or expenditure not complying with the operational policies of the Youth Commission, from occurring.

10.3 Section 1 of the PFMA provides that:

10.3.1 "*Unauthorised expenditure means-*
(a) overspending of a vote or a main division within a vote;

(b) expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the main division".

10.3.2 Irregular expenditure means expenditure other than unauthorised expenditure, incurred in contravention of, or that is not in accordance with a requirement of any applicable legislation.

10.3.3 Expenditure which was made in vain and would have been avoided had reasonable care been exercised is defined as "*fruitless and wasteful expenditure.*"

10.4 Section 83 of the PFMA regulates financial misconduct by the accounting officer of a public entity, which includes wilfully or negligently making or permitting irregular or fruitless and wasteful expenditure.

10.5 A charge of financial misconduct against the accounting officer of a public entity must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment of the public entity applicable to the accounting officer.

11. THE DISBANDING OF THE YOUTH COMMISSION

The National Youth Development Agency Act, 2008 repealed the National Youth Commission Act, 1996, which resulted in the enactment by the Free State Provincial Legislature of the Free State Youth Commission Repeal Act, 2009, in terms of which the Youth Commission ceased to exist on 31 July 2009.

12. ANALYSIS AND EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED FROM THE INVESTIGATION

12.1 The Youth Day event planned and organised by the Youth Commission for 16 June 2008 formed part of a programme of the celebration of a *Youth Month* by the Free State Provincial Government.

12.2 Stakeholders, such as non-governmental organisations and political parties, were invited to participate in the programme.

12.3 As far as Youth Day was concerned, it transpired that the ANCYL planned an event in Selosesha, whilst the Youth Commission was aiming to have a celebration at Bothaville.

12.4 The Youth Commission, by direction of the former Premier, however decided to join the ANCYL in the event planned for Selosesha. It therefore became a joint effort, hence the involvement of the Premier and the Chairperson of the Youth Commission as the main speakers.

12.5 Prominent leaders of the ANC addressed the crowd who attended the event and it drew a substantial amount of media attention.

12.6 The expenditure incurred by the Youth Commission for the event was mainly for transportation advertisement, catering, accommodation and entertainment, and was not irregular as it was incurred in terms of the Free State Youth Commission Act.

12.7 For it to have constituted fruitless and wasteful expenditure, it had to have been made in vain and would have been avoided had reasonable care been taken. In this regard the evidence and information obtained from the investigation demonstrated that the Youth Commission would have incurred such expenditure in terms of its involvement in the Youth Day Celebrations, irrespective of where it was held. There is no indication that the ANCYL or the ANC improperly benefitted from the

said expenditure incurred by the Youth Commission as the originally planned rally of the ANCYL was not dependent on the Youth Commission's involvement. It would have happened and most probably would have been well attended, anyway.

12.8 The exposure of the Youth Commission and its operations at the time due to its presence at the event and the large crowd that attended, was probably to its advantage.

12.9 Consequently, it cannot be found that the expenditure incurred by the Youth Commission for the Youth Day celebrations held on 16 June 2008 was made in vain. All indications are that the event focused on the youth, which was the main aim of the involvement of the Youth Commission.

12.10 However, it is unfortunate that the platform of the event, which was to celebrate our youth, was used for party political statements by some of the speakers. The view is held that institutions of the State should refrain from joining forces with political parties in the celebration of national events, as it will always have the potential of creating a perception of political bias and an abuse of public resources.

12.11 It was clearly this perception that led Mr Jankielsohn to believe public money was used to fund an ANC Rally, which was not the case.

13. FINDING

The allegation of the misappropriation of public funds by the Youth Commission was unfounded.

14. CONCLUSION

As the conduct referred to in this report relate to the performance of the functions of a public entity that has been disbanded, no recommendation of appropriate remedial action is made. The

authorities to whom the report is submitted are however to take note of the observations made in paragraph 12.10 above, with a view to similar events to be held in the future.

ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
Date: 19/03/2010