
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO. 8 of 2011/2012

"Touting for a donation"

REPORT ON AN INVESTIGATION INTO THE ALLEGED IMPROPER SOLICITING OF BUSINESSES FOR DONATIONS TO THE AFRICAN NATIONAL CONGRESS BY MR C TAUTE, EXECUTIVE MAYOR OF THE HESSEQUA MUNICIPALITY
Executive Summary

(i) The Public Protector conducted an investigation into the alleged improper conduct of the Executive Mayor of the Hessequa Local Municipality (the Municipality). It was alleged that-

(a) the Mayor had sent letters in his capacity as Executive Mayor to local businesses on official letterheads soliciting them for donations to the African National Congress (ANC). Apparently the letter implies “that these businesses, which have been awarded municipal tenders in the past, owe the ANC for winning those tenders and should give donations to the party so as to maintain ‘good relations’ with the council for future tenders.”

(b) It was further alleged that this conduct breached the Code of Conduct of Councillors and other pieces of legislation.

(ii) The Public Protector found that-

(a) The conduct of the Mayor was unlawful, improper and an act of abuse of power. Not only did the Mayor act in breach of Item 6(1) of the Code of Conduct for Councillors, but his actions compromised the integrity and credibility of the Municipality that he was supposed to oversee.

(b) that the Mayor’s conduct brought the Municipality’s supply chain management system into disrepute. It is in violation of sections 127 and 195(1)(a) of the Constitution. The fact that the Mayor has 12 years’ experience in local government is an aggravating factor and an indictment against him. The conduct is accordingly improper, and constitutes maladministration.

(iii) Remedial action to be taken in terms of section 182(1)(c) of the Constitution is that:
(a) The Council of the Hessequa Local Municipality must urgently consider this matter and exercise its powers in terms of Item 14 of the Code of Conduct for Councillors regarding breaches of the Code (Schedule 1 to the Local Government: Municipal Systems Act, 2000);

(b) The Council must also consider the finding of maladministration against the Mayor and ensure that it is dealt with in terms of its disciplinary procedures.

(c) The Council must report to the Public Protector within 60 days of the issuing of the report.
REPORT ON AN INVESTIGATION INTO THE ALLEGED IMPROPER SOLICITING OF BUSINESSES FOR DONATIONS TO THE AFRICAN NATIONAL CONGRESS BY MR C TAUTE, EXECUTIVE MAYOR OF THE HESSEQUA MUNICIPALITY

1. INTRODUCTION

1.1 This report is submitted to the Member of the Executive Council (MEC) responsible for Local Government, Western Cape and the Speaker of the Hessequa Local Municipality in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 A copy is provided to Dr W James, Federal Chairperson of the Democratic Alliance (DA) (hereinafter referred to as the Complainant) in terms of section 8(3) of the Public Protector Act.

1.3 The report pertains to an investigation undertaken by the Public Protector following allegations of a breach of local government and corruption legislation by Mr C Taute, Executive Mayor of the Hessequa Local Municipality (hereinafter referred to as the Mayor).

2. THE COMPLAINT

2.1 On 2 February 2011 the Public Protector received a complaint from the Complainant alleging that the Mayor had sent letters in his capacity as Executive Mayor to local businesses on official letterheads soliciting them for donations to the African National Congress (ANC). Apparently the letter implies “that these businesses, which have been awarded municipal tenders in the past, owe the ANC for winning those tenders and should give
donations to the party so as to maintain ‘good relations’ with the council for future tenders.’’

2.2 The Complainant stated that this action breached:

2.2.1 The Code of Conduct of Councillors which provides that a councillor may not encourage or participate in any conduct which would cause or contribute to maladministration in the council;

2.2.2 The provisions of the Municipal Finance Management Act, 2003 (MFMA) relating to a prohibition to interference with the supply chain management system of a municipality or tampering with tenders, contracts etc as well as offences connected to this; and

2.2.3 The Prevention and Combating of Corrupt Activities Act, 2004 in particular the general offence of corruption and the offence of corrupt activities relating to members of the legislative authority.

3. JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector was established in terms of Chapter 9 of the Constitution and its additional operational requirements are governed by the Public Protector Act. It was established to strengthen constitutional democracy.

3.2 In terms of section 182(1) of the Constitution the Public Protector has the power 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; to report on that conduct; and to take appropriate remedial action.

3.3 The complaint accordingly falls within the mandate of the Public Protector.
4. **THE INVESTIGATION**

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

4.1 **Key sources of information**

4.1.1 The Complainant was requested to submit further information and documentation.

4.1.2 Information was requested from the South African Police Service (SAPS).

4.1.3 A previous relevant report issued by the Public Protector was considered.

4.1.4 The provisions of applicable legislation were perused.

4.1.5 The Municipal Manager of the Hessequa Municipality (the Municipality) was interviewed.

4.1.6 A recipient (owner of a business) of one of the relevant letters was interviewed.

4.1.7 The Mayor was interviewed and afforded the opportunity to respond to the allegations and to state his case.

4.1.8 Documents submitted by the Mayor were examined.

4.2 **Summary of the investigation process and evidence**

4.2.1 **The letter:**
4.2.1.1 A copy of the letter was obtained from the Complainant. It is noteworthy that the name and address was blocked out, presumably to protect the identity of the recipient of the letter. Another sample of the letters that were sent was obtained from the Mayor as reflected in Annexure A. This document (in Afrikaans) carries the logo, name in Afrikaans, English and isiXhosa of the Hessequa Municipality as well as the address at the top. It further specifies that it is from the Office of the Executive Mayor, is dated 20 January 2011 addressed to ‘the Manager / Owner’ and signed by C P Taute, Executive Mayor.

4.2.1.2 The translation of this letter by the Complainant as encapsulated in his complaint, is agreed with (apart from the fact that the Complainant did not cite the heading of the letter viz “RE: REQUEST FOR DONATION”). The translation of the Complainant is as follows:

Hessequa Municipality
Office of the Executive Mayor

2011-01-20

Dear Manager/Owner,

I herewith wish to request your company for a donation to the ANC for our election campaign. As you currently have contracts with our municipality - which were made possible by this ANC-run council, I would like to make a friendly request that you contribute a donation to the ANC for the election campaign, in order to continue building on your good relations with this ANC-run council. If you would like to make a donation to our election campaign, it would be appreciated if you could do so by cheque, made out to the "ANC."

Best wishes
CP Taute
Executive Mayor
4.2.2 Criminal investigation

4.2.2.1 Enquiries revealed that the Complainant had lodged a criminal complaint with the SAPS, Cape Town CAS no. 14/2/2011. The police docket was transferred to the Commercial Crime Investigating Unit of the SAPS in George.

4.2.2.2 The SAPS confirmed that it is tasked with investigating complaints of alleged contraventions of section 118(a) of the MFMA and section 3 of the Prevention and Combating of Corrupt Activities Act, 2004. By 30 March 2011 it was confirmed that this investigation is still ongoing.

4.2.3 Interview of the Municipal Manager on 23 February 2011

4.2.3.1 The Municipal Manager, Mr J Jacobs, mentioned that he was not aware of the letter at the time it was transmitted. He stated that his enquiries to the Supply Chain Management Division and Chief Financial Officer of the Municipality revealed that the database of approved suppliers is readily available on the Municipality’s website – he confirmed that the list includes suppliers with whom actual contracts had been concluded. He does not know how the Mayor obtained the specific names of the relevant suppliers to whom the letter was addressed, but in any event contracts above a certain level entered into with suppliers are reported monthly to the Council, which is also public information.

4.2.3.2 The Municipal Manager further emphasised that the Municipality pioneered an Anti-corruption Strategy and strictly adheres to anti-corruption policies. He said that the strategy does not specifically provide for a prohibition of utilisation of municipal property for private gain, but acknowledged that such prescript is contained in the Code of Conduct for Councillors in the Local Government: Municipal Systems Act, 2000. He further submitted that the
letterhead used by the Mayor in this case is not the official letterhead of the Municipality, but one created by the Mayor’s office. He mentioned that Annexure B attached to this report is the approved official letterhead:

4.2.3.3 The Municipal Manager mentioned that he raised the matter with their legal officer and they came to the conclusion that the letter did not constitute illegal conduct, possibly unethical conduct. He further remarked that the Municipality also received letters of complaint regarding the letter from the Albertinia Concerned Residents’ Association and the Stilbaai Tax Payers’ Association.

4.2.3.4 The Municipal Manager confirmed that there is a realisation by councillors at the Municipality of the boundary between local government on the one hand, and the political party that they represent – he reiterated that the Mayor was one of the drivers of the Anti-corruption Strategy.

4.2.3.5 He further confirmed that he is aware that the Speaker intends having the alleged conduct of the Mayor investigated. In view of the Speaker’s family relationship with the Mayor, a consultant is being appointed to conduct the investigation. The Municipal Manager is not aware of any investigation by the National Department of Cooperative Governance and Traditional Affairs.

4.2.3.6 The Municipal Manager advised that a councillor or the Mayor is unable to influence the awarding of contracts as the Municipality has a supply chain system of committees, consisting of municipal officials in place to consider and adjudicate tenders. He said that information and processes are not accessible to councillors.
4.2.4 Interview of the Mayor on 24 February 2011

4.2.4.1 The Mayor indicated that he is well-experienced in local government - he was the Mayor of Riversdale from 1995 to 2000 and of Hessequa from 2004 to 2011.

4.2.4.2 The Mayor mentioned that he directed his Secretary to send the letter (which is the subject of the investigation) to businesses. The secretary subsequently identified 15 businesses and sent the letter to them. He apparently referred to the good relationships with these businesses because the Council has such relations with the business community which has always been supportive. He confirmed that councillors are not involved in municipal tenders as regulated by section 117 of the MFMA and accordingly he has no power to threaten businesses regarding contracts. He said that the last paragraph of his letter made it clear that a donation was voluntary.

4.2.4.3 As far as the letterhead is concerned, the Mayor also mentioned that he uses his own letterhead (which is created electronically), and which is different to the official letterhead of the Municipality as mentioned above. He acknowledged that the logo etc implies that the letter is official correspondence from the Municipality and was therefore a mistake.

4.2.4.4 The Mayor further remarked that his Secretary is somewhat inexperienced and prepared the letter, attached his electronic signature to it and sent it. He however conceded that he instructed and dictated the contents of the letter to her and instructed her to check which businesses have contracts with the Municipality. He further conceded that the letter could be regarded as his letter. He stated that his Secretary identified the businesses, which he considers to be public knowledge.
4.2.4.5 He acknowledged the boundary between being a representative of a political party vis-à-vis his previous position of Executive Mayor. The Mayor further conceded that the reader of his letter could construe it to mean that he, in his capacity as Executive Mayor, is advancing the cause of a specific political party. When asked whether this might have compromised the ethical standards of the Municipality, he responded that he acknowledges that he had made a mistake, but it was not his intention. The Mayor further conceded that a member of public could interpret the letter to mean that if a donation is not made, it would jeopardise relations with the Municipality if such person is ignorant about the legal position that he is not involved in tenders or contracts.

4.2.4.6 The Mayor stated that he did not use his position as Councillor or Mayor to improperly benefit another (the ANC). If this was the consequence, it was unintentional.

4.2.4.7 The Mayor referred to one scenario where one of the recipients of the letter responded that their staff and clients are from across the political spectrum and that they had therefore decided to donate the same amount of money to the main political parties i.e. the ANC and DA. Following the letters, the Mayor received three donations made out to the ANC and the total aggregate amount of the three cheques is R2000-00. These cheques were not cashed and the Mayor expressed during the interview the intention to return these cheques to the businesses concerned.

4.2.4.8 The Mayor was asked whether the fact that he wrote to businesses which had received contracts following supply chain management procedures and to refer to those contracts in the context of the letter, contributed to maladministration. He rejected this allegation and reiterated that there is no connection between him and the supply chain management system. Similarly, the Mayor rejected the contention that he had interfered with the
supply chain management system and therefore contravened section 118 of
the MFMA. When asked whether he, by virtue of the high position that he
occupies, could nevertheless influence contracts, he responded that even if
he could, he would not do so.

4.2.4.9 The Mayor was not aware of any investigation by the Department of
Cooperative Governance and Traditional Affairs. He had also not been
approached by any investigating officer of the SAPS at the time.

4.2.4.10 As far as possible contraventions of the Prevention and Combating of
Corrupt Activities Act, 2004, are concerned, he mentioned that it was never
his intention to do wrong or contravene any statute.

4.2.4.11 The Mayor assisted the Public Protector during the investigation and
interview in a cooperative manner.

4.2.5 Interview on 23 February 2011 of a recipient of a letter from the Mayor

4.2.5.1 An interview was held with a business person who received one of the letters
in question. As this person wanted to remain anonymous, s/he is referred to
as person X.

4.2.5.2 Person X confirmed having a contract with the Municipality, but is not the
person who reported the matter to the Complainant.

4.2.5.3 He/she states that, upon receipt of the letter, s/he thought that 'it was a
cheek'. Person X however interpreted the letter to mean that, if a donation is
not made, the contract might not be renewed. He/she further mentioned that
s/he did not realise that it was wrong to send the letter on an official
letterhead, but he/she knew that the action by the Mayor was generally
wrong.
4.2.5.4 Person X would not like her/his identity to be revealed as he/she would not want to jeopardise future contractual relationships with the Municipality.

5. REGULATORY FRAMEWORK AND PRECEDENT

5.1 The regulatory framework within which this matter is to be assessed is as follows:

5.1.1 Law

5.1.1.1 The Constitution

Section 195(1) of the Constitution provides among others, that public administration must be governed by the democratic values and principles enshrined in the Constitution, including the principle of a high standard of professional ethics must be promoted and maintained.

5.1.1.2 Local Government: Municipal Systems Act

a) Section 4(2) provides inter alia that the council of a municipality has the duty to exercise the municipality’s executive and legislative authority and use the resources of the municipality in the best interests of the local community; and to provide, without favour or prejudice, democratic and accountable government.

b) In terms of section 54 the Code of Conduct for councillors contained in Schedule 1 applies to every member of a municipal council. Attention is directed to the following items of the Code:
(i) Item 6(1) of the Code states that a councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.

(ii) Item 11(d) provides that a councillor may not, except as provided by law, encourage or participate in any conduct which would cause or contribute to maladministration in the council.

(iii) Item 13 stipulates that, if the chairperson of a council, on reasonable suspicion, is of the opinion that a provision of the Code has been breached, the chairperson must (a) authorise an investigation of the facts and circumstances of the alleged breach; (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and (c) report the matter to a meeting of the municipal council after the aforementioned. Thereafter the chairperson must report the outcome of the investigation to the relevant MEC for local government.

(iv) Item 14 provides that-

“(1) A municipal council may—
(a) investigate and make a finding on any alleged breach of a provision of this Code; or
(b) …
(2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—
(a) issue a formal warning to the councillor;
(b) reprimand the councillor;
(c) request the MEC for local government in the province to suspend the councillor for a period;
(d) fine the councillor; and
(e) request the MEC to remove the councillor from office.”

c) Section 83 of the Act provides-

“(1) If a municipality decides to provide a municipal service through a service delivery agreement ..., it must select the service provider through selection processes which—

(a) comply with Chapter 11 of the Municipal Finance Management Act;

(b) allow all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;

(c) minimise the possibility of fraud and corruption;

(d) make the municipality accountable to the local community about progress with selecting a service provider, and the reasons for any decision in this regard; and

(e) takes into account the need to promote the empowerment of small and emerging enterprises.

(2) ...

(3) The selection process referred to in subsection (1), must be fair, equitable, transparent, cost-effective and competitive, and as may be provided for in other applicable national legislation.”

5.1.1.3 Local Government: Municipal Finance Management Act, 2003

a) Section 52 provides for the following general responsibilities of a mayor-

“The mayor of a municipality—

(a) must provide general political guidance over the fiscal and financial affairs of the municipality;
(b) in providing such general political guidance, may monitor and, to the extent provided in this Act, oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer, but may not interfere in the exercise of those responsibilities;

(c) must take all reasonable steps to ensure that the municipality performs its constitutional and statutory functions within the limits of the municipality’s approved budget;

(d) …”

b) In terms of section 112(1)(m) the supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management, which must cover, inter alia, measures for—

(i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and

(ii) promoting ethics of officials and other role players involved in municipal supply chain management.

c) In terms of section 117 no councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

D) Section 118 provides:

“No person may—”
(a) interfere with the supply chain management system of a municipality or municipal entity; or

(b) amend or tamper with any tenders, quotations, contracts or bids after their submission."

e) In terms of section 173 a councillor who deliberately or in a grossly negligent way contravenes section 118 is guilty of an offence.

5.1.1.4 Prevention and Combating of Corrupt Activities Act, 2004

a) The Complainant alleges that the Mayor breached section 3 and 7 of this Act. Section 3 stipulates the general offence of corruption as follows:

"Any person who, directly or indirectly—

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner—

(i) that amounts to the—

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the,
exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to—

(a) the abuse of a position of authority;

(b) a breach of trust; or

(c) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corruption.”

b) Section 7 provides for offences in respect of corrupt activities relating to members of legislative authority, as follows:

“(1) Any—

(a) member of the legislative authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the legislative authority, whether for the benefit of that member or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner—

(i) that amounts to the—

(a) illegal, dishonest, unauthorised, incomplete, or biased; or
(bb) misuse or selling of information or material acquired in the course of the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to—

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corrupt activities relating to members of the legislative authority.”

5.1.2 Precedent: Report on an investigation by the Public Protector into allegations of the improper soliciting of funds for a political party by officials of the Dihlabeng Local Municipality dated 24 November 2003 (hereinafter referred to as the Dihlabeng Local Municipality Report issued on 24 November 2003)

5.1.2.1 In this matter the then Acting Municipal Manager of the above-mentioned Municipality addressed a letter on an official letterhead to members of the Bethlehem business community stating that “[t]he ANC Councillors requested that we approach you on behalf of the ANC and ask for a donation to assist them financially to enable them to make a success of their Anniversary Celebrations.”
5.1.2.2 Due to the specific facts of the matter, a hearing was held and five persons were directed to appear before the Public Protector.

5.1.2.3 In this matter the evidence revealed that municipal officials (Acting Municipal Manager and Acting Financial Manager) acted on own initiative to approach the local businesses. Their conduct was found to be “unlawful, improper and highly irregular” for the following reasons:

“The use of municipal resources for party political purposes is not authorised by any law;

The contents of the letter in question created the perception that the Dihlabeng Municipality approved and/or condoned the use of municipal resources for the party political purposes;

The contents of the letter, furthermore, created the perception that the Dihlabeng Municipality supports the cause of a specific political party; and

By creating these perceptions, the ethical standard that the Municipality is compelled to maintain, as provided by section 195 of the Constitution, 1996 was compromised.”

5.1.2.4 The then Public Protector also made the following observations:

“Extremely alarming in Mr Nell’s evidence was his contention that to provide a list of the suppliers of the Municipality to Councillors to use for party political purposes, would not be improper. The fact that the credibility of the suppliers and the Municipality could be compromised in the process, did not seem to be of concern to him;”
"By approaching local businesses on an official letterhead of the Municipality, requesting a donation for the ANC, Messrs Nell and Evans failed to act in the best interest of the Municipality. Their actions compromised the credibility and integrity of the Municipality."

5.1.2.5 The Public Protector found that the conduct of the municipal officials breached the Code of Conduct for Municipal Staff Members. It was remarked that “[a]llowing officials in public administrations at any level of government to support the cause of a political party would compromise the constitutional democracy that institutions, such as the Public Protector, are compelled to uphold.”

5.1.2.6 Following the above findings it was recommended, amongst others, that the breach of the Code by the municipal officials is dealt with in terms of the disciplinary procedures of the municipality.

6. CONCLUSION

6.1 The investigation revealed that the conduct of the Mayor resulted in the relevant letter being sent to 15 businesses.

6.2 The Mayor's letters to these businesses were created electronically by his office and encapsulated the Municipality's logo, the name in Afrikaans, English and isiXhosa of the Hessequa Municipality, as well as contact details of the Municipality such as the postal address. The Mayor conceded that these features implied that the letter was official correspondence from the Municipality.

6.3 Not only did these letters refer to the relevant business owner's contract with the Municipality, but it also stated that the contract was made possible by the ANC-run council and then requested a donation to the ANC in order to, or by doing so, to continue building on their good relations with the ANC-run
council. In this regard the Mayor conceded that a member of public could interpret the letter to mean that if a donation is not made, it would jeopardise relations with the Municipality if such person is ignorant about the legal position that he (in the capacity of Mayor) is not involved in tenders or contracts. It is doubtful that many members of the public are acquainted with the provisions of section 117 of the MFMA relating to municipal tenders. In this connection person X interpreted the letter to mean that, if a donation is not made, the contract might not be renewed. It is also noteworthy that the Municipality received letters of complaint regarding the letter from the Albertinia Concerned Residents' Association and the Stilbaai Tax Payers' Association.

6.4 Similar to the situation in the Dihlabeng Local Municipality Report issued on 24 November 2003, the contents of the letter created the perception that the Hessequa Municipality supports the cause of a specific political party. The Mayor overstepped the boundary between being a representative of a political party and that of his position of Executive Mayor. In fact in this case it went further to link the making of a donation to future good relations with the council. In this regard the Mayor confirmed that he received three donations made out to the ANC (total aggregate amount of the three cheques of R2000-00 were received as a result). It is therefore evident that the Mayor used his position as a councillor i.e. as Executive Mayor, to improperly benefit the ANC. By doing so, the Mayor contravened Item 6(1) of the Code of Conduct for Councillors.

6.5 In view of the provisions of section 117 of the MFMA and the supply chain system of committees consisting of municipal officials that consider and adjudicate tenders, no substantiation could be found that the Mayor encouraged or participated in conduct which would cause or contribute to maladministration in the council. The letter in this case was directed to
external stakeholders and, at most, could have created the perception in the minds of those businesses owners of maladministration within the council.

6.6 Furthermore, the conduct of the Mayor did not conform to the provisions of section 4(2) of the Local Government: Municipal Systems Act in that the Council of a municipality has the duty to exercise the municipality’s executive and legislative authority and use the resources of the municipality in the best interests of the local community; and to provide, without favour or prejudice, democratic and accountable government.

6.7 The MFMA (section 112(1)(m)) provides in detail for the standards and regulatory framework expected of the supply chain management policy of a municipality, including measures for combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and promoting ethics of officials and other role players involved in municipal supply chain management. In this connection the Mayor’s action brought the Municipality’s supply chain management system into disrepute in the minds of the recipients of his letters and the public.

6.8 As regards alleged contraventions of section 118(a) of the MFMA (interference with the supply chain management system of a municipality or amendment / tampering with tenders etc) and relevant sections of the Prevention and Combating of Corrupt Activities Act, the alleged offences are the subject of a police investigation by the Commercial Crime Investigating Unit of the SAPS and the Complainant should allow the criminal justice system to take its course.

7. FINDINGS

7.1 The conduct of the Mayor was unlawful, improper and an act of abuse of power. Not only did the Mayor act in breach of Item 6(1) of the Code of
Conduct for Councillors, but his actions compromised the integrity and credibility of the Municipality that he was supposed to oversee.

7.2 The Mayor’s conduct brought the Municipality’s supply chain management system into disrepute. It is in violation of sections 127 and 195(1)(a) of the Constitution. The fact that the Mayor has 12 years’ experience in local government is an aggravating factor and an indictment against him. The conduct is accordingly improper and constitutes maladministration.

8. REMEDIAL ACTION

8.1 Remedial action to be taken in terms of section 182(1)(c) is that:

8.1.1 The Council of the Hessequa Local Municipality must urgently consider this matter and exercise its powers in terms of Item 14 of the Code of Conduct for Councillors regarding breaches of the Code (Schedule 1 to the Local Government: Municipal Systems Act, 2000); and

8.1.2 The Council must also consider the finding of maladministration against the Mayor and ensure that it is dealt with in terms of its disciplinary procedures.

8.1.3 The Council must report to the Public Protector within 60 days of the issuing of the report.

9. MONITORING

9.1 The Speaker of the Hessequa Council is required to:
9.1.1 Acknowledge receipt and indicate whether or not the report is accepted, within 10 days of the date of the report; and

9.1.2 Provide the Public Protector with an action plan for the implementation of the report within 30 days of the date of the report.

[Signature]

ADV Y N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 30 June 2011

Assisted by: Adv. W.R. JANSE VAN RENSBURG