

LEGAL COMPLIANCE REPORT 2009

THABO MOFUTSANYANE DISTRICT MUNICIPALITY AND LOCAL MUNICIPALITIES

THABO MOFUTSANYANE

Non-compliance with applicable legislation

Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)

1. Bank reconciliations were not available for all the bank accounts of the municipality. Section 61(1)(b) and (c) of the MFMA
2. Council did not have a budget-related policy to regulate the budgeting process. The lack of policies resulted in an unrealistic income budget and significant deviations between budgeted and actual expenditure that could not be appropriately explained. Section 21 of the MFMA
3. Payments amounting to R1 million were not always made within 30 days of receipt of the invoice. Section 65(2)(e) of the MFMA
4. Goods received could not be confirmed as having been received. Section 65(2)(a-c) of the MFMA
5. Insufficient disclosure was made in the financial statements regarding the bank account. Section 125(2)(a) of the MFMA,
6. In terms of section 121(3)(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Local Government Municipal Systems Act, 2000 (Act No 32 of 2000) (MSA).
7. The service delivery budget implementation plan was not approved by council within the time frame required by section 53 of the MFMA.
8. In terms of section 121(3)(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA).
9. The municipality did not submit performance information as required by section 121(3)(c) of the MFMA

Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA)

1. No evidence could be obtained that council had managed the performance management system and formally approved it as required by section 39 of the MSA.
2. No evidence could be obtained that council had approved the 2007-08 process plan as required by section 28 of the MSA.
3. No evidence could be obtained that the approved IDP was submitted to the MEC as required by section 32 of the MSA
4. No key performance indicators or performance targets were included in the Integrated Development Plan for 2007-08

SETSOTO

Non-compliance with applicable legislation

Municipal Finance Management Act, 2003 (Act No 56 of 2003)(MFMA)

1. Section 115(1)(b) of the MFMA states that the Accounting Officer of a municipality must take all reasonable steps to ensure that proper mechanisms and separation of duties are in place to minimize the likelihood of fraud, corruption, favouritism, unfair and irregular practices. The municipality did not have a strategy in place to prevent fraud and corruption such as a fraud prevention plan.
2. The accounting officer is responsible for ensuring that the municipality has and maintain effective, efficient and transparent systems of risk management in terms of section 62(1)(c)(1) of the MFMA. In the absence of a risk management policy and a risk management committee was not established to assist the accounting officer in managing risks and to determine appropriate strategies dealing with such risks.
3. In terms of section 53(1)(c)(ii) of the MFMA the mayor must take all reasonable steps to ensure that the service delivery and budget implementation plan (SDBIP) is approved within 28 days after approval of the budget. Through inspection of the budget and the SDBIP I noticed that the budget was approved on 31 May 2007 but the SDBIP only on 07 August 2007 which is almost two months after the budget was approved. Management could not provide me with evidence that the council and the MEC were informed of the delay in approval of the SDBIP in terms of section 53(2) of the MFMA

Municipal Systems Act, 2000 (Act No 32 of 2000)(MSA)

1. In terms of section 67 of the MSA, a municipality must develop and adopt appropriate systems and procedures to ensure fair, efficient, effective and transparent personnel administration. The policy regulating personnel matters was only implemented during June 2008.
2. In terms of section 121(3)(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA).
3. It was not possible to obtain sufficient evidence that the performance agreements signed for section 55 and 57 managers were aligned to the IDP and the Performance Management System of the municipality.
4. The integrated development plan of the Setsoto local municipality did not include the key performance indicators and performance targets determined in terms of its performance management system, as required by section 26(i) of the MSA
5. The municipality did not appoint and budget for a performance audit committee, neither was another audit committee utilised as the performance audit committee.

6. The municipality has not reported performance against predetermined objectives, as required by section 46 of the MSA.

DIHLABENG

Non-compliance with applicable legislation

Municipal Finance Management Act, 2003 (Act No 56 of 2003)(MFMA)

1. Policies were only submitted to council for adoption on 29 May 2008. (Sect 62 (1)(c)(i)).
2. The accounting officer did not implement controls to ensure a complete, sufficient asset register. Sect 63).
3. Payments were not always made within 30 days of receipt of invoices. Sect 65(2)(e))
4. The accounting officer of a municipality must place on the website certain documents of the municipality, which was not done in all instances. (Sect 75(1))
5. The municipality did not approve the budget and supply chain management policies in terms of section 111 and did not inform the provincial treasury of such a failure or non-compliance in terms of section 73 and 111.
6. The annual report for the 2006-07 financial year was not submitted and tabled. (Sect 127 and 130)

NKETOANA

Non-compliance with applicable legislation

Municipal Finance Management Act

1. The council did not adopt resolutions setting measurable performance objectives for revenue from each source and each vote and approving changes to budget-related policies, together with the adoption of the budget as required by section 24(2)(c) of the MFMA.
2. No evidence existed that irregular, fruitless and wasteful expenditure incurred in previous financial years to the value of R1 049 287 was to be recovered or, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.
3. Contrary to section 45 of the MFMA evidence that the municipality's overdraft facility of R2 000 000 was approved by council could not be obtained.
4. Contrary to section 62(1)(c) of the MFMA the municipality did not maintain effective, efficient and transparent systems of risk management and internal control.
5. Contrary to section 65(2)(j) of the MFMA bank reconciliations were only performed at year-end and not on a monthly basis.
6. No indication existed that the National Treasury was informed of the arrear accounts of other state organs amounting to R5 336 226 as required by section 64(3) of the

MFMA.

7. The provincial treasury was not informed of the failure by the municipality to adopt and implement a budget and supply chain management policy as contemplated in section 73 of the MFMA.
8. The municipality has not adopted and implemented its draft supply chain management policy for the year under review as required by section 111 of the MFMA
9. The annual report for the 2006-07 financial year has not yet been prepared and adopted by the council in accordance with sections 121(1) and 127 of the MFMA.
10. The matters raised in the prior year audit report were not adequately addressed as per section 131(1) of the MFMA.
11. A report by the accounting officer on mid-year budget and performance assessments, as required by section 72 of the MFMA was not performed

Municipal Systems Act

1. Councillors did not complete updated financial disclosure forms in the year under review as required by schedule 1 of the MSA.
2. Performance contracts with managers have not been concluded and/or revised as required by section 57 of the MSA
3. In terms of section 121(3)(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of the MSA.
4. The municipality has not reported performance against predetermined objectives, as required by section 41 of the MSA.
5. The municipality did not develop and implement a performance management system, as required by regulations 7 and 8 of the Local Government: Municipal Planning and Performance Management Regulations, 2001 (*GNR 796 of 2001*) and sections 38 to 42 of the MSA.
6. A process was not adopted which would set out in writing guidance on the planning, drafting, adoption and review of the municipality's IDP, as required in terms of section 28(1) of the MSA.
7. The municipality did not afford the local community at least 21 days to comment on the final draft of its IDP before the plan was submitted to council for adoption, as required by regulation 15(3) of the Municipal Planning and Performance Management Regulations, 2001.
8. The public was not notified within 14 days after the adoption of the IDP, that the IDP has been adopted and that copies of, or extracts from, the plan are available for public inspection at specified places as required by section 25(4) of the MSA.
9. A forum was not established to enhance community participation in the drafting and implementation of the IDP and the monitoring, measurement and review of the municipality's performance in relation to the key performance indicators and performance targets set by the municipality, as required by regulation 15(1) of the

Municipal Planning and Performance Management Regulations, 2001 and section 28(2) of the MSA.

10. The municipality did not develop and implement a service delivery and budget implementation plan (SDBIP) for the period under review, as required by section 69(3) of the MFMA.
11. The audit committee, which was also appointed as the performance audit committee, was not fully functional during the year as it did not meet at least twice where a quorum was present and did not make recommendations regarding a performance management system to the council of the municipality, as required by regulation 14 of the Municipal Planning and Performance Management Regulations 2001.
12. The municipality did not develop and implement mechanisms, systems and processes for auditing the results of performance measurement as part of its internal auditing processes as required in terms of section 45 of the MSA and section 165(2)(b)(v) of the MFMA.
13. The municipality did not set appropriate key performance indicators and targets as a yardstick for measuring performance, including outcomes and impact, with regard to the municipality's development priorities and objectives set out in its IDP, as required by regulations 9 to 12 of the Municipal Planning and Performance Management Regulations, 2001, and sections 41(1)(a), 43 and 44 of the MFMA. The IDP was further incomplete with regard to institutional framework, council's development priorities and objectives, an alignment to the national and provincial sectoral plans and a three-year financial plan.

MALUTI A PHOFUNG

Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)

1. Section 75 requires that certain information, including the annual report, be placed on the website of the municipality. Section 21 (a) of the Systems Act stipulates that if the municipality does not have a website it should disclose the required information on an organised local government website sponsored by the National Treasury. No evidence could be found that this was done.
2. Section 27 of the MFMA states that should the mayor of the municipality become aware of any impending non-compliance with any provisions of the MFMA or any other legislation pertaining to the tabling or approval of the annual budget or compulsory consultation processes, he/she must inform the MEC for Finance and the National Treasury in writing of such non-compliance or remedial action to be taken. No correspondence of this nature could be presented.
3. There was no documentary proof that the accounting officer submitted a draft service delivery and budget implementation plan for the budget year within 14 days after the approval of the annual budget as required by section 69(3)(a).
4. Section 69(3)(b) requires that drafts of the annual performance agreements as required in terms of section 57(1)(b) of the Municipal Systems Act for the municipal manager and all senior managers must be submitted to the mayor no later than 14 days after the approval of the annual budget. Proof could not be presented that this was done.
5. Section 17 requires certain information to be included in the budget when tabled for

example:

- information regarding any proposed amendments to the municipality's integrated development plan;
- proposed amendments to the budget-related policies
- information regarding any proposed new municipal entities;
- service delivery agreements or material amendments to existing service delivery agreements; and
- details of the proposed cost for the budget year to a municipal entity under the sole control of the municipality.

No evidence could be obtained that this information was submitted with the budget.

6. The adjustment budget was not accompanied by an explanation of the impact of the adjustment budget on the annual budget, nor was the budget accompanied by an explanation of the impact of the increased spending on the annual budgets for the next two years as required by section 28.
7. Evidence that the mayor did within 30 days of the end of each quarter submit a report to the council on the implementation of the budget and the financial state of affairs of the municipality as required by section 52 could not be submitted.
8. The monthly budget reports of the municipality indicate that it had negative cash flows for a number of months. This is an indication of non-compliance with section 65(2)(h) which requires that the accounting officer must take all reasonable steps to ensure that the municipality's available working capital is managed effectively and economically in terms of the prescribed cash management and investment framework.
9. Section 71(1) of the MFMA requires that the accounting officer of a municipality must by no later than 10 working days after the end of each month submit to the mayor of the municipality and the relevant provincial treasury a monthly budget statement in the format prescribed by section 71(1). Several of these monthly reports were not submitted timeously or at all.
10. Supporting documentation could not be obtained to verify that the annual budget was submitted to the National Treasury and the relevant provincial treasury in printed and electronic format as required by section 24.
11. Section 64(3) of the MFMA requires the municipality to report all outstanding balances relating to organs of state to the National Treasury. Upon inspection of the report it was noted that no outstanding balances were reported although there were amounts owed to the municipality by at least some of the provincial departments.
12. In terms of section 121(3)(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA).

A handwritten signature in black ink, consisting of a large, sweeping loop on the left and a smaller, more complex scribble on the right.

CL Hohne

29 September 2009