

LEGAL COMPLIANCE REPORT 2009

XHARIEP DISTRICT MUNICIPALITY AND LOCAL MUNICIPALITIES

XHARIEP DISTRICT MUNICIPALITY

Non-compliance with applicable legislation

Municipal Finance Management Act

1. An appropriate and effective cash management and investment policy has not yet been approved by council as required by section 13(2) of the MFMA.
2. The annual budget was not tabled at a council meeting at least 90 days before the start of the budget year as required by section 16(2) of the MFMA.
3. The municipal council did not consider approval of the budget at least 30 days before the start of the budget year as required by section 24(1) of the MFMA.
4. Section 22 of the MFMA requires the accounting officer, immediately after an annual budget is tabled in a municipal council, to make public the annual budget and the documents referred to in section 17(3) and invite the local community to submit representations in connection with the budget; to submit the annual budget in both printed and electronic format to the National Treasury and the relevant provincial treasury and in either format to any prescribed national or provincial organs of state and to other municipalities affected by the budget. No evidence could be obtained that this was done by the municipality.
5. An annual budget must be approved together with any municipal tariffs set for the budget year. Any changes to the municipality's integrated development plan and any changes to the municipality's budget-related policies must be approved. This could not be verified as required by section 24(2)(c) of the MFMA.
6. The 2007-08 budget was approved by council with a deficit of R7 229 399. The municipality had budgeted for a deficit notwithstanding sections 54(2), 54(3), (70)(1)(a) and 70(1)(b) of the MFMA.
7. The mayor did not submit a report to the council on the implementation of the budget and the financial state of affairs of the municipality within 30 days of the end of each quarter as required by section 52(d) of the MFMA.
8. The mid-year budget report was not submitted to the council by 31 January 2008 as required by section 54(1) of the MFMA.
9. It was noted that payments amounting to R518 435 were not made within 30 days after receipt of the supplier's invoice, which is in contravention of section 65(2)(e) of the MFMA.

Municipal Systems Act

1. The performance agreement between the accounting officer and the executive authority could not be provided, as required by section 57(1)(b) of the MSA, and not all written employment contracts could be obtained in terms of section 57(1)(a) of the MFMA.
2. The entire delegation of powers policy has not been approved as required by section 59(4).
3. No updated tariff policy could be obtained for the rental of the municipality's buildings

as required by section 74 of the MSA.

4. 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).

Municipal Structures Act

1. The municipal council did not meet quarterly as required by section 18(2) of the Act.

LETSEMENG

Non-compliance with applicable legislation

Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003)

1. The management of the Letsemeng Local Municipality did not maintain full and proper records in accordance with section 62(1)(b) of the MFMA and did not always submit information, returns, documents, explanations and motivations as required by the Auditor-General in accordance with section 74(1) of the said act.
2. Contrary to section 115(b) of the MFMA, the accounting officer did not establish proper mechanisms to ensure separation of duties in respect of demand management, procurement stores and warehousing, and performance and contract management.
3. According to section 64(2)(a) of the MFMA, *the accounting officer must take all reasonable steps to ensure that the municipality has effective revenue collection systems consistent with section 95 of the Municipal Systems Act and the municipality's credit control and debt collection policy.* Notwithstanding, it was noted that long overdue debtors were not handed over to attorneys for collection nor were other reasonable steps taken to recover these amounts due to the municipality.
4. Could not be provided with evidence that the accounting officer submitted reports to the executive mayor within ten days after the end of each month on the state of the municipality's budget in accordance with section 71(1) of the MFMA.
5. In terms of section 131 of the MFMA, a municipality must address any issues raised by the Auditor-General in an audit report. The mayor of a municipality must ensure compliance by the municipality. Various matters noted in my audit report on the financial statements for the year ended 30 June 2007, dated 5 November 2008 have not yet been resolved by management. As a result, the mayor and management of the Letsemeng Local Municipality did not fulfil their responsibility in terms of section 131 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).

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

1. According to section 11(3)(a) of the MSA, regulations, plans and policies should be established, approved and implemented by the municipality that should govern the different processes and activities of the municipality. Notwithstanding, it was noted that the

municipality has not established or implemented formally documented and approved policy frameworks for the financial transactions and events related to several important business processes.

2. Section 6(c) of the MSA requires the administration of a municipality to take measures to prevent corruption. Contrary to this prescript, neither a formally documented and approved risk assessment strategy and risk assessment plan nor a fraud prevention plan existed during the year under review, resulting in risks not being identified or assessed by management and the risk that fraud might not be prevented or detected timeously.
3. Contrary to section 38 of the MSA, the performance of middle level management and their subordinates was not evaluated during the year under review. Furthermore, the performance of section 57 managers was also not evaluated as required by sections 57(1) (b), (4A), (4B) and 5 of the act.

Division of Revenue Act, 2007 (Act No. 1 of 2007)

1. Contrary to the requirements of Section 31 (2) of the Division of Revenue Act, the accounting officer did not submit electronic returns of the municipality's conditional grant spending to the Provincial Treasury for the period ending 30 June 2008. The municipality thus failed to comply with the legislative requirements outlined by section 71 of the MFMA.

KOPANONG

Non-compliance with applicable legislation

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

1. Section 69(3)(a) of the MFMA prescribes that the accounting officer must no later than 14 days after approval of an annual budget submit to the mayor a draft service delivery and budget implementation plan for the budget year. Section 53(1)(c)(ii) of the MFMA prescribes that the mayor of a municipality must take all reasonable steps to ensure that the municipality's service delivery and budget implementation plan is approved by the mayor within 28 days after the approval of the budget. No evidence could be obtained that a draft service delivery and budget implementation plan for the 2008-09 budget year had been prepared and submitted as required.
2. In terms of section 65(2)(e) of the MFMA the accounting officer of a municipality must ensure that all money owing by the municipality is paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure. In respect of payments with a total value of R2 097 252, sufficient appropriate audit evidence could not be obtained that the payment was made within the prescribed period.

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

1. Section 66 of the MSA prescribes that a municipal manager, within a policy framework determined by the municipal council and subject to any applicable legislation, must among others attach to all the posts on its approved staff establishment the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation and should establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service. Sufficient appropriate audit evidence that municipal manager complied with these prescripts of the MSA could not be obtained.

2. Input, output, outcome indicators and targets were not set for development priorities and objectives in the IDP, as prescribed in terms of section 41 of the MSA.
3. A financial plan was not compiled for the municipality, as required in terms of section 26(h) of the MSA.
4. The Municipality has not reported on all the predetermined objectives, as required by section 25 of the MSA.

A handwritten signature in black ink, consisting of a large, loopy initial 'C' followed by a stylized 'L' and 'H'.

CL Hohne

11 February 2009