

**RAYMOND MHLABA LOCAL
MUNICIPALITY**

**Policy Guidelines on Unauthorized,
Irregular, Fruitless and Wasteful
Expenditure and the Enforcement of
Proper Financial Management through
Disciplinary and Criminal Proceedings**

Table of Contents

1. Introduction	3
2. Restriction on the incurring of expenditure	3
3. Withdrawal of money from a municipal bank account	3
4. Defining concepts.....	4
5. Recovery of unauthorised, irregular, fruitless and wasteful expenditure	6
6. Role of council committee	6
7. Writing off of unauthorised, irregular, fruitless and wasteful expenditure is no excuse in criminal and disciplinary proceedings	7
8. Liability of political office bearers for unauthorised expenditure	7
9. Liability for unauthorised expenditure deliberately or negligently incurred	7
10. Reporting of unauthorised, irregular or fruitless and wasteful expenditure	8
11. Reporting of irregular expenditure, theft and fraud	8
12. Remuneration of councillors and irregular expenditure	9
13. Irregular staff appointments	9
14. Enforcing proper financial management through disciplinary and criminal proceedings.....	10
15. Offences by Councillors	13
16. Criminal sanctions - councillors, senior managers and other officials	14
17. Civil liability of municipality, structures, office bearers and officials	14

1. Introduction

In terms of section 62 of the Municipal Finance Management Act No. 56 of 2003 (herein referred to as “the Act”), the accounting officer is responsible for managing the financial affairs of the municipality and he/she must, for this purpose, inter alia:

(a) take all reasonable steps to ensure that:

- unauthorised; and
- irregular; and
- fruitless and wasteful expenditure; and
- other losses are prevented; and

(b) ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the Act.

This policy guideline is aimed at providing the accounting officer with an overview of legislation pertaining to unauthorised, irregular, fruitless and wasteful expenditure and the recovery of same where applicable.

2. Restriction on the incurring of expenditure

Section 15 of the Act provides that a municipality may, except where otherwise provided therein, incur expenditure only -

(a) in terms of a budget approved by the council or by a provincial or the national executive following an intervention in terms of section 139 of the Constitution and also an annual budget as revised by an adjustments budget in terms of section 28 of the Act; and

(b) within the limits of the amounts appropriated for the different votes in an approved budget.

3. Withdrawal of money from a municipal bank account

In terms of section 11(3) of the Act, money may be withdrawn from a bank account of the municipality without appropriation (without further budget approval) in terms of an approved budget for the following purposes:

(a) to defray expenditure authorised in terms of section 26 (4) which provides that, until a budget for the municipality is approved, funds for the requirements of the municipality may, with the approval of the MEC for local government, be withdrawn from the municipality’s bank accounts subject to certain conditions and restrictions;

(b) to defray unforeseeable and unavoidable expenditure authorized by the mayor in emergency or other exceptional circumstances in terms of section 29 (1) of the Act and the council’s applicable policy;

(c) in the case of a bank account opened in terms of section 12 of the Act for relief, charitable and trust purposes, to make payments from such account but only by or the written authority of the accounting officer acting in accordance with decisions of the council and for the purposes for which, and subject to any conditions on which, the fund was established or the money in the fund was donated;

- (d) to pay over to a person or organ of state money received by the municipality on behalf of that person or organ of state, including money collected by the municipality on behalf of that person or organ of state by agreement or any insurance or other payments received by the municipality for that person or organ of state;
- (e) to refund money incorrectly paid into a bank account;
- (f) to refund guarantees, sureties and security deposits;
- (g) for cash management and investment purposes in accordance with the cash and investment policies of the municipality;
- (h) to defray increased expenditure in terms of section 31 of the Act which relates to the shifting of funds between multi-year appropriations;
- (i) for such other purposes prescribed under the Act.

4. Defining concepts

“Unauthorised expenditure” is incurred by the municipality otherwise than in accordance with section 15 or 11 (3), and includes -

- (a) overspending of the total amount appropriated in the municipality’s approved budget;
- (b) overspending of the total amount appropriated for a vote in the approved budget;
- (c) expenditure from a vote unrelated to the department or functional area covered by the vote;
- (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- (e) spending of an allocation of money made to the municipality by the national government from revenue raised nationally contrary to the condition(s) of such allocation or an allocation of money to a municipality in terms of a provincial budget;
- (f) a grant by the municipality otherwise than in accordance with the Act.

Essentially, “unauthorised expenditure” includes overspending on the total amount of the budget, overspending on a vote, the incurring of expenditure unrelated to a vote and the incurring of expenditure for a purpose other than the approved purpose.

It should be noted that “unauthorised expenditure” excludes “irregular” expenditure.

Unauthorised expenditure is expenditure that has not been budgeted for, expenditure that is not in terms of the conditions of an allocation received from another sphere of government, municipality or organ of state and expenditure in the form of a grant that is not permitted in terms of the Municipal Finance Management Act (Act No. 56 of 2003). Unauthorised expenditure is accounted for as an expense in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

“Irregular expenditure” occurs in the following circumstances:

(a) Where the expenditure concerned is incurred by the municipality or a municipal entity in contravention of, or that is not in accordance with, a requirement of the Act, and which has not been condoned in terms of section 170 thereof.

In terms of section 170 of the Act, National Treasury may, on good grounds, approve a departure from a treasury regulation or from any condition imposed in terms of the Act. Non-compliance with a regulation made in terms of section 168 or with a condition imposed by the National Treasury in terms of the Act may, on good grounds shown, also be condoned by the National Treasury.

(b) Expenditure incurred by the municipality or a municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;

(c) Expenditure incurred by the municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or

(d) Expenditure incurred by the municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”.

The accounting officer may, in terms of section 36(1)(b) of the Municipal Supply Chain Management Regulations, ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature. The accounting officer must record the reasons for any deviations and report them to the next meeting of the council or board of directors in the case of a municipal entity, and include same as a note to the annual financial statements.

Irregular expenditure is expenditure that is contrary to the Municipal Finance Management Act (Act No. 56 of 2003), the Municipal Systems Act (Act No. 32 of 2000), and the Remuneration of Public Office Bearers Act (Act No. 20 of 1998) or is in contravention of the municipality’s supply chain management policy. Irregular expenditure excludes unauthorised expenditure. Irregular expenditure is accounted for as expenditure in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

A ***“vote”*** means one of the main segments into which a budget of a municipality is divided for the appropriation of money for the different departments or functional areas of the municipality and which specifies the total amount that is appropriated for the purposes of the department or functional area concerned.

“Overspending” occurs in the following circumstances:

- (a) where the operational or capital expenditure incurred by the municipality during a financial year exceeds the total amount appropriated in that year’s budget for operational or capital expenditure, as the case may be;
- (b) in relation to a vote, in the event of expenditure exceeding the amount appropriated for that vote; or
- (c) where expenditure pending the approval of the budget of the municipality exceeds the amount permissible in terms of section 26(5) of the Act. In terms of this sub-section, funds withdrawn from a municipality’s bank accounts in terms of sub-section (4) may be used only to defray current and capital expenditure in connection with votes for which funds were appropriated in the approved budget for the previous financial year and any withdrawal may not, during any month, exceed eight per cent of the total amount appropriated in that approved budget for current expenditure, which percentage must be scaled down proportionately if revenue flows are not at least at the same level as the previous financial year and exceed the amount actually available.

Fruitless and wasteful expenditure

The Act defines “fruitless and wasteful expenditure” as expenditure that was made in vain and would have been avoided had reasonable care been exercised.

Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised. Fruitless and wasteful expenditure is accounted for as expenditure in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

5. Recovery of unauthorised, irregular, fruitless and wasteful expenditure

Section 32 (2) of the Act provides that the municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure **unless** that expenditure is:

- (a) in the case of unauthorised expenditure, authorised in an adjustments budget or certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and
- (b) in the case of irregular or fruitless and wasteful expenditure, is after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

6. Role of council committee

In terms of section 74 the Municipal Budget and Reporting Regulations contained in Government Notice 393 of 17 April, 2009, chapter 6 part 1 a council committee appointed to investigate the recoverability or otherwise of any unauthorised, irregular or fruitless and wasteful expenditure must consider –

- (a) the measures already taken to recover such expenditure;

- (b) the cost of the measures already taken to recover such expenditure;
- (c) the estimated cost and likely benefit of further measures that can be taken to recover such expenditure; and
- (d) submit a motivation explaining its recommendation to the council for a final decision.

The municipal manager must provide the committee concerned with such information it may require for the purpose of conducting a proper investigation.

The aforesaid committee may only comprise councillors and should not include political office bearers of the municipality. At least 3 councillors are required to constitute a committee.

It should be noted that the council is required by resolution to certify that the expenditure concerned is considered irrecoverable and that it should be written off. This power may not be delegated by the council.

An audit committee established in terms of section 166 of the Act is not precluded from assisting the appointed committee with its deliberations.

7. Writing off of unauthorised, irregular, fruitless and wasteful expenditure is no excuse in criminal and disciplinary proceedings

In terms of section 32 (5) of the Act, the writing off of any unauthorised, irregular or fruitless and wasteful expenditure as irrecoverable, is no excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or a breach of the Act relating to such unauthorised, irregular or fruitless and wasteful expenditure.

8. Liability of political office bearers for unauthorised expenditure

Without limiting liability in terms of the common law or other legislation, a political office-bearer of the municipality is, in terms of section 32(1)(a) of the Act, liable for unauthorised expenditure if that office-bearer either knowingly or after having been advised by the accounting officer that the expenditure concerned is likely to result in unauthorised expenditure, instructed an official of the municipality to incur such expenditure.

The Act defines a “political office-bearer” as the speaker, mayor or a member of the executive committee of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act, 1998.

9. Liability for unauthorised expenditure deliberately or negligently incurred

Section 32 (1)(b)(c) and(d) of the Act provides that, without limiting liability in terms of the common law or other legislation:

- (a) the accounting officer is liable for **unauthorised expenditure** deliberately or negligently incurred by him or her, subject to section 32 (3). The accounting officer accordingly incurs liability for unauthorised expenditure deliberately or negligently

incurred unless he / she informs the council or the mayor, as the case may be, in writing that a decision which has been taken, if implemented, is likely to result in unauthorised expenditure;

(b) any political office-bearer or official of the municipality who deliberately (intentionally) or negligently (failed to take adequate care) committed, made or authorised an **irregular** expenditure, is liable for that expenditure; or

(c) any political office-bearer or official of the municipality who deliberately or negligently made or authorised a **fruitless and wasteful expenditure** is liable for that expenditure.

An “**official**” of the municipality has a wider meaning than an employee or staff member of the municipality and includes -

(a) an employee of a municipality;

(b) a person seconded to the municipality to work as a member of the staff of the municipality; or

(c) a person contracted by a municipality to work as a member of the staff of the municipality otherwise than as an employee.

10. Reporting of unauthorised, irregular or fruitless and wasteful expenditure

Section 32 (4) of the Act requires the accounting officer to promptly inform the mayor, the MEC for local government and the Auditor-General, in writing, of -

(a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;

(b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and

(c) the steps that have been taken -

(i) to recover or rectify such expenditure; and

(ii) to prevent a recurrence of such expenditure.

11. Reporting of irregular expenditure, theft and fraud

Section 32 (6) of the Act obliges the accounting officer to report to the South African Police Service all cases of alleged -

(a) irregular expenditure that constitute a criminal offence; and

(b) theft and fraud that occurred in the municipality.

The council must, in terms of section 32(7) of the Act and through the mayor, take all reasonable steps to ensure that all cases of irregular expenditure incurred as a result of a criminal offence, theft and fraud are reported to the South African Police Service if -

(i) the charge is against the accounting officer; or

(ii) the accounting officer failed to comply with section 32(6) (referred to above) of the Act.

12. Remuneration of councillors and irregular expenditure

Section 167 (1) of the Act provides that a municipality may remunerate its political office-bearers (speaker/mayor) and members of its political structures (councillors), but only -

(i) within the framework of the Remuneration of Public Office-Bearers Act, 1998 (Act No. 20 of 1998), setting the upper limits of the salaries, allowances and benefits for those political office-bearers and members; and

(ii) in accordance with section 219 (4) of the Constitution.

Section 167(2) of the Act provides that any remuneration paid or given in cash or in kind to a person as a political office-bearer or as a member of a political structure of a municipality otherwise than in accordance with sub-section (1), including any bonus, bursary, loan, advance or other benefit, is an irregular expenditure, and the municipality -

(a) must, and has the right to, recover that remuneration from the political office-bearer or member concerned; and

(b) may not write-off any expenditure incurred by the municipality in paying or giving that remuneration. It should be noted that the Government Notice increasing the upper limits of the salary and allowances of councillors normally contains the following preamble:

“The salary and allowances of a member of a municipal council is determined by that municipal council by resolution of a supporting vote of a municipality of its members, in consultation with the member of the Executive Council responsible for local government in the province concerned, having regard to the upper limits as set out hereunder, the financial year of municipal councils, and the affordability of municipal councils to pay within the different levels of remuneration of councillors.

For purposes of implementing this Government Notice, “in consultation with” means that municipality will require the concurrence of the member of the Executive Council responsible for local government in the province concerned.”

The above preamble has the effect that irregular expenditure will occur in the event of councillor salaries and allowances being increased prior to the consideration of a report thereon by the council on such adjustment, budgetary provision, affordability and the adoption of the required resolution. Irregular expenditure will also occur in the event of existing salaries and allowances being increased without prior consultation with the MEC for local government in the province.

It should further be noted that the municipality is obliged to recover any irregular expenditure from councillors and that same cannot be written off as irrecoverable.

In the case of the overpayment of salaries and allowances, this recovery may be by way of set-off from subsequent similar payments due to the councillors concerned.

13. Irregular staff appointments

(a) Section 66 (3) of the System Act provides that no person may be employed in a municipality unless the post to which he or she is appointed, is provided for in the staff establishment of the municipality as approved by the council.

(b) If a person is employed contrary to subparagraph (a), the decision to employ such person as well as the ensuing contract of employment between the parties is null and void and of no force or effect.

(c) Any person who takes a decision contemplated in subparagraph (a) knowing that such decision is unlawful, may be held personally liable for any irregular or fruitless and wasteful expenditure that the municipality may incur as a result of such invalid decision.

14. Enforcing proper financial management through disciplinary and criminal proceedings

The Act seeks to secure compliance with its provisions by creating both acts of misconduct, dealt with in disciplinary proceedings, and offences, which are prosecuted in criminal proceedings.

As pointed out above, section 62 (1)(e) of the Act provides that the accounting officer of a municipality is responsible for managing the financial administration of the municipality and he/she must, for this purpose, inter alia, take all reasonable steps to ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15. The accounting officer has discretionary power to institute criminal proceedings against the official concerned. No discretionary power exists with regard to the taking of disciplinary action. The final decision to institute criminal proceedings will, however, lie with state prosecuting authorities.

The taking of disciplinary action against an official who allegedly committed an act of financial misconduct is not a bar against the laying of a criminal charge based on the same facts and a criminal prosecution does not bar the municipality from instituting disciplinary action against such official.

The course of action to be adopted will depend on the seriousness of the alleged act of misconduct, the prevalence of such conduct in the municipality and the provisions of the council's fraud and anti-corruption policies. It is essential for a consistent approach to the taking of disciplinary action and the institution of criminal proceedings to be adopted and implemented.

Disciplinary proceedings

The Act defines specific acts of misconduct for accounting officers, chief financial officers', other senior managers or officials who have delegated powers or duties in the area of financial management.

Section 171(1) of the Act provides that an act of financial misconduct is committed by a municipal manager if he or she deliberately or negligently commits one of the following acts:

- (a)** contravenes any provision of the Act;
- (b)** fails to comply with a duty imposed on an accounting officer under the Act;
- (c)** makes, permits or instructs another municipal official to make an unauthorised, irregular, or fruitless and wasteful expenditure; or
- (d)** provides incorrect or misleading information in any document that must be supplied in terms of the Act to the mayor, the council, the Auditor-General, any other organ of state (such as the provincial treasury) or the public.

The chief financial officer also commits an act of misconduct when he or she deliberately or negligently fails to carry out any delegated duty, or contravenes or fails to comply with a condition of a delegated power or duty. A chief financial officer may not make, permit or instruct another municipal official to incur unauthorised, irregular, or fruitless and wasteful expenditure, or provide incorrect or misleading information to the accounting officer for incorporation into any written report which must be submitted to the mayor or the council, the Auditor-General, National Treasury, any other organ of state or be made public. Any of these acts constitute acts of misconduct. Similar acts of misconduct are created for senior managers and other officials exercising management responsibilities.

A "senior manager" is a manager referred to in section 56 of the Municipal Systems Act, namely a manager directly accountable to the municipal manager.

Once allegations of financial misconduct have been made against the accounting officer, the chief financial officer, a senior manager or any officials, the municipality (presumably the council as political structure) must cause the matter to be investigated. This duty does not arise where these allegations are frivolous (not serious), vexatious (without ground and aimed at causing annoyance or embarrassment), speculative or obviously unfounded. In the event that allegations are made against an official other than the accounting officer, the latter must oversee the investigation. If the accounting officer is the accused, the mayor bears the responsibility of overseeing the investigation.

If the investigation reveals a *prima facie* case of financial misconduct, the municipality must institute disciplinary proceedings against the responsible officer in accordance with the systems and procedures referred to in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act (the staff code of conduct) (in the case of the accounting officer, by the mayor and, in the case of other staff, by the accounting officer).

Section 67(1) of the Municipal Systems Act provides that a municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and

adopt appropriate systems and procedures to ensure fair, efficient, effective and transparent personnel administration including those relating to disciplinary procedures. These systems and procedures apply to a person referred to in section 57 of this Act (i.e. managers directly accountable to the municipal manager), except to the extent that they are inconsistent with that person's employment contract.

Disciplinary action against an official on the grounds of financial misconduct will normally be undertaken in terms of the Disciplinary Procedure and Code of the South African Local Government Bargaining Council (the Disciplinary Code). This Code is not entirely suitable for disciplinary action against senior staff of a municipality and particularly the accounting officer. The fact that the municipality (the council) must cause alleged acts of misconduct by the accounting officer and senior managers to be investigated is in conflict with the provisions of the Code. In the absence of any contractual provisions in the employment contracts of these staff members regulating disciplinary matters, the provisions of the Code must, however, be applied.

Section 29 of the Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers, 2006 contained in GN R805 of 1 August 2006 reads as follows:

“29. The employer will be entitled to terminate the employee's employment contract for any sufficient reason recognized by law, provided that the employer must comply with its disciplinary code and procedures, in the absence of which the disciplinary code and procedures of the South African Local Government Bargaining Council will apply, as well as in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995). “

The Disciplinary Procedure and Code must be read in conjunction with the Code of Conduct for Municipal Staff contained in Schedule 2 to the Municipal Systems Act and it is essential for charges of alleged financial misconduct to accurately describe the alleged transgressions.

The Disciplinary Code contains several acts of misconduct by staff which could constitute financial misconduct and it is possible to institute disciplinary action against an accounting officer and senior manager without reference to the acts of financial misconduct referred to in section 171(1) of the Act.

Criminal proceedings

Certain acts committed by councillors, the chief financial officer, senior managers and other officials are deemed to constitute criminal conduct. The seriousness of these offences is apparent from the fact that any offence in terms of section 173 of the Act carries a prison sentence of up to five years or an appropriate fine determined in terms of applicable legislation.

A wide array of conduct is subject to criminal sanction.

(1) The accounting officer of a municipality is guilty of an offence if he or she -

- (a)** deliberately or in a grossly negligent way -
 - (i)** contravenes or fails to comply with a provision of section 61 (2) (b), 62 (1), 63 (2) (a) or (c), 64 (2) (a) or (d) or 65 (2) (a), (b), (c), (d), (f) or (i);
 - (ii)** fails to take reasonable steps to implement the municipality's supply chain management policy referred to in section 111;
 - (iii)** fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or
 - (iv)** fails to take all reasonable steps to prevent corruptive practices -
 - (aa)** in the management of the municipality's assets or receipt of money; or
 - (bb)** in the implementation of the municipality's supply chain management policy;
- (b)** deliberately misleads or withholds information from the Auditor-General on any bank accounts of the municipality or on money received or spent by the municipality; or
- (c)** deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be –
 - (aa)** submitted to the Auditor-General, the National Treasury or any other organ of state; or
 - (bb)** made public.

Three elements of the above offences require closer attention.

Firstly, the **actus reus** (the voluntary and wrongful act or omission that constitutes the physical components of a crime) can either be an act or an omission. An "act" consists of a direct contravention of a legal provision, while an 'omission' consists of the failure to comply with a positive duty imposed by statute. In proving the *actus reus*, there must be evidence that, for example, a municipality did not have or maintain "a management, accounting and information system that accounts for the assets and liabilities of the municipality". This is an objective assessment.

The second element of the offence is the establishment of a causal link between any action or omission by the accounting officer and the objective state of affairs. It must be shown that the officer either acted contrary to a provision or failed to take all reasonable steps required by a provision. Once the *actus reus* elements have been established, the **mens rea** must be proved; the action or omission must either have been deliberate or the result of gross negligence.

Given the high premium placed on the supervisory roles of the Auditor-General, the National Treasury and the province, the deliberate misleading or withholding of information from them, has been criminalised. The accounting officer may not deliberately mislead or withhold information from the Auditor-General on any municipal bank account or on money received or spent. Likewise, the accounting officer may not deliberately provide false or misleading information in any document which must be submitted to the Auditor-General, the National Treasury, or any other organ of state, or made public.

Civil proceedings

Losses or damages suffered by the municipality because of an act committed or omitted by an official constitutes a debt owing to the municipality and must be recovered from such an official if that official is liable in law.

The accounting officer must determine the amount of the loss or damage and, in writing, request that official to pay such amount within 30 days or in reasonable instalments. If the official fails to comply with the request, the matter must be handed to the municipality's attorneys for the recovery of the loss or damage plus accrued interest through civil process.

15. Offences by councillors

In terms of section 173(4) of the Act, a councillor is guilty of an offence if he or she-

(a) deliberately influences or attempts to influence the accounting officer, the chief financial officer, a senior manager or any other official of the municipality to contravene a provision of the Act or to refrain from complying with a requirement of this Act;

(b) interferes in the financial management responsibilities and functions assigned in terms of the Act to the accounting officer of the municipality or delegated to the chief financial officer of the municipality in terms of the Act;

(c) interferes in the financial management responsibilities and functions assigned in terms of the Act to the accounting officer of a municipal entity under the sole or shared control of the municipality; or

(d) interferes in the management or operational activities of a municipal entity under the sole or shared control of the municipality.

16. Criminal sanctions -councillors, senior managers and other officials

Councillors and officials of the municipality are also subject to criminal sanctions if they:

Sect.	Offence
79	Deliberately or in a grossly negligent* way contravene or fail to comply with a condition of a delegation of power.
173(5)(a)	Deliberately or in a grossly negligent way impede an accounting officer from complying with a provision of the Act.
173(5)(b)	Deliberately or in a grossly negligent way give incorrect, untrue or misleading information material to an investment decision relating to borrowing by the municipality.
173(5)(b)	Illegally withdraw money from a municipal bank account.
173(5)(d)	Fail to disclose material information when the municipality borrows money.
173(5)(e)	Interfere in the supply chain management system.
173(5)(f)	Provide false or misleading information for the purposes of any document which must in terms of a requirement of the Act be submitted to the council, mayor or accounting officer, the Auditor-General, the National Treasury or be made public.

* Gross negligence is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both. It is conduct that is extreme when compared with ordinary negligence, which is a mere failure to exercise reasonable care.

17. Civil liability of municipality, structures, office bearers and officials

The Act exempts municipalities, their political structures, office-bearers or officials from civil liability for any loss or damage resulting from the exercise of any power or the performance of any function in terms of the Act, provided same was done in good faith. Without limiting liability in terms of the common law or other legislation, a municipality may recover from its political office bearers and officials, any loss or damage suffered by it because of their deliberate or negligent unlawful actions when performing a function of office.