

FRIDAY, 27 AUGUST 2010

***PROCEEDINGS OF THE
LEGISLATURE OF THE PROVINCE OF THE
EASTERN CAPE***

The House met at 11:30.

The Deputy Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.

**APPROVAL OF REGULATIONS FOR SUPPORT TO MEMBERS AND
POLITICAL PARTIES**

The DEPUTY SPEAKER: Hon members, I must present the Regulations and I therefore ask the hon Chairperson of Committees to take the Chair.

The Chairperson of Committees took the Chair.

The CHAIRPERSON OF COMMITTEES: Hon members, I will now call on the Deputy Speaker to present the Regulations, as per the programme.

The DEPUTY SPEAKER: Thank you, hon Chair of Chairs.

Section 33 of the Financial Management of the Eastern Cape Provincial Legislature Act requires from the Executive Authority to make regulations concerning the allocation and use of any funds provided by the Legislature to political parties or to members of the Legislature.

These regulations must regulate the allocation of funds in an equitable manner, specify the purposes for which funds may be used, provide for the prompt payment of funds into a bank account, stipulate the responsibilities of the members of the Legislature and political parties to account for allocated funds, establish a procedure according to which members of the Legislature and political parties account for the use of funds, prescribe a format for financial statements for accounting for the use of funds, require political parties to submit audited financial statements in the prescribed format to the accounting officer, provide for the recovery of funds spent irregularly and establish a dispute resolution procedure.

In terms of section 64 of the Act, any regulations made by the executive authority only comes into effect if approved by the House. In view of the importance of those regulations, it was felt that they should be debated as well. The regulations that are

submitted are based on the existing policy on financial and administrative assistance to political parties represented in the Legislature. This policy seemed to work well in the past and only recently a problem was encountered by one party. However, these regulations are hereby submitted for consideration by the House. These regulations make provision for a process of determination of the funding of constituency allowances and caucus funding, the purposes for which each type of funding may be used, the transfer of funds to political parties, accounting for the funds and the repeal on replacement of these regulations.

An important provision is that the accounting officer must withhold payment of funds if he or she does not receive financial statement reports. If a qualified audit report is submitted by a political party, or if he or she receives *prima facie* evidence that funds are not used in accordance with the regulations, we received an input that the word “must” in this regulation should be replaced with the word “may”. However, the Act determines “must” and the regulations cannot be in conflict with the Act. I thank you, hon Chair of Chairs.

The CHAIRPERSON OF COMMITTEES: Thank you very much, hon Deputy Speaker. We will now invite political parties for debate on the matter. Cope? Hon Korkie.

The hon KORKIE: Goeiemôre mnr die Voorsitter, lede van die provinsiale Wetgewer, kollegas, familie, vriende, lede van die Uitvoerende Raad en Premier in absentia.

[Good morning hon Chair, members of the provincial Legislature, colleagues, family, friends, members of the Executive Board and Premier in absentia.]

Chairperson, I suppose these comments that I am hearing is designed to intimidate the opposition. It will not work, Chairperson. Chair, I have only one issue, or rather two issues, to raise. The regulations concerning the Act are fairly progressive; they tend to address issues that need to be addressed and which are of a necessary nature. However, I need to add my comments regarding this Bill. It will not be long, Chairperson.

The first comment is that these regulations must authorize the accounting officer. Now, the hon Deputy Speaker says that the Act states that he must withhold funds in the event of a, b or c happening. The Act reads: “The regulations must authorize the accounting officer to withhold funds”. My interpretation is that it bestows authority on the accounting officer to act to be able to do something. It does not regulate the actual action that will be performed by the accounting officer.

So, if we say that the Act is now compelling the accounting officer to use the word “must”, my interpretation differs from that, hon Chairperson. We can debate that, because the regulation says that the accounting officer must withhold funds. However, the “must” that the Act is talking about, is his authority to act, whether it is “may” or “must”. The Act does not say that the accounting officer must be authorized, sorry, must withhold funds. It does not say that. It says it must authorize the accounting officer to be able to

take a decision regarding the withholding of funds in the event of certain things happening. That is what it is saying.

The other issue ... I need protection, Chairperson ... the other issue is about the application of these regulations. If there is a disclaimer – a disclaimer might be a very small offense – it does not necessarily warrant the withholding of the entire body of funds for the entire number of existing constituency offices. One can zoom in on a particular problem and in that particular case, you make an appropriate decision regarding the withholding of funds in terms of that constituency office. So, the disclaimers, Chairperson, that sometimes come with an audited report could be of such a nature where the decision of the accounting officer can have a little bit of leeway in terms of the interpretation of these regulations.

Chairperson, if a political party raises concerns regarding the allocation of funding and those concerns are not addressed within a particular reasonable period of time, one could then also say it is unfair in a situation like that to withhold the funds. As the regulations are standing now, it is designed to NOT allow the accounting officer to use his discretion. Sometimes discretion is necessary to keep the ball rolling. How is a political party able to account if you do not even give him a cent? Regulations must provide for instance, that in the event that you are not complying with a particular regulation or act or section of the law, a percentage of the funds must be withheld. That sounds a little bit more progressive and practically, Chairperson, it would make sense because these are funds for the constituency offices and a constituency office helps whomever is in that constituency. It could be that the constituency office of the one party is closed, and that the other constituency offices in the area can then be of assistance.

Now for the regulations, Chairperson. My office is up and running. I have complied with the Act but my funds are cut off. Is it fair, Chairperson, because I am also servicing the children of ANC members in those areas. I am delivering sport deliverables to those people in those areas but I am not able to do that under the current state of affairs. Thank you, Chairperson.

The CHAIRPERSON OF COMMITTEES: Thank you very much, hon Korkie. As we are now about to invite the DA ... hon members, order please ... as we are now about to invite the DA, the hon Stevenson, can we first acknowledge the presence of our colleagues here from the Nelson Mandela Metro who constitute the Chief Whip, councilor Ncolomba who is known as Tshipa, accompanied by councilor Bungane who is the secretary of the caucus. They are also accompanied by the staff in the Chief Whip's office. You are welcome. Enjoy your stay. Hon Stevenson, you can take the floor.

The hon STEVENSON: Thank you, Chair of Chairs. By and large the DA is in support of these regulations and I believe that our Legislature is certainly setting a trend for other legislatures to follow. There are, however, one or two concerns that we have. I am looking at Clause 2 that is talking about the withholding of funds. It says that if a qualified audit report in respect of allocated funds is received, the Secretary to the Legislature must withhold the payment of such funding. I would like to suggest that one

should at least put in the words that there should be some material qualification. I say simply, because every one of our audit reports has a simple qualification by our auditors that says ... “in keeping with similar voluntary organizations ... “ etc, we can only pronounce on funds that are actually in your bank account”. In other words, voluntary organisations collect funds, have donations, but an auditing firm cannot pronounce on whether all those funds from fund raising events were actually paid into your banking account. So, they all have a standard qualification.

My first suggestion is that there must be a material qualification that is actually relevant. Therefore, it is necessary that the accounting officer be given some discretion. The hon Korkie read out the clause which is on page 28 of our legislation FIMLA which says that the accounting officer must be authorized to deal with the issue of withholding of funds. It is open to two forms of interpretation whether the “must” refers to the authorization of the accounting officer or if the “must” actually speaks to the withholding of funds. We believe that before these regulations are passed, that issue must be cleared up beyond all doubt and we also suggest that the qualification must be material.

Then, with regard to 7.3; timeframes for withholding of funds. There need to be some kind of time frame put into place to deal with these investigations. Also, when one talks about the withholding of funds, we believe that one must also look at the withholding of funds or a portion thereof, so that one is at least reasonable in the action. However, we do support the principle that the accounting officer should have some authority and some sanction to waive in order to ensure some compliance with these regulations.

Now, for the final matter that we have some problems with. It says that a constituency management committee must meet at least once a month. I would like to suggest that one says that a constituency management committee must meet regularly.

These are a few views of the DA on this matter. May I also take this opportunity to welcome our delegates from the Nelson Mandela Metropole, our biggest municipality in this province and a host city that did tremendously well for the World Cup. It made us all proud to be members of the metro and to be South Africans. I thank you, Chair of Chairs.

The CHAIRPERSON OF COMMITTEES: Thank you very much, hon Stevenson. We now invite our next speaker, the hon Mhlathi from the UDM.

The hon MHLATI: Hon Chair of Chairs, hon MEC and hon members. The UDM supports these regulations. We would like to commend those people who were in the front line of the drafting of these regulations. We have been operating for years without having these regulations. On the question of a qualified audit, the mere fact that you get a qualified audit means there are material shortcomings. If your books are up to standard, you get an unqualified audit with just emphasis of matters. The mere fact that it is qualified report means that there are major issues which are not up to standard. So, there is no dispute with that paragraph. Once it is qualified, it means there are major issues which are wrong. You get an unqualified report with emphasis on matters. Then your books are clear.

Thank you, hon Chair.

The CHAIRPERSON OF COMMITTEES. Thank you very much, hon Mhlati. We then call upon the ANC, hon Matomela.

The hon MATOMELA: Thank you, hon Chair of Chairs. I would like to salute my comrades from the metro. Welcome comrades. I hope that you will get some experience here and improve the management of the party issues in the metro. Thank you very much.

Chairperson, these arguments by the members of the opposition; some are sound, and some are responding to practical failures that they are confronting. Unfortunately they are not based on principles, hon Chair. This document is going to be referred to the committee responsible for overseeing the affairs of the Legislature; that is the Legislature's Budget and Oversight Committee. So, it will be able there to make ... I have seen some grammatical mistakes here, but they will be done there.

I think that the hon member Mhlati is correct that once you receive a qualified report, there is something materially wrong with your accounting. I think members of the opposition must bank on 6.2 because it says each political party must appoint an accounting officer. This accounting officer must be a registered accountant and may not be a member of the Legislature. In other words, you are given a directive to appoint a qualified person so that your books are in order. So, I think that we should be positive and focus on that. If we as political parties abuse these funds, I can assure you there will be an outcry from the members of the public. We must not create an impression that we do not want to be accountable.

The constituency part of the funding has been clearly articulated; the caucus part of it. As the ANC we have been doing very well for many, many years. I can count the political parties which have flouted the management of these funds from the opposition. I think, hon members, that we should not create excuses from the word go. Let us go out there and make sure that we appoint the relevant people who keep our books in order.

About the issue of one constituency office not doing very well; this fund is not given to a specific constituency office. It is given to a political party. So, the political party is collectively responsible for the funds. Therefore, as colleagues within political parties, we need to ensure that we work collectively so that each political party is clean in terms of accountability. I am happy that today the hon member Stevenson is no longer arguing the old argument about the legalities of it. You have advanced. We are happy that you are following us, because we are leading all of you here. Thank you very much, hon Chairperson.

The CHAIRPERSON OF COMMITTEES: Thank you very much, hon Matomela. Before we move to the next order of the day, I would like to inform members that it was brought to our attention that the sound of the bell has now been changed. You will recall that the bell sounded like a church bell. There were some concerns – not because it sounded like a

church bell – but that some people had different views about it. It has now been changed. In the very near future it is going to be applied.

I also want to, hon members, take this opportunity ... this is not a matter for us to discuss here ... please, hon members, can you bear with me. It was just a piece of information. I would also like to take this opportunity, hon members, to indicate that the hon Pienaar – you might have heard about that – has fallen ill. He is one of our colleagues. He has fallen ill and has been hospitalized. We thought it important to bring it to the attention of the hon members. He is currently in Port Elizabeth and he is undergoing chemotherapy. You might have heard that he has been diagnosed with cancer. We would therefore like to appeal to members that those who are able to pay a visit, to please do so. We really encourage hon members to render as much support as possible.

After these few words, we will now return to the item of the day. The inputs that have been made by the hon members should now be considered and if appropriate, be incorporated into the regulations. These regulations therefore stand referred to the Budget and Oversight Committee for consideration and report back to the House. That concludes our business for the day and the House is adjourned until further notice. Thank you very much, ladies and gentlemen.

The House adjourned at 11:55.