

# **MATJHABENG LOCAL MUNICIPALITY SECTION 106**

**28 January 2020**



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# LAYOUT OF PRESENTATION

- Legislative Background
- Factors that triggers Section 106
- Challenges identified in Matjhabeng
- Invocation of the Section 106 and the Terms of Reference
- Recommendations



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# LEGISLATIVE BACKGROUND

- The Municipal Systems Act contains substantive and procedural requirements which must be complied with for the MEC to lawfully use his or her powers. The principle for legality is of paramount importance in this regard.



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# LEGISLATIVE BACKGROUND (CONT.)

- Section 106(1) read as follows;

- (1) If an MEC has reason to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the MEC must-*
- (a) by written notice to the municipality, request the municipal council or municipal manager to provide the MEC with information required in the notice; or*
- (b) if the MEC considers it necessary, designate a person or persons to investigate the matter.*



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# FACTORS THAT TRIGGERS SECTION 106

- In order for the provisions of section 106(1)(b) of the Municipal Systems Act to be properly invoked, the MEC responsible for local government in the province, must have reason to believe that a serious malpractice occurred or was occurring in a municipality. Mere suspicion is not enough. It is accepted that the test as to whether there is reason to believe is an objective one and must be constituted by facts giving rise to such belief.
- The MEC must act if a municipality cannot or does not fulfil a statutory obligation.
- The conduct which the MEC wishes to investigate must be at the level of seriousness indicated by the words “maladministration, fraud or corruption”. Maladministration can be attributed to incapacity or inability on the part of the municipality’s personnel. The mere possibility of maladministration would not justify the dissolution of the municipal council. If it can be proved that certain individuals within the municipality have committed fraud or corruption that can warrant invocation.



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# CHALLENGES IDENTIFIED IN MATJHABENG

Issues such as amongst others;

- Financial management and overall financial position;
- Infrastructure and Projects;
- Litigations against the Municipality;
- Human Resource and functional Organogram;
- Labour disputes



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# INVOCATION OF SECTION 106 AND TERMS OF REFERENCE

- As prescribed by Section 106 (1)(b) of the Municipal Systems Act;
- As per the Memorandum from Organised Labour;
- Deficiencies and shortcomings raised in the Task Team Report;
- Issues raised by the Auditor General of South Africa over the last 3 financial years;
- The designated Team will conduct the investigation and submit a Report to the MEC about the outcome within 90 days.
- The designated Team will require;
  - Working space;
  - Access to records
  - Access to key personnel



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# RECOMMENDATIONS

- Where the requirements of section 106(1) of the Municipal Systems Act have been met, the Municipal Systems Act prescribes the steps which the MEC must take. Essentially the MEC has two options. The MEC may request information from the municipality of he / she may appoint person(s) to conduct an investigation.
- In Matjhabeng the MEC exercised his discretion to invoke Section 106 (1)(b) based on the seriousness of challenges in Matjhabeng.
- That the Council take note and cooperate on the operation of Section 106 Team.



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# Thank you



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