

# Dissolution of the Lekwa Teemane Council

## key points

- Dissolution of a council is the most severe intervention in a municipality.
- Dissolution only takes effect 14 days from the date of receipt of the notice by the NCOP.

On 21 January 2004 the Provincial Executive of the North-West Province approved a resolution to dissolve the Lekwa Teemane Local Council in terms of Section 139(1)(c) of the Constitution.

Section 139 of the Constitution was amended in 2003 and one of the new innovations is the provision that when a municipality cannot fulfill an executive obligation in terms of the Constitution or legislation, the provincial executive has the power to dissolve the municipal council and appoint an administrator until a new municipal council has been elected. The dissolution of the Lekwa Teemane Municipality is the first such case under section 139.

If a municipal council is dissolved the provincial executive must immediately submit a written notice of the dissolution to the Minister of Provincial and Local Government and the relevant provincial legislature and the National Council of Provinces (NCOP).

The dissolution takes effect 14 days from the date of receipt of the notice by the NCOP unless set aside by the Minister or the NCOP before the expiry of those 14 days.

## Problems

The Lekwa Teemane Municipality is a result of the amalgamation of two major towns, namely Bloemhof and Christiana. It is composed of six

wards, three from each town, and it is presided over by 11 councillors. The NCOP found that tribulations within the municipality started almost immediately after the intended amalgamation of the two towns in 2000 and the division between the two towns was evident immediately. This was mainly due to a power struggle between the two local town councils, which resulted in the failure to amalgamate them. While Bloemhof was concerned that Christiana was too dominant, Christiana was concerned that Bloemhof was running up large debts, including those of councillors and officials. The failure of the two towns to fully amalgamate caused divisions among both councillors and officials. The finance department was the only department that started the process of amalgamation.

The NCOP's investigation found that the municipality had been faced with several difficulties since its inception in 2000. Firstly, the power struggle between the two former town local councils resulted in protests and objections from each town and consequently, the failure to amalgamate them. Secondly, as a result of political instability and institutional problems the following features were observed: breakdown of political leadership, corruption, abuse of council property and nepotism. Lastly, the municipality has been struggling to maintain financial stability. The financial position includes the following areas of concern:

- staff salaries amounted to R4.6 million, representing 45% of total expenditure and 78% of actual income;

- the municipality owes the Department of Water Affairs and Forestry R11.7 million;
- there is no cash management strategy and the municipality does not implement credit control or debt collection. Outstanding debts are standing at R54 million;
- the municipality has defaulted on loan repayments to the Development Bank;
- the municipality does not have a tariff policy for certain crucial revenue and is therefore collecting less revenue than it should;
- the municipality has not implemented free basic electricity, while free basic water is only supplied to registered indigent households.

The Provincial Department of Developmental Local Government and Housing has made several efforts to assist the municipality in terms of section 105 of the Municipal Systems Act of 2000. Assistance included putting in place a monitoring and support system in the municipality and providing financial assistance worth R5 million.

However, the municipality did not cooperate with the appointed consultants and none of the measures taken were successful.

According to the province the intervention in terms of section 139(1)(c) was necessary and hence it was approved on 21 January 2004.

## Notifying the NCOP

As required by section 139(3), the notice was submitted to the Minister, the provincial legislature and the NCOP. The NCOP received the notice on 23 January 2004 and the 14-day period therefore started from 24 January 2004. The NCOP formed an ad-hoc committee to investigate the matter and on 11 February 2004 it reported to the NCOP that it had visited the municipality on 9 and 10 February, but that it was not yet ready to make a recommendation. The committee subsequently recommended the following:

- intervention was necessary, but it did not approve the dissolution of the council in terms of section 139(1)(c); and
- intervention in the municipality should be in terms of section 139(1)(b), that is, the

assumption of responsibility by the province and the appointment of an administrator. The NCOP adopted the committee's report and its recommendation on 4 March 2004. However, the MEC indicated that the NCOP did not disapprove the intervention within the 14-day period, which ended on 6 February 2004, and therefore that the dissolution had taken effect and an administrator was appointed. An election was subsequently held in the municipality.

Notice for the dissolution of the Lekwa Teemane Municipality was published on 18 February 2004 and the by-election was subsequently held on 5 May 2004. It thus took nearly two and a half months (77 days) to elect a new council, which was within the statutorily prescribed 90-day period.

## Comment

The dissolution of the Lekwa Teemane Municipal Council was the first in terms of the provinces' new powers of intervention. It was a drastic action taken by the North-West provincial government.

Although there were substantial reasons for intervention, the NCOP found that measures less drastic than dissolution were needed, namely the assumption of responsibilities by appointing an administrator for specified tasks. Unfortunately, the NCOP did not meet the 14-day deadline and its decision was to no effect.

Two comments are called for. First, the dissolution of a democratically elected council is the most severe intervention in a municipality and should normally follow only when all other measures have failed. Second, the 14-day period within which the NCOP must review the intervention is very short. Yet, because of the drastic nature of the intervention, there is an urgency to the matter. Short of a constitutional amendment, the NCOP must ensure that its internal operations are adequately geared towards speedy and informed decision-making.

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