

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 811 [NW896E]
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811. Mr K J Mileham (DA) to ask the Minister of Cooperative Governance and Traditional Affairs:

Whether any action (a) has been or (b) will be taken against municipal officials for opening or maintaining accounts with Venda Building Society Mutual Bank in contravention of provisions outlined in the Local Government: Municipal Finance Management Act, Act 56 of 2003; if not, why not; if so, what action was taken in each case?

NW896E

REPLY:

The Honourable Member to note that the question was redirected to the Minister of Finance as the National Treasury is the relevant department that is responsible for monitoring compliance with the Local Government: Municipal Finance Management Act, Act 56 of 2003 (MFMA) by municipalities.

In terms of Section 151(3) of the Constitution, a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. The MFMA provides the frameworks within which municipalities must conduct their financial management, including consequence management relating to financial misconduct or criminal proceedings. However, it is imperative that it is understood that any actions against municipal officials must be undertaken by the Municipal Council as the accountable authority and as legislated.

Section 13 empowers the Minister of Finance to prescribe a framework within which municipalities may, amongst others, invest money not immediately required. Such a framework was provided in the Municipal Investment Regulations which sets out a list of permitted investments municipalities may invest municipal funds. In terms of Regulation 6, municipalities may invest funds only in banks registered in terms of the Banks Act. The Venda Building Society Mutual Bank (VBS) is not registered under the Banks Act of 1990, therefore those municipalities that invested with VBS did not comply with the MFMA read together with the Municipal Investment Regulations.

In terms of Chapter 15 of the MFMA, an official commits an act of financial misconduct if that official deliberately or negligently contravenes a provision of the MFMA or if that official deliberately or negligently contravenes or fails to comply with a condition of any delegation of power or duty in terms of the MFMA.

The MFMA, in particular section 171(4) of the MFMA, places the responsibility on municipalities to ensure that there is consequence management and municipalities must investigate and follow the processes outlined in terms of section 171 read with the Municipal Regulations on Financial

Misconduct Procedures and Criminal Proceedings (the Financial Misconduct Regulations), where acts of financial misconduct are committed.

The Financial Misconduct Regulations were promulgated on 31 May 2014 and sets out the processes, procedures and reporting to expeditiously deal with allegations of financial misconduct. The regulations apply to all officials and political office bearers within municipalities and municipal entities. These Regulations must be read together with Local Government: Municipal Systems Act, 2000 and the regulations issued in terms thereof. Therefore, the affected municipalities must investigate the actions of the officials which led to the investment of municipal funds with VBS to determine whether there was financial misconduct.

The National Treasury may only intervene in instances where municipalities, fail to investigate an allegation of financial misconduct or financial offence and the National Treasury may direct that investigations be conducted.

The National Treasury are liaising with the provincial government departments who perform first line oversight over municipalities, however, they have not received any reports on actions taken from affected municipalities in this regard. Follow-ups will be made as part of the National Treasury's compliance monitoring with the affected municipalities.

