

The Dual Role of Councillor and Businessperson in South African Law: A Comprehensive Analysis

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Introduction

The intersection of public office and private enterprise presents a complex legal and ethical landscape. In South Africa, the role of a municipal councillor who is also a businessperson is governed by a robust framework of constitutional and statutory law designed to uphold public trust and ensure the integrity of local government. This report provides a deep-dive into the South African legal framework, relevant court cases, and the implications for a councillor who is also a businessperson, both during their term of office and after its conclusion.

The Legal Framework Governing Councillor Conduct

The primary legal instrument governing the conduct of municipal councillors in South Africa is the Local Government: Municipal Systems Act 32 of 2000 . Schedule 1 of this Act, the Code of Conduct for Councillors, sets out the standards of ethical conduct and the duties of councillors.

General Conduct and Disclosure of Interests

The Code of Conduct establishes a high standard for the behavior of councillors. Item 2 of the Code stipulates that a councillor must:

"(a) perform the functions of office in good faith, honestly and in a transparent manner; and
(b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised."

To manage potential conflicts of interest, Item 8 of the Code of Conduct mandates the declaration of financial interests. Within 60 days of being elected, and annually thereafter, a councillor must declare a wide range of financial interests in writing to the municipal manager. These interests include:

- Shares and securities in any company
- Membership of any close corporation
- Interest in any trust
- Directorships and partnerships
- Other financial interests in any business undertaking
- Employment and remuneration
- Interest in property
- Pensions, subsidies, grants, and sponsorships

Defining Conflict of Interest

A conflict of interest arises when a public official's private interests could improperly influence the performance of their official duties. Corruption Watch, a South African non-profit organization, defines a conflict of interest as:

"Any financial or other private interest or undertaking that could directly or indirectly compromise the performance of the public servant's duties or the reputation of a public servant's department in its relationship with its stakeholders."

The Councillor as a Businessperson: Navigating the Dual Role

South African law does not prohibit a councillor from being a businessperson. However, it imposes strict rules to manage the potential for conflicts of interest. A councillor can continue with their business activities, but they must do so within the confines of the law.

Practical Restrictions and Obligations

A councillor who is also a businessperson must navigate a series of practical restrictions and obligations:

Obligation/Restriction	Description
Full Disclosure	All business and financial interests must be declared as required by the Code of Conduct.
Recusal from Voting	A councillor may not vote on any matter in which they have a direct or indirect financial interest. They must declare their interest and recuse themselves from the proceedings.
Prohibition on Bidding for Municipal Contracts	A councillor, or a company in which they have an interest, is generally prohibited from bidding for contracts with the municipality they serve.
No Improper Influence	A councillor must not use their position to improperly influence municipal decisions for their personal or business benefit.

Failure to adhere to these rules can result in a breach of the Code of Conduct, which can lead to disciplinary action, including removal from office.

Case Law: Precedents and Interpretations

South African courts have played a crucial role in interpreting and enforcing the laws governing councillor conduct. The case of *Gamnca v MEC for Co-Operative Governance and Traditional Affairs and Others (73/2021) [2021] ZAECBHC 8* provides important insights into the procedural requirements for investigating alleged breaches of the Code of Conduct. In this case, a councillor was removed from office for an alleged breach of the Code. The High Court, however, found that the investigation into the alleged breach was procedurally unfair. The court emphasized that a councillor must be given a reasonable opportunity to respond to any allegations against them. This case underscores the importance of due process and natural justice in proceedings that could lead to the removal of a democratically elected official.

Post-Term Implications: After the 5-Year Mandate

The term of a municipal council in South Africa is a fixed 5-year period. Once this term expires, the councillor's official duties and the restrictions that come with them come to an end.

Eligibility for Re-election

A former councillor is generally eligible to stand for re-election in subsequent municipal elections. The Constitution of the Republic of South Africa, 1996, in Section 158(1), sets out the eligibility criteria for municipal councillors. A person is eligible to be a councillor unless they are disqualified on specific grounds, such as being an unrehabilitated insolvent, having been declared of unsound mind, or having been convicted of a serious criminal offense. Notably, a person is disqualified if they have been sentenced to more than 12 months imprisonment without the option of a fine, and a period of 5 years has not elapsed since the sentence was completed.

Post-Term Business Activities

Once a councillor's term has ended, there are no legal restrictions on their business activities. They are free to engage in business without the conflict of interest obligations that applied during their tenure. The requirement to declare financial interests also ceases upon leaving office.

Conclusion

In conclusion, a councillor in South Africa can be a businessperson, but this dual role is subject to a stringent legal and ethical framework. The law prioritizes transparency, accountability, and the management of conflicts of interest. Councillors must fully disclose their financial interests and recuse themselves from any matter where their private interests could conflict with their public duties. Failure to do so can lead to serious consequences, including removal from office.

After the 5-year term, a former councillor is free to pursue their business interests without the restrictions that apply to public officials. They are also eligible for re-election, provided they continue to meet the constitutional requirements for holding public office.

References

- [1] [Republic of South Africa. \(2000\). Local Government: Municipal Systems Act 32 of 2000.](#)
- [2] [Corruption Watch. \(2015\). Conflict of Interest.](#)
- [3] [Southern African Legal Information Institute. \(2021\). Gamnca v MEC for Co-Operative Governance and Traditional Affairs and Others \(73/2021\) \[2021\] ZAECBHC 8.](#)
- [4] [Republic of South Africa. \(1996\). Constitution of the Republic of South Africa, 1996.](#)