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GRAHAMSTOWN CIVIC ASSOCIATION  
C/O PRIVATE BAG 1024  
6140 GRAHAMSTOWN  
SOUTH AFRICA

14 June 1984

The Town Clerk  
Mr. J.P. CELLIERS  
Rhini Town Council  
P.O. Box 376  
Grahamstown.

Dear Sir

Re: Access to Community Halls in Grahamstown

The hiring of community halls and recreational grounds in the Grahamstown townships is governed by the Regulations drawn up in terms of the Black (Urban Areas) Consolidation Act No. 25 of 1945, Chapter 5 being the applicable portion of the Regulation Gazette.

A number of irregularities have come to light in the past few months as regards the exercise of the discretion granted to the Rhini Town Council in terms of the Act. In view of the persistent disregard of the statutory provisions governing the hire of halls, the following allegations of fact are pertinent:

1. In January of this year, the GRAHAMSTOWN CIVIC ASSOCIATION (GRACA) made application for the use of the Noluthando Hall in Makanaskop, which booking was confirmed. On 5 January 1984 this booking, which was to have been for the use of the hall on the 8th of January 1984, was summarily cancelled by the Rhini Town Council, without giving any reasons.

In terms of Section 3 of Chapter 5 of the above-mentioned regulation, the granting of "any application for the hire of a hall shall be in the sole and absolute discretion of the Council ...". It is our submission that this discretion was duly exercised by the Council when it granted the application and that once the granting of the application had been made, GRACA had acquired a contractual right to the use of the hall and the question of the discretion granted to the Rhini Town Council in terms of Section 3 fell away. In other words, only the grounds for cancellation of the contract of hiring provided for in Section 14 of Chapter 5 would have become applicable. No such grounds as outlined in Section 14 existed at the time of the purported cancellation, which was unilaterally exercised by an officer of the Rhini Town Council.

2. On the 3rd of February 1984, your Council confirmed GRACA's booking for the 5th of February 1984, but on the same day on which our organization was to have used the hall, the booking was again cancelled without giving any reasons.
3. A member of the GRACA Executive, Mr P.V. Nkayi, sought to make an application for the use of the Noluthando and Albert Halls for the 23rd and 24th of May 1984, but Mr T. Loots of the Rhini Town Council is alleged to have refused to accept the application and gave as his reason that GRACA is alleged to have said that the Rhini Council is a "Toyshop."
4. An attempt was made by GRACA to submit applications for the use of community halls for the 30th and 31st of May 1984, but again Mr T. Loots confirmed that GRACA would not ever in the future be given permission to use the community halls for the reasons advanced in 3. above. Mr Loots said to Mr N.D. Sandi that his (Mr Loots's) attitude remained the same.

So, as regards the circumstances outlined in 1. and 2. above, it is clear that the purported cancellation of the applications was wrongful. Only if circumstances such as outlined in Section 14 of Chapter 5. exist is the Rhini Town Council empowered to cancellation a properly confirmed booking.

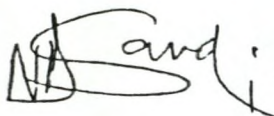
So far as 3. and 4. are concerned, it is our submission that the following adequately summarises the applicable legal principles: Section 3 of Chapter 5 'Grant of Application', confers an absolute discretion on the relevant Town Council to grant any application for the hire of a hall. Where an unfettered discretion vests in a body such as the Rhini Town Council, this does not mean that the body operates above the law but rather that the legislature entrusts a greater degree of choice than in the case of a fettered discretion (See Wiechers, ADMINISTRATIEFREG, p.299-300)

However, it is also clear that this discretion must be exercised each time an application is made for a hall. This necessarily implies that each application is entitled to be treated on its merits. It further follows that a failure to exercise this administrative discretion as a result of a prior policy decision of the kind evidenced by the facts referred to in 3. and 4. above, would amount to a material misdirection on the part of such administrative officer. It would result in the decision being ultra vires for want of jurisdiction. Put another way, it is our submission that the failure on the part of the empowered administrative officer to exercise his discretion would mean that he had failed to apply his mind to the matter. See Rose-Innes, Judicial Review of Administrative Tribunals, 47; Chotobhai v Union Government 1911 AD 13;

Administrateur van Suidwes-Afrika v Pieters 1973(1) SA (AD).

We have taken legal advice on this matter and it is our submission that unless we have an assurance from your Council that each application will be dealt with in terms of the legal provisions clearly applicable then we will be forced to make application to the Supreme Court to seek a mandamus and other ancillary relief.

Yours faithfully



Secretary: N. D. SANDI

F/S. Our previous letter was dated 6 May 1984 instead of 6 June 1984, by mistake. It was posted to you on 8 June 1984 by certified mail.

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