

ELECTIONS EXPENSES ACT

ACT No. 5 of 2013



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MSWATI III

KING OF SWAZILAND

.....**2013**

AN ACT

Entitled

AN Act to provide for the supervision and administration of election expenses by the Registrar of the Elections and Boundaries Commission; provide for a regime of accountability for funds used for election campaigns; prohibit certain electoral practices; provide for offences and penalties; and provide for incidental matters.

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PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Elections Expenses Act, 2013.
(2) This Act shall come into operation on the date that the Minister may, by notice in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires—
“candidate” means any person nominated as a candidate for an election;
“Commission” means the Elections and Boundaries Commission;
“contested election” means an election in a ward or constituency in which there are more candidates than are vacancies;

“Constitution” means the Constitution of the Kingdom of Swaziland, 2005 (Act No. 001 of 2005);

“election expenses” has the meaning ascribed to it under section 3;

“Minister” means Minister responsible for elections;

“organised campaign” means a campaign determined by the commission in terms of section 41 of the Election Act, 2013;

“organisation” means a body or institution and includes a Faith-Based Organisation, Non-Governmental Organisation or Community-Based Organisation;

“prohibited practice” means any offence mentioned in and punishable under Part V of this Act; and

“Registrar” means the Head of the Secretariat of the Elections and Boundaries Commission.

PART II

ELECTION EXPENSES

Meaning of election expenses

3. (1) “Election expenses” means all funds expended or expenses incurred in respect of the conduct and management of a secondary election campaign or an election by a candidate and includes,–

- (a) in relation to an election campaign, all expenses or expenditure incurred by a candidate for the purpose of an election campaign; and
- (b) in relation to an election day, all expenses incurred by the candidate.

(2) All funds used for promotional groups for purposes of presentation of a candidate to voters, including the cost of providing food, drinks, accommodation or transportation which is reasonably incurred by a candidate for members of that candidate’s campaign team shall be deemed to constitute election expenses.

(3) For the purposes of subsection (2), "campaign team" means a group of persons formed by a candidate during the contested election for purposes of presenting or assisting that candidate in the election campaign.

Disclosure of funds after primary elections

4. (1) A candidate shall be required to disclose, at least three days after primary elections, the amount of funds which the candidate has and expects to receive to use as election expenses.

(2) The disclosure of funds by a candidate shall, for the purposes of this Act, in the absence of any other factors, be *prima facie* evidence that that candidate has complied with the requirement for the disclosure of funds.

(3) The disclosure of funds made pursuant to the provisions of this Act shall be confidential and shall not be divulged except when such information is the subject of a complaint or a complaint lodged by the Registrar or investigation initiated by the Registrar or if it is the subject of proceedings in a court of law.

Limit on election expenses

5. (1) The Minister may, by regulations—

- (a) prescribe the maximum amount that a candidate can use on election expenses;
- (b) vary the amount of election expenses to be used by candidates during election campaigns.

(2) Where in exceptional circumstances, a candidate expends funds in excess of the amount prescribed under sub-section (1), that candidate shall be required to submit a report to the Registrar within thirty days after the election providing reasons for the use of excess funds.

(3) A candidate who uses funds in excess of the amount prescribed pursuant to sub-section (1) and fails to submit a report in terms of sub-section (2) commits an offence and shall be liable on conviction to pay a fine not exceeding thirty thousand Emalangeni or imprisonment for a period of more than six months.

Election expenses account

6. A candidate who intends to spend money for elections in terms of this Act shall open an election expenses account into which all money including donations received by that candidate shall be deposited and the candidate shall ensure that all election expenses are paid from that account.

Voluntary donations

7. (1) A candidate may, for the purposes of financing election campaign, appeal for and receive voluntary donations from any creditable and traceable individual or organisation in Swaziland.

(2) A candidate shall not receive funds from—

- (a) a proscribed organisation; or
- (b) an organisation which is outside Swaziland.

(3) A candidate who contravenes subsection (2) shall be liable to disqualification from the nomination or election.

(4) Where a candidate receives a donation as specified in subsection (1), that candidate shall disclose the donation to the Registrar within thirty days of receiving it.

(5) A person who uses or threatens to use force or violence or injures, damages or harms any person who donates or intends to donate any funds to a candidate, a member of a family or property of a candidate commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand Emalangeneni or to imprisonment for a period not exceeding ten years or to both.

Organisations or individuals to disclose sources of fund

8. (1) An organisation or individual which, for the purpose of an election, wishes to participate in any activity referred to in subsection (3) shall apply for permission from the Commission and shall be required to disclose the sources and the amount of funds to be used for that activity.

(2) Without prejudice to subsection (1), the funds of an organisation or individual shall be used for purposes of advocacy and public awareness for the furtherance of an election campaign.

(3) Within ninety days after an election, an organisation or individual shall furnish the Registrar with information relating to expenses incurred for the election.

(4) An individual who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding twenty thousand Emalangeneni or imprisonment for a period not exceeding two years or both.

(5) An organisation that contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand Emalangeneni.

PART III

ADMINISTRATION OF ELECTION EXPENSES

Registrar

9. The Head of Secretariat of the Commission shall, for purposes of this Act, be the Registrar of election expenses and shall be responsible for supervising and administering election expenses under this Act.

Powers of inspection

10. (1) For the purposes of an investigation or examination under this Act, the Registrar or a representative of the Registrar, authorised in writing may, at any reasonable time, enter into any premises in which books, papers or documents of a candidate relevant to the subject matter of the investigation or examination are kept.

(2) For the purposes of subsection (1) and subject to subsection (3), the Registrar may serve notice of not less than five days to the candidate concerned.

(3) If the Registrar believes on reasonable grounds that the serving of notice in terms of subsection (2) would defeat the object and purpose of the search, the Registrar may enter and search, without serving the notice, any premises in which books, papers or documents of a candidate relevant to the subject matter of the investigation or examination are.

Powers of the Registrar

11. (1) The Registrar has power to request for any information relating to the election expenses of a candidate that is reasonably required.

(2) Where the Registrar requests for information, a candidate shall furnish the requested information to the Registrar within such reasonable time that the Registrar may determine.

PART IV

ACCOUNTABILITY

Disclosure of funds for election campaigns

12. (1) All funds provided by an association or group of persons or by any person for election campaign of a candidate, shall be paid to the candidate concerned and the candidate shall disclose the received funds in the returns for election expenses.

(2) A candidate who fails to disclose funds received as required under subsection (1) commits an act of prohibited practice.

Obligation to keep records

13. (1) For the purposes of financial accountability under this Act, it shall be the duty of every candidate, and organisation which participated in activities referred to in section 8 (2) to keep records.

(2) A candidate or organisation shall ensure that—

- (a) donations consisting of goods or services are recorded in accordance with this Act; and
- (b) financial statements required under this Act, together with an auditor's report in a case of an organisation, are filed with the Registrar.

(3) The Registrar shall, for the purposes of record keeping under this section, make guidelines prescribing the manner in which records shall be prepared and maintained and shall further provide a candidate with the assistance necessary for compliance with this section.

(4) The Registrar shall keep the records in terms of this section for a period of at least seven years.

Failure to disclose funds

14. (1) A candidate who, or an organisation that, is required under the provisions of this Act to disclose the amount and sources of funds intended to be used as election expenses and fails to disclose the funds, shall, in the absence of any reasonable explanation be liable to disqualification from participating in the election in the case of a candidate or revocation of permission in the case of an organisation.

(2) The Attorney-General, a person who was a candidate or voter, may file an election petition challenging the nomination of a candidate or election of a candidate who contravened the requirement for the disclosure of funds for election expenses under this Act.

PART V

PROHIBITED PRACTICES

Unfair conduct

15. (1) During the election campaign or election, an act of prohibited practice shall be committed by a person who,—

- (a) before or during the campaign period, directly or indirectly by any other person acting on behalf of that person, gives, lends or agrees to give or to lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any voter or to or for any person on behalf of any voter or to or for any other person, in order to induce a voter to vote or to refrain from voting, or corruptly does any act, on account of that voter having voted or refrained from voting at any nomination process or election;
- (b) directly or indirectly, or through the agent of that person, gives or procures or agrees to give or to procure or to endeavour to procure, any office, place or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce that voter to vote or to refrain from voting, or corruptly does any act, on account of that voter having voted or refrained from voting at any election;
- (c) before or during an election campaign period directly or indirectly makes any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce that person to procure or to endeavour to procure the nomination of a person as a candidate,

the election of any person as a Member of Parliament or the vote of any voter at any nomination process or election;

- (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement procures or engages, promises or endeavours to procure the nomination of a person as a candidate, the return of any person as a Member of Parliament, Bucopho or Indvuna ye-Nkhundla or the vote of any voter at nomination process or an election;
- (e) for purposes of promoting or furthering a nomination process or an election campaign, or during the nomination or campaign, or during the nomination or campaign period advances or pays or causes to be paid any money to or for the use of any other person, with the intention that that money, or any part of that money shall be expended in bribery at a nomination process or election or who knowingly pays, or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any nomination process or election;
- (f) being a voter who, before or during the nomination process or election campaign period, directly or indirectly receives any money or valuable consideration on account of that voter having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any nomination process or election.

(2) For the purposes of this section, an act or transaction shall not be deemed to constitute a prohibited practice if it is proved to have been designed to advance the interests of community fund raising, service delivery, self-help, self-reliance or social welfare projects within the constituency.

Unconscionable funding

16. The following persons shall be deemed to commit unconscionable funding within the meaning of this Act:

- (a) a person who corruptly, through that person or through any other person, either before, during or after the nomination process or election, directly or indirectly gives, or provides, or pays, wholly or in part, the expense of giving or providing food, drink, entertainment or provisions to or for any person, for the purpose of influencing that person, or any other person, to vote or to refrain from voting at that nomination process or election; and
- (b) a person who corruptly accepts or takes any food, drink entertainment or provision.

Disqualification of a candidate

17. (1) A candidate who, directly or indirectly, commits an act amounting to a prohibited practice as stipulated in this Part shall be liable to disqualification from participation in the nomination or election.

(2) Where the Registrar is satisfied that the candidate who, through that candidate or an agent has committed a prohibited practice for which that candidate is liable to disqualification from participation in the election, the Registrar shall withdraw the nomination of that candidate.

(3) Where a candidate or an agent of the candidate commits an act which amounts to prohibited practice in respect of which no action was taken, the Attorney-General may institute an election petition proceedings against that candidate.

PART VI

OFFENCES AND PENALTIES

General offences and penalties

18. (1) A person who commits an offence under this Act to which no specific penalty is prescribed shall, on conviction, be liable to—

- (a) in the case of a candidate, to a fine not exceeding fifty thousand Emalangeni or imprisonment for a period not exceeding ten years or to both;
- (b) in the case of an organization, corporation or institution, to a fine not exceeding one hundred thousand Emalangeni.

Offences relating to powers of the Registrar

19. A person who—

- (a) obstructs the Registrar or a representative of the Registrar from exercising the powers of the Registrar under this Act;
- (b) refuses to produce books, papers and documents as requested by the Registrar;
- (c) produces false books, documents or false information to the Registrar;
- (d) makes a false statement in any returns or financial report; or
- (e) destroys any books, papers, documents or thing relating to the subject matter of an investigation, examination or inspection

commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand Emalangeni or to imprisonment for a period not exceeding three years or to both.

PART VII

GENERAL POWERS

Protection from liability

20. An act, omission or thing done by any officer or employee of the Commission or any other official of Government shall, if the matter or thing was done in good faith for the purposes of the performance of any functions or exercise of any powers provided for under this Act, shall not make that officer or employee personally liable for the matter or thing done.

Regulations

21. The Minister may, on the recommendation of the Commission make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary for giving effect to this Act.