

立法會

Legislative Council

LC Paper No. CB(2)1334/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Legislative Council Panel on Constitutional Affairs

Minutes of meeting held on Monday, 18 February 2002 at 2:30 pm in Conference Room A of the Legislative Council Building

Members Present : Hon Emily LAU Wai-hing, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon SZETO Wah
Hon IP Kwok-him, JP

Members Absent : Hon Andrew WONG Wang-fat, JP
Hon YEUNG Yiu-chung, BBS

Member Attending: Hon Cyd HO Sau-lan

Public Officers Attending : Item II

Mr Clement C H MAK
Acting Secretary for Constitutional Affairs

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional Affairs

Item III

Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer of the
Registration and Election Office

Item IV

Mr Robin GILL
Deputy Secretary for Health and Welfare 3

Mrs Patricia CHU
Deputy Director of Social Welfare

By Invitation : Item II

Professor K C WONG
Department of Government and Public Administration
The Chinese University of Hong Kong

Mr Wilson WONG
Assistant Professor
Department of Government and Public Administration
The Chinese University of Hong Kong

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Paul WOO
Senior Assistant Secretary (2)3

Action
Column

Ms Emily LAU, Deputy Chairman, took the chair in the absence of Mr Andrew WONG, Chairman of the Panel.

- I. Items for discussion at the next meeting**
(LC Paper Nos. CB(2)1081/01-02(01), 821/01-02(01) and 1027/01-02(01))

Items for meeting on 18 March 2002

2. Members agreed that the following items should be discussed at the next meeting on 18 March 2002 -

- (a) Research Report on the process of appointment of senior members of government in the United States, the United Kingdom and Singapore;
- (b) Restrictions on activities of former heads of government and senior members of government; and
- (c) Hong Kong 2001 Population Census - Basic Tables for Constituency Areas.

Proposal for an additional seat for District Council functional constituency (DC FC)

3. The Chairman briefed members on the background to the above subject matter. She said that at the LegCo Members' meeting with the Sha Tin DC on 29 November 2001, the proposal of having an additional seat for the DC FC was raised by the Sha Tin DC as a measure to enhance co-operation and liaison between LegCo and DCs (LC Paper No. CB(2)821/01-02(01)). On the instruction of the Chairman of the Panel, the proposal was referred to the Administration for comments. The Administration subsequently responded in writing (LC Paper No. CB(2)1027/01-02(01)). In its reply, the Administration advised that under the Basic Law (BL), the number of FC seats would remain unchanged at 30 in the 2004 LegCo elections. That being the case, an extra seat could only be given to the DC FC at the expense of one of the remaining FCs. The Administration would like to seek the Panel's views on whether this change was justified.

4. Mr Howard YOUNG opined that the proposal should not be pursued at this stage in the absence of any justifications for increasing the number of the existing FC seats.

5. Mr SZETO Wah said that it was necessary to amend the Basic Law (BL) to provide for 31 FC seats. Otherwise, the creation of an extra seat for the DC FC would need to be offset by the deletion of an existing FC seat. Mr James TIEN asked whether the proposal had been discussed by all the 18 DCs and if so, whether the 18 DCs have a consensus view on the proposal.

6. Members agreed that the Secretariat should write to the Sha Tin DC to seek its comments on the Administration's reply and the points raised by members.

(Posting-meeting note : The Secretariat has written to the Sha Tin DC on 4 March 2002 on the matter.)

II. Restrictions on activities of former heads of government and former senior members of government

(LC Paper Nos. CB(2)2042/00-01(04); 1081/01-02(02) to (04) and 1186/01-02(01); Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government" (RP02/01-02 circulated under LC Paper No. CB(2)887/01-02))

7. The Chairman welcomed Professor K C WONG and Mr Wilson WONG from the Department of Government and Public Administration, the Chinese University of Hong Kong, to the meeting. She also drew members' attention to a written submission (LC Paper No. CB(2)1081/01-02(03)) from Professor Frank FU of the Baptist University, who was unable to attend the meeting.

8. At the invitation of the Chairman, Professor K C WONG and Mr Wilson WONG presented their views on the subject as detailed in their written submissions to the Panel (LC Paper Nos. CB(2)1186/01-02(01) and 1081/01-02(02) respectively).

9. The Chairman then invited views from members.

10. Dr YEUNG Sum expressed the view that a monitoring mechanism should be put in place for the purpose of regulating post-office activities of the Chief Executive (CE) and principal officials. He said that in many democratic countries, although there were no written rules or statutes governing post-office activities of the head of government and senior members of government, the operation of a fully representative system of government, as well as established conventions, provided effective safeguards against possible abuse of powers by government officials and conflict of interest in the exercise of such powers. Under democratic election, a ruling party to which the head and senior members of government belonged would be voted out of power if it failed to win the support of the people. In Hong Kong, however, the CE was not directly elected. There were no statutory restrictions on CE's activities, apart from BL 46 which provided that CE might serve for not more than two consecutive terms. As regards the principal officials who would be politically appointed under the new accountability system, they would have a relatively less secure tenure of office as compared with their permanent civil service counterparts. Therefore, it was likely that they would continue to pursue a post-government career after departure from office.

11. Professor K C WONG considered that the need for introducing post-office restrictions was both necessary and urgent. He added that apart from the CE and the principal officials, the scope of the restrictions should also be extended to other people who had access to sensitive and confidential government information to prevent them from using such information for personal gains.

12. Ms Cyd HO said that a possible scenario could arise where a holder of the office of the CE or principal officials might be appointed to a political office in the Mainland of the People's Republic of China (PRC) after leaving office in the Hong Kong Special Administrative Region (HKSAR). The prospect of such future appointment might influence how the officials performed their duties when in office. Hence, she considered that the scope of restrictions should also cover engagement in political activities after leaving office. In her opinion, it would not be appropriate for an ex-CE to be appointed to a substantive political office outside Hong Kong after stepping down from office in the HKSAR.

13. Following up on Dr YEUNG Sum's point on the monitoring role played by political parties, Ms Cyd HO said that the existing legislative requirement that the CE should not be a member of a political party should be reviewed.

14. Mr Wilson WONG shared the view that in implementing restrictions on post-office activities so as to uphold public confidence in the integrity of government officials, the need to introduce safeguards against persons with high political motives seeking to pursue their own self-interest should also be taken into account. He said that this consideration was particularly pertinent in the unique situation of the HKSAR where issues relating to the interests of the HKSAR vis-à-vis that of the Central Government had often aroused great public concern.

15. On the issue of the monitoring role played by political parties, Mr Wilson WONG considered that the effect could only be viewed in the context of the long term development of political parties in Hong Kong. At present, political parties only played a low profile in the political arena of Hong Kong and their influence was limited.

16. Mr Howard YOUNG said that enactment of statutes and development of convention took time. He enquired whether the setting up of independent monitoring bodies such as an ethics commission would be the first necessary step in implementing a framework for regulating post-office activities.

17. Professor K C WONG said that regulatory bodies were useful in developing an ethics culture and promoting ethical conduct in and out of government and therefore should be established at an early stage. In the long term, a comprehensive and multiple-measure approach should be adopted. He added that restrictions, particularly those intended to be applicable to the CE, should be implemented on a case-by-case approach, rather than using an all-embracing rule, taking into account the individual circumstances and nature of the post-office activities concerned. He drew members' attention to his recommendations as listed under item 5 in page 4 of his written submission.

18. Mr Wilson WONG said that introduction of regulatory means such as

legislation, convention, or independent monitoring bodies should proceed at the same time and without delay. He added that there were precedent cases of abuse of powers by public officers which had attracted huge public outcry and substantial media comments. In his view, some form of convention could start to be developed on that basis.

19. Mr CHEUNG Man-kwong said that the Administration should introduce post-office restrictions as a matter of urgency. He pointed out that as the new accountability system for principal officials would be implemented by July 2002 when the second term CE assumed office, it would be necessary for the restrictions to be promulgated before that time, and written into the contracts of the newly appointed principal officials. It would be unfair if the Administration were to introduce legislation to impose the restrictions on CE and the principal officials with retrospective effect. He said that the Administration should explain how it would deal with this pressing issue.

20. Ms Cyd HO said that the restrictions should be published before the second CE and the principal officials assumed office.

21. Both Professor K C WONG and Mr Wilson WONG agreed that it was desirable to have all the requirements and restrictions in place and made known to the public as the second CE took up office in July 2002.

22. Miss Margaret NG said that whether or not certain statutory provisions should apply retrospectively depended on the particular nature of the issues involved. She pointed out that there was a difference between public law and private law, and cited the example of the Prevention of Bribery Ordinance whose provisions, when enacted, applied to all government officers with retrospective effect.

23. Miss Margaret NG added that restrictions on post-office activities should be clearly stipulated in the employment contracts of the principal officials appointed under the new accountability system. She said that since CE as well as the principal officials were not civil servants, the Administration should clarify the following issues -

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- (a) with whom the principal officials would be entering into the employment agreements;
- (b) which were the appropriate authorities responsible for enforcing sanctions against the CE and principal officials for violation of the post-office restrictions; and
- (c) whether or not the common law offence of public officers abusing their positions to gain personal advantage applied to the CE.

24. Ms Cyd HO said that the Administration should clarify to whom the CE was responsible and explain the mechanism for conducting investigation into a suspected case of violation of post-office restrictions by the CE.

25. Miss Margaret NG suggested that, in considering measures to deal with potential conflict of interest, the Administration should review what lesson could be learned from the case of the former Privacy Commissioner for Personal Data who took up an employment which was closely related to his work soon after leaving office.

26. Mr SZETO Wah asked whether the principal officials appointed under the new accountability system would be required to swear allegiance to the HKSAR.

27. At the invitation of the Chairman, Acting Secretary for Constitutional Affairs (SCA(Atg)) made the following initial comments and clarifications -

- (a) In the countries and places covered by the Research Report, heads of government/political appointees/civil servants were subject to post-office restrictions on their activities to avoid conflict of interest. The restrictions generally took the form of statutes, express rules and guidelines, convention, public opinion and pressure from the media etc. The Administration would take all these into consideration in its study. As far as civil servants were concerned, they were not allowed to take up employment within a specified period of time after leaving the service of the government unless approval from government was given. Hong Kong adopted a similar practice;
- (b) The Administration was aware of the need to introduce post-office restrictions to help maintain public confidence in the integrity of the CE and senior members of government, and to safeguard their right to post-office employment. Whatever restrictions would be introduced in future, the clear principle was that they should not result in deterring able and dedicated people from joining the government and making contributions to Hong Kong. In the end, it was a matter of striking the right balance for the overall benefit of the society;
- (c) The proposed accountability system would be applicable to most principal official posts specified in BL 48(5). However, certain principal official posts would be excluded and remain as civil service posts. Principal officials were subject to the requirements stipulated in BL 104, i.e. they must swear to uphold the BL of the HKSAR and swear allegiance to the HKSAR.

28. SCA(Atg) said that the Administration would provide an overall response at the next meeting of the Panel on 18 March 2002, after having considered the Research Report and the various issues raised by the Panel. Members requested the Administration to explain, in particular, the proposed means of imposing post-office restrictions on activities of former holders of the office of the CE and senior members of government, as well as the timetable for implementing the measures.

29. The Chairman said that as future discussion might touch on issues relating to employment matters and contractual arrangements under the new accountability system, representatives from both the Constitutional Affairs Bureau and the Civil Service Bureau should be invited to attend the next meeting on 18 March 2002 for discussion of the item.

III. Electoral Affairs Commission's Report on the 2001 Legislative Council By-election

(Electoral Affairs Commission's Report circulated under LC Paper No. CB(2)1035/01-02; LC Paper No. CB(2)1081/01-02(05))

30. Deputy Secretary for Constitutional Affairs (DS/CA) informed members that the Electoral Affairs Commission (EAC) Report on the by-election held on 16 November 2001 to return a Member of LegCo by the Election Committee (EC) to fill a vacancy arising the resignation of Mr NG Ching-fai was published. He briefed members on the paper prepared by the Administration (LC Paper No. CB(2)1081/01-02(05)) which explained the major issues raised by the EAC in its Report, i.e. shorter polling hours and counting votes at polling station after the close of poll.

31. DS/CA added that the two issues were not new and had been raised in the EAC post-election report after the 2000 LegCo general elections. It was considered that shorter polling hours and counting votes at polling stations after the close of poll had the major advantages of savings of resources, enhancing security and enabling an earlier announcement of election results. The EAC would revisit the issues in future elections.

32. Dr YEUNG Sum pointed out that as compared with the EC election, geographical constituency (GC) elections involved a much larger electorate. Moreover, according to past experiences, the turnout rate for the GC elections was highest between 7:30 pm to 10:30 pm during the poll. He cautioned that the EAC should consider the issue of shortening the polling hours carefully.

33. The Chairman said that the public should be widely consulted on the issues well before-hand. She enquired about the Administration's plan for conducting a consultation exercise.

34. Chief Electoral Officer advised that public consultation had been

conducted by the EAC on the issue of counting votes at polling stations in the context of the 2000 LegCo general elections. The EAC would conduct wide consultation when it had come up with concrete proposals. He added that consultation relating to the constituency boundaries of District Council elections in November 2003 would be conducted some time in 2003. The public would be consulted on delineation of constituency boundaries in September 2002.

IV. Issues relating to employees of subvented organizations taking up public offices

(LC Paper Nos. CB(2)1081/01-02(06) and (07); 1186/01-02(02))

35. The Chairman drew members' attention to the paper prepared by the Administration on the subject (LC Paper CB(2)1081/01-02(07)) and a letter from the Hong Kong Council of Social Service tabled at the meeting (LC Paper No. CB(2)1186/01-02(02)).

36. Deputy Secretary for Health and Welfare 3 (DS/HW) briefed members on the Administration's paper which explained the up-to-date situation and the position of the Administration on the matter. He advised that after reporting to the Lump Sum Grant Steering Committee, the Social Welfare Department had issued a set of guidelines for reference by subvented non-government organizations (NGOs) in the welfare sector in the context of "Good Practices". A copy of the guidelines was attached to the Administration's paper for the Panel's reference. In summary, the Administration remained of the view that whether employees of subvented bodies should be permitted to take up public office and whether their remuneration should be reduced as a result, were matters between the management of the subvented bodies and their employees. Government's subvention policy acknowledged that subvented organizations needed to operate with flexibility and independently of the Government. A policy stipulating mandatory compliance with the guidelines would have service-wide implications, given that organizations receiving government subvention covered a wide range of services.

37. DS/HW added that the Administration would see how the guidelines worked in practice and take another look at the matter in 12 to 18 months' time.

38. The Chairman said that in previous discussions on the subject, the Panel had repeatedly urged the Administration to promulgate guidelines for subvented welfare NGOs on arrangements for employees taking up remunerated public offices, along the line of those already promulgated by the Hospital Authority (HA) and tertiary institutions funded by the University Grants Committee (UGC) relating to adjustment of salary of the staff concerned. She said that a lot of reasons had been argued in previous discussions for adjustment of the pay of employees of subvented welfare NGOs taking up remunerated public offices. She said that she was dismayed to find

that the Administration's stance remained unchanged.

39. DS/HW said that the Administration had reviewed the issue and had consulted members of the Lump Sum Grant Steering Committee. The general consensus was that mandatory compliance went against the spirit of lump sum funding in which flexibility was given to NGOs in determining how their organizations should operate, particularly in terms of manpower and financial practices. It was thought that the best way to proceed would be to leave it to the individual NGOs' Boards of Directors who were responsible for the management of their organizations and their employees to work out their own arrangements. He added that the guidelines represented the right balance between effective use of public funds and encouraging staff in welfare organizations to participate in public service. He pointed out that similar views had been expressed by the HKCSS in its letter to the Panel.

40. DS/HW also said that most welfare NGOs were not funded 100% by the Government. Many also received funding from other sources and the percentage of an organization's total budget varied widely. Hence, a direct comparison of welfare NGOs with the HA and the UGC-funded institutions could not be made. In the Administration's view, the guidelines were adequate as far as subvented welfare NGOs were concerned.

41. The Chairman said that although welfare NGOs were not fully funded by the Government, insofar as proper use of public money was an issue, the taxpayers and the public could hardly see the justification for a situation where an employee of a subvented organization, who could not devote all his time on the job because of his concurrently taking up another remunerated office, was permitted to receive full pay for both of the jobs. She said that the public surely did not want to give the subvented organizations a flexibility to overpay their employees. She said that HA, the UGC-funded institutions and aid-schools had implemented guidelines on adjustment of salary for employees taking up remunerated offices. She saw no reasons why subvented welfare NGOs should not do the same. Mr Howard YOUNG expressed similar views.

42. Dr YEUNG Sum explained his own case as an example. He said that as he could not devote all his time on his teaching post in the University of Hong Kong because of his engagement in LegCo work, an agreed arrangement with the University was that he should give up 40% of his remuneration received in the capacity as a LegCo Member to the University. He said that he was not against giving flexibility to welfare NGOs in managing their own staff affairs. However, when it came to use of public funding for their operation, a bottom-line should be drawn as to how the organizations should properly remunerate their staff. The impression should not be given to the public that staff of subvented welfare NGOs was a privileged class as compared with other subvented bodies.

43. Mr SZETO Wah said that the primary consideration in dealing with the

issue was that all organizations receiving public funding should be bound by the same policy principle regarding employees taking up paid public offices and that there should be no double-standard of application of any rules and guidelines to the employees. Mr CHEUNG Man-kwong said that where the work of an employee of a subvented organization was significantly affected by his taking up another paid public office, it was only fair that his salary should be adjusted.

44. DS/HW and Deputy Director of Social Welfare said that it was difficult to draw up hard and fast rules for the welfare sector, in view of the wide diversity of services provided by well over 180 subvented NGOs. Moreover, with the introduction of lump-sum funding, the Government had moved away from “micro-managing” the operation of NGOs, including on staff matters, which was essentially something between the employer and employees. From the Government’s point of view, under the subvention policy, the bottom-line was that the services (and quality) which the Government expected were actually delivered to the public by NGO. The Government would review the subvention if the services failed to meet the standards set. Hence, the Government was focusing its attention on monitoring the “final product” produced by NGOs, set against certain benchmarks as laid out in service quality standards and the funding and service agreement. The latter contained the individual responsibilities of the Government as funder and the NGOs as the service provider. The operation of the Lump Sum Grant Steering Committee had contributed to ensuring that the objective of getting value for money from public funds was met and the services provided by NGOs had not been adversely affected.

45. The Chairman said that the reason that the services provided by the NGOs was not affected could be that the work of the employees who engaged time in other public offices had been shared by other employees. She queried if this was fair to the latter group of employees. On the other hand, if services were adversely affected hence resulting in the Government cutting down on the subvention for the NGOs, the welfare sector and the service recipients as a whole would suffer. In her view, a set of clearly defined policy guidelines on adjustment of salary of staff taking up remunerated public offices should apply to all subvented organizations alike for compliance.

46. Miss Margaret NG said that she agreed in principle with the view that the Government should not involve itself in the detailed monitoring and management of the employment affairs of the welfare NGOs. However, she considered that insofar as the Administration was a fund provider, it should have a role to play in requiring that subvented organizations put in place proper mechanism to ensure that particular arrangements for employees taking up paid public offices were fair and justified.

47. On the issue of employees taking up public offices, Miss Margaret NG said that a difference should be drawn between public office and private office.

She said that it was a widely shared opinion that employees of publicly funded organizations taking up public offices outside the scope of their formal substantive appointment could benefit the organizations concerned in achieving their aims and missions. Hence, whilst she agreed that the Government should review the desirability of introducing uniform guidelines for the subvented organizations, she cautioned that over-rigid rules and requirements which might deter employees from taking part in public service should be avoided.

48. The Chairman considered that as the issue had been discussed by the Panel since more than two years ago without any progress, it might be appropriate at this stage for the Panel to make a report to the House Committee to explain the Panel's different stance with the Administration on the matter and request the Chairman of the House Committee to urge the Chief Secretary for Administration to reconsider the Administration's position. She suggested that the Panel should report to the House Committee at the meeting on 22 February 2002.

(Post-meeting note - The Secretariat consulted Mr Andrew WONG and Ms Emily LAU, Chairman and Deputy Chairman of the Panel respectively, on the issue after the meeting. In view of the recent advice of the Chairman of the House Committee that the House Committee should avoid taking on matters which were clearly within the ambit of individual Panels, the Chairman had instructed that the Panel should discuss how the matter should be further pursued at the next meeting in March 2002.)

V. Any other business

49. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
13 March 2002