

SPA 9/9/2 (2001)

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16 March 2002

Clerk to LegCo Panel on Constitutional Affairs
(Attn: Mrs Percy MA)
Legislative Council Secretariat
3/F, Citibank Tower,
3 Garden Road,
Central,
Hong Kong

Dear Mrs Ma,

**LegCo Panel on Constitutional Affairs
Engagement in public offices**

Thank you for your letter of 28 February 2002.

Before answering the specific questions raised in your letter of 28 February 2002, we wish to first state the principles underlying the existing civil service rules on outside work.

Government has a prior call at all times on the service of its staff. Under existing civil service rules, an officer is required to apply for permission before taking up any paid outside work, or outside work during working hours.

Any outside work which may impair an officer's performance of his/her duties; distract his/her attention from them; or conflict with the officer's duties as a civil servant will not be permitted.

Outside work during the officer's working hours as a civil servant is permissible only in the most exceptional circumstances. The current Civil Service Regulations (CSRs) stipulate that the approving authority must be satisfied that the work is clearly in the public interest before giving permission for an officer to perform outside work during his/her working hours. One common example is the delivery of talks/lectures on a subject on which the officer is a recognized expert in a specialist field, at the invitation of an outside organization. Where remuneration is payable in such cases, the officer will not normally be allowed to retain more than 50% of it. The remaining sum will be credited to Government's General Revenue Account.

Paid outside work outside working hours, if approved, is performed in the officer's own time. Since there is no overlap between the time when the officer is on duty as a civil servant and the time when he/she is engaged in such paid outside work, there is no question of us having to consider adjusting the amount of remuneration the officer may retain.

That takes us to the specific questions raised in your letter of 28 February 2002. Our comments are as follows:-

- (a) under section 3 of the Interpretation and General Clauses Ordinance (Chapter 1), "public office" is defined as meaning "any office or employment the holding or discharging of which by a person would constitute that person a public officer". The same section defines "public officer" as meaning "any person *holding an office of emolument* under the Government, whether such office be permanent or temporary"; and
- (b) when looking at cases of outside work, whether paid or unpaid, we apply the same principles highlighted in the foregoing paragraphs irrespective of whether the officer engaged in the outside work is taking up a "public office" as defined in (a) above. We have examined some examples. Our observations are given below -
 - (i) if by outside work one is referring to an elected seat on either the Legislative Council or a District Council, the answer to the question posed in para. 2(b) of your letter is "no". The relevant legislation debar a civil servant from getting elected as a Legislative Councillor or a District Councillor;
 - (ii) if by outside work one means a civil servant taking up say polling duties as a temporary staff under the Registration and Electoral Office and getting paid, his/her engagement in such duties is governed by existing CSRs on outside work. An officer must obtain the consent of his/her Head of Department (HoD) before *engaging*

on his/her own account in outside work for remuneration of any sort. In considering such applications, the HoD will take into account factors including those given in paragraphs 4 - 5 above.

As part of his/her official duties, a civil servant may be appointed as a member of an advisory or statutory body. In such circumstances, the civil service rules on outside work do not apply.

Yours sincerely,

(SUI Wai Keung)
for Secretary for the Civil Service

p.s. A Chinese version and soft copies of the reply are attached.