

~~PRESIDENT (in Cantonese): Those against please raise their hands.~~

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

MEMBERS' MOTIONS

~~PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance.~~

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR RONALD ARCULLI: Madam President, in my capacity as Chairman of the Subcommittee on subsidiary legislation relating to 2000 Legislative Council Election, I move the motion standing in my name on the Agenda.

The Electoral Affairs Commission (Printing of Name of Organization and Emblem on Ballot Paper) (Legislative Council) Regulation sets out the procedure to be followed for having certain particulars, that is, the name, an abbreviation of the name or an emblem of an organization or an emblem of a natural person printed on a ballot paper for use in a Legislative Council Election (excluding an Election Committee subsector election).

The Subcommittee has met with the Administration's team, namely, representatives of the Administration and the Registration and Electoral Office, to discuss the Regulation on three occasions.

As proposed under the Regulation, applications for registration will only be invited in the year in which a Legislative Council Election is to be held. If the Electoral Affairs Commission (EAC) is of the opinion that it may refuse an application, the applicant will be given 14 days to lodge with the EAC a statement of reasons why the EAC should not refuse to grant the application or to make a request to vary the application. The EAC will then compile a

Provisional Register for all the applications that it intends to grant for publication in newspapers and for public inspection. Upon receipt of an objection, the EAC will hold a hearing. The EAC's decision is final and not subject to any appeal. An applicant has to apply to the EAC for renewing the registered particulars if the applicant would like to retain the registered particulars in the next register, otherwise, the particulars will cease to be registered.

Apart from a member who has expressly indicated that he does not support the Regulation, the Subcommittee supports in principle the proposal of enabling the emblem or name of an individual, organization or a political party to be on ballot papers. However, the majority of the members of the Subcommittee have raised concern about the technical and implementation aspects of the proposal.

I would like to quote two examples of the confusion that could arise upon the implementation of the Regulation.

In the first example:

Under section 7(1), the EAC may refuse an application made by organization A for the registration of a name or an emblem if the name or an emblem is identical or so closely resembles that of organization B on the condition that:

- (i) the name or emblem of organization B is registered; and
- (ii) organization B has applied for renewal of its application.

Since the two conditions must co-exist, the EAC apparently has no power under section 7 to refuse the application of organization A if organization B does not make an application to renew its registration. The Administration's team does not consider the arrangement would pose any problem because when the Provisional Register containing details of the application of organization A is published, any objection raised by organization B will be considered by the EAC. In any event, if organization B has not made an application for renewal, its name or emblem will not be entered in the new register.

However, the Administration's team has not addressed the question of the failure of organization B to object, and the question of the incapability of organization B to object to the application because it has ceased to exist.

In the second example:

Under the Regulation, applications for registration should be made during a "relevant period" which falls within the nine months immediately preceding the date of a general election of the Legislative Council.

The Subcommittee is concerned about this scenario: Let us say shortly after the 2000 Legislative Council Election, or indeed, any subsequent general election of the Legislative Council, organization A adopts an emblem which might be similar to a registered emblem of organization B. However, organization A cannot apply for registration of the emblem at that time because of the existing arrangement. When organization A submits an application for registration of its emblem in 2004 for the purpose of printing the emblem on a ballot paper for the 2004 Legislative Council Election, can the EAC refuse its application on the ground that the emblem is similar to that of organization B which has also applied for renewal of its emblem? One has to bear in mind that organization A may have been using the emblem for over three years.

To sum up, some members consider that the registration procedure under the Regulation is very cumbersome and should be simplified. Since candidates are at present free to use any names and emblems in election publicity materials without being subject to any registration procedure, they have proposed that the registration procedure should be replaced by a notification procedure. The EAC's role should be confined to ascertaining whether a candidate is authorized to use the particulars. Although the EAC's approval *per se* is not required, it would also be empowered to refuse to accede to the request on specified grounds. These members have also expressed concern that a procedure which has imposed too many restrictions might compromise political freedom or even freedom of expression. As the EAC is an independent statutory body, it would be undesirable for it to be involved in sensitive and political issues.

Other members have proposed that applications for registration should not be restricted to a specified period which falls within the nine months immediately preceding the date for a general election. In addition, the requirement for

applicants to apply for renewal of the registered particulars before the next Legislative Council general election should be removed. Applicants should be allowed to retain the registered particulars until such time when the EAC decides that the particulars should cease to be registered, such as when an organization has ceased operation.

All these issues have not been adequately addressed by the Administration's team.

Madam President, in view of the time constraint facing the Subcommittee for scrutinizing the Regulation under the negative vetting procedure and members' substantive views on the Regulation which is very complex, the Subcommittee requested the Administration's team to consider repealing the Regulation at this Council meeting, with a view to having it gazetted again with or without amendments, after conclusion of deliberation by the Subcommittee. The Administration's team has advised that applications for registration will be invited in February 2000, in order that the Register containing the registered particulars will be compiled in good time before the commencement of the nomination period for the 2000 Legislative Council Election. It further said that if the proposal is to be implemented in time for this year's Legislative Council Election, the timetable could not be postponed.

Nine out of 13 members attended the Subcommittee's meeting on 13 January. In view of the EAC's position on the timetable, members have agreed that it is impracticable for the Subcommittee to complete scrutiny and also propose amendments to the Regulation before the expiry of the scrutiny period on 19 January, not to mention the time that other Members would need for considering the proposed Regulation or any amendments. In addition, it would be undesirable for the Legislative Council to impose a revised proposal on the EAC without adequate consultation. After deliberation, it is the consensus of the members present at that meeting that despite their support for the inclusion of names or emblems on ballot papers, regrettably due to the lack of time, they felt that the Regulation should be repealed.

I would also like to say a few words on the response of the Administration's team to the Subcommittee's decision. In the view of the Administration's team, the proposal is workable as set out in the Regulation. However, given members' views on the proposal, the Administration's team also considers that it is better for the Legislative Council to repeal the Regulation than

to put forward a revised proposal which might have problems in implementation. While the EAC would reconsider the proposal having regard to the views expressed by the Subcommittee, the proposal, however, will not be implemented for this year's Legislative Council Election.

The motion, as I understand it, Madam President, will require the majority support, on the one hand of the functional constituency Members, and on the other hand, of the Members returned by geographical constituencies through direct elections and by the Election Committee, since it is a Members' motion and the voting has to be done as specified in the Basic Law. Should the motion, namely, my motion to repeal the Regulation, be defeated, the Regulation under consideration will take effect on 21 January 2000, that is, this Friday. With these remarks, Madam President, I urge Members to support the motion.

Mr Ronald ARCULLI moved the following motion:

"That the Electoral Affairs Commission (Printing of Name of Organization and Emblem on Ballot Paper) (Legislative Council) Regulation, published as Legal Notice No. 306 of 1999 and laid on the table of the Legislative Council on 15 December 1999, be repealed."