

立法會
Legislative Council

LC Paper No. LS11/05-06

**Paper for the House Committee Meeting
on 2 December 2005**

**Legal Service Division Report on
St. Stephen's College Incorporation (Change of Name of the Council of
St. Stephen's College and General Amendments) Bill 2005**

I. SUMMARY

- | | |
|---|--|
| 1. Objects of the Bill | To amend the St. Stephen's College Incorporation Ordinance (Cap. 1049) to- <ul style="list-style-type: none">(a) provide for the change of name of the Council of St. Stephen's College;(b) bring the provisions of the Ordinance into conformity with the Education Ordinance (Cap. 279);(c) introduce miscellaneous amendments and make transitional arrangements. |
| 2. Comments | <ul style="list-style-type: none">(a) The Administration is preparing Committee Stage amendments to introduce a commencement clause so that a commencement date may be appointed when the Constitution is ready. This would replace the transitional arrangements originally proposed.(b) Other Committee Stage amendments of a technical nature are also being prepared by the Administration. |
| 3. Public Consultation | No public consultation has been carried out. The Council of St. Stephen's College has agreed to the proposals in the Bill. |
| 4. Consultation with LegCo Panel | No consultation with the Education Panel has been carried out. |
| 5. Conclusion | Members may wish to defer consideration on the need to set up a Bills Committee pending our further report on the Committee Stage amendments to be proposed by the Administration. |

II. REPORT

Objects of the Bill

To amend the St. Stephen's College Incorporation Ordinance (Cap. 1049) ("the Ordinance") to-

- (a) provide for the change of name of the Council of St. Stephen's College ("the Council");
- (b) bring the provisions of the Ordinance into conformity with the Education Ordinance (Cap. 279);
- (c) introduce miscellaneous amendments and make transitional arrangements.

LegCo Brief Reference

2. EMB(SCR) 23/58/05 issued by the Education and Manpower Bureau on 16 November 2005.

Date of First Reading

3. 30 November 2005.

Comments

The role of the Administration

4. The Education (Amendment) Ordinance 2004 (27 of 2004), which provides for the establishment of incorporated management committees ("IMC") to manage certain types of schools, came into operation on 1 January 2005. Consequential amendments to the Ordinance are required and the Administration considers that it would be more appropriate for it to introduce the Bill.

Change of name

5. The Bill proposes to amend the long and short titles of the Ordinance and the references to the Council in the Chinese text of the Ordinance. The titles of the Ordinance are confusing as they convey the impression that St. Stephen's College ("the College") is an incorporated body. It is in fact the Council that is the body corporate incorporated under the Ordinance. The Council is referred to as "校董會" in the Ordinance and it may be confused with the future IMC of the College which,

according to the LegCo Brief, is to be named as “聖士提反書院法團校董會”. Under the Bill, the Council would have the corporate name “St. Stephen’s College Council (聖士提反書院教委會)”.

Conformity with the Education Ordinance

6. The Bill seeks to repeal section 3 of the Ordinance which provides for the appointment and removal of the warden of the College by the Church Missionary Society. This section is inconsistent with sections 55 and 57A of the Education Ordinance (Cap. 279) concerning the tenure of office of principal and the selection of principal of an IMC school respectively.

7. To bring the Ordinance further in line with the Education Ordinance, the Bill proposes to repeal section 4(2) and (3) relating to the powers of the Council to manage resources of the College, section 6 which empowers the Council to make regulations, and the St. Stephen’s College Regulations (Cap. 1049 sub. leg. A). The Bill also sets out the objects of the Council and makes provisions for the Constitution of the Council. It is proposed that the powers and duties of the Council be specified in the Constitution.

Other miscellaneous amendments

8. Other miscellaneous amendments introduced include provisions on the composition of the Council, the use of common seal, emblems, the delivery of certain particulars to the Registrar of Companies and indemnity by the Council.

Committee Stage amendments

9. The Bill originally proposes a transitional arrangement for the Constitution. The St. Stephen’s College Regulations would have effect as the Constitution of the Council during the next six months before the new Constitution is adopted. The new section 6D is intended to be a savings provision, but it is doubtful whether that section, as it is now drafted, would give effect to the policy intent. Members may refer to paragraphs 6 to 9 of the correspondence exchanged between the Legal Service Division and the Administration attached in the **Annex** for further information.

10. The Administration has now advised that the Council would not object to the introduction of a commencement clause so that a commencement date may be appointed when the Constitution is ready. This would ensure that the existing powers of the Council under section 4(2) and (3) and the present composition of the Council provided in section 2(2) would continue while the Constitution is being prepared. The Administration is in the course of preparing Committee Stage amendments to give effect to the above new arrangement replacing the transitional arrangement.

11. In addition, other Committee Stage amendments of a technical nature are being prepared by the Administration. Members may refer to paragraphs 4 and 5 of the correspondence in the Annex for details.

Public Consultation

12. No public consultation has been carried out. The Administration has sought the agreement of the Council on the Bill who in turn has consulted the Standing Committee of the Synod of the Diocese of Hong Kong Island of the Hong Kong Sheng Kung Hui. The Administration has indicated that the Council has no objection to the proposed Committee Stage amendments.

Consultation with LegCo Panel

13. No consultation with the Education Panel has been carried out.

Conclusion

14. Members may wish to defer consideration on the need to set up a Bills Committee pending our further report on the Committee Stage amendments to be proposed by the Administration.

Encl

Prepared by

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Assistant Legal Adviser
Legislative Council Secretariat
30 November 2005

Bill/B/3/05-06

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Secretary for Education and Manpower
(Attn : Mrs Betty Ip,
PAS(School Administration & Support))

21 November 2005

Education and Manpower Bureau
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Total no(s) of page(s) : 3

Dear Mrs Ip,

**St. Stephen's College Incorporation (Change of Name of the
Council of St. Stephen's College and General Amendments) Bill 2005**

We are scrutinizing the legal and drafting aspects of the above Bill for and on behalf of Members and shall be grateful for your clarification:

Interpretation (new section 1A under Clause 4)

1. What is the purpose of including the predecessor of Hong Kong Sheng Kung Hui in the definition of **“Church”**?
2. Why is the definition of **“Standing Committee of the Church”** different from the definition of “Standing Committee” under the Hong Kong Sheng Kung Hui (Cap. 1157)? Please clarify the relationship between “the Synod of the Diocese of Hong Kong Island of the Church” referred to in the Bill and “the General Synod of the Province of the Hong Kong Sheng Kung Hui” referred to in Cap. 1157. We note that section 6 of Cap. 1157 provides that the Diocese of Hong Kong Island is one of the constituents of the Province.

Incorporation (Clause 5)

3. What is the purpose of the proposed **section 2(4)**? Should the Chairman and the Secretary be regarded as members of the Council, so that their appointment and removal from office have been provided under the proposed section 2(3)?

Objects of Council (proposed section 3 under Clause 6)

4. In the proposed **section 3(a)**, why is the description of the work for which the College was originally founded not exactly the same as the description in section 4(1) proposed to be repealed? The Bill refers to Hong Kong and elsewhere (in substitution of the term “Chinese youths”), and adds the qualification of a “well-balanced” education. Are the Christian principles as professed by the Church of England the same as those professed by the Hong Kong Sheng Kung Hui? Why is the Chinese rendition for “Christian principles” different?

5. Why does **section 3(c)** refer to the management committee only? It is stated in the LegCo Brief that St. Stephen’s College is an aided school, and is required to submit a draft constitution of the incorporated management committee (IMC) by 1 July 2009. One of the reasons for changing the Chinese name of the Council is to avoid confusion with the Chinese name of the future IMC of the College. Will there be future amendments to the Ordinance when the IMC of the College is established?

Powers and duties of Council (proposed section 4 under Clause 7)

Constitution (proposed section 6 under Clause 9)

Change of name does not affect identity, etc (new section 6D under Clause 10)

Transitional arrangement for Constitution (Clause 11)

6. Please clarify the policy intent of the transitional arrangements. For what period of time does the Council intend to determine under **Clause 11** that the St. Stephen’s College Regulations (Cap. 1049 sub. leg. A) (“the Regulations”) would have effect as the Constitution of the Council?

7. The Regulations now apply to St. Stephen’s College, but the scope of the Constitution appears to cover St. Stephen’s College Preparatory School and other schools and educational institutions in Hong Kong and elsewhere. Please clarify.

8. One of the effect of the new **section 6D** seems to provide that the powers of the Council would not be affected except as amended by the Bill. During the transitional period when the existing section 4(2) and (3) is repealed and the Regulations take effect as the Constitution, is it intended that the Council would not continue to have the prescribed powers under section 4(2) and (3)? Does the Council have any lands, buildings, messuages or tenements, investments, vessels and other goods and chattels?

9. Another effect of the new **section 6D** seems to provide that the office of the members of the Council would continue subject to the Ordinance as amended. The Bill proposes to repeal section 2(2) in respect of the composition of the Council, but there is no corresponding provision in the Regulations.

We should be grateful if you would reply, in both languages, by 26 November 2005 to facilitate our reporting to the House Committee.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

c.c. D of J (Attn : Ms Elsie Tse, GC) (Fax : 2869 1302)
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Education and Manpower Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

本局檔號 Our Ref.: (7) in EMB(SCR)23/58/05 Pt.4

電話 Telephone: 2892 6401

來函檔號 Your Ref.: LS/B/3/05-06

傳真 Fax Line: 2119 9061

26 November 2005

Ms Bernice Wong
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Legislative Council Building,
8 Jackson Road
Central, Hong Kong

Dear Ms Wong,

**St. Stephen's College Incorporation (Change of Name of the
Council of St. Stephen's College And General Amendments) Bill 2005**

Thank you for your letter dated 21 November 2005. Having discussed the matter with the council of the St. Stephen's College, I would make the following clarification of the issues raised in your letter:

Interpretation (new section 1A under clause 4)

1. (a) The Hong Kong Sheng Kung Hui ("Church") is part of the Anglican Church community and is the successor to the Anglican Church's Diocese of Victoria and the Anglican Church's Diocese of Hong Kong & Macao. The Anglican Church (also known as "the Church of England") in Hong Kong was known originally as "the Diocese of Victoria", later as "the Diocese of Hong Kong & Macao" and in 1998 became "the Province of Hong Kong Sheng Kung Hui" – see Annex for information obtained from the Anglican Communion website (in English only).

- (b) The council of the St. Stephen's College always has extremely close ties with the Anglican Church (also known as "the Church of England") in Hong Kong. St. Stephen's College Incorporation Ordinance (Cap. 1049) contains the following provisions :-

"2(2) The council shall be composed of ... (a) the **Bishop for the time being of Victoria**, Hong Kong, hereinafter referred to as the patron; ... (d) not more than seven persons nominated by the patron and the warden jointly, of whom ... two shall be members of the **Church of England** or of a Church in China in communion with the **Church of England**."

"4(1) The corporation shall carry on the work ... of offering to Chinese youths a modern, liberal education ... upon Christian principles ... as professed by the **Church of England**."

- (c) Under the Bill, a Church organ (i.e. the Standing Committee of the Synod of the Diocese of Hong Kong Island of the Church) has the right to approve the Constitution of the St. Stephen's College Council.
- (d) The reference in the Bill to the predecessor of the Church serves to safeguard the right of the Church organ to approve the Constitution of the St. Stephen's College Council, which is the continuation of an important role played by the Anglican Church in Hong Kong under the existing Cap. 1049.
2. (a) The Church is a "Province" within the worldwide Anglican community comprising, inter alia:-
- (i) the Diocese of Hong Kong Island;
 - (ii) the Diocese of Eastern Kowloon;
 - (iii) the Diocese of Western Kowloon.
- (b) The General Synod is the governing authority of the Province and the Standing Committee of the General Synod is responsible for the management of the affairs of the Province.
- (c) The Synod of each Diocese is the governing authority of that Diocese and the Standing Committee of that Synod is responsible for the management of the affairs of that Diocese.

- (d) St. Stephen's College is located within the Diocese of Hong Kong Island and the Standing Committee of the Synod of the Diocese of Hong Kong Island is, therefore, the proper organ for approving the Constitution of St. Stephen's College Council. It is, therefore, appropriate for the "Standing Committee of the Church" to be defined in the Bill as the "Standing Committee of the Synod of the Diocese of Hong Kong Island of the Church or its successor or replacement from time to time".

Incorporation (clause 5)

3. As presently drafted, the new section 2(4) would allow removal from office of the Chairman/Secretary while remaining a member. It is proposed to keep section 2(3) and 2(4) intact.

Objects of Council (proposed section 3 under clause 6)

4. (a) It is the College's intention to extend and widen its scope of education from the original scope. It is believed that such intention could be fully reflected by amending " , namely, of" in the new section 3(a) to "by".
- (b) "Christian principles" in the new section 3(a) is intended to replace "Christian principles, protestant (i.e. 新教) and evangelical (i.e. 福音)" in section 4(1) of the existing Cap. 1049. It is considered that "基督教信仰原則" is an appropriate Chinese rendition of "Christian principles".
5. The College has no intention to further amend the Ordinance when the incorporated management committee is established. It is suggested to cover this eventuality by adding "and the incorporated management committee" before " ;" at the end of the proposed section 3(c).

Powers and duties of Council (proposed section 4 under clause 7)

Constitution (proposed section 6 under clause 9)

Change of name does not affect identity, etc. (new section 6D under clause 10)

Transitional arrangement for Constitution (clause 11)

6. The policy intent is that the Regulations will continue to govern Council meetings and regulate the College Council etc. until a new Constitution is drafted and adopted by the Council. As the Standing Committee of the Synod of the Hong Kong Island of the Church will have to be consulted in the drafting of the Constitution, it is anticipated that the exercise will take about 6 months.

7. (a) Although the existing Cap. 1049 appears only to apply to St. Stephen's College, the council of the St. Stephen's College in fact exercises the same functions in relation to St. Stephen's College Preparatory School as to the College. In other words, "St. Stephen's College" has for all practical purposes been regarded as comprising the secondary school and the preparatory school.
- (b) The widening of the definition of "College" in the new interpretation section to include "St. Stephen's College Preparatory School" is intended to regularize this anomaly.
8. When the Bill was drafted, it was intended that the new section 6D(b) will continue to give the council of the College the powers under the existing section 4(2) and 4(3). The council would not object if a commencement clause is introduced to postpone the commencement of the Bill to safeguard the continuation of such powers pending the adoption of a Constitution. If a commencement clause (with the Bill coming into operation on a date to be appointed) is added, clause 11 (Transitional arrangement for Constitution) of the Bill would no longer be necessary. The proposed section 6D would too serve little purpose and could be deleted.
9. It is believed that this query has been addressed in paragraph 8 above.

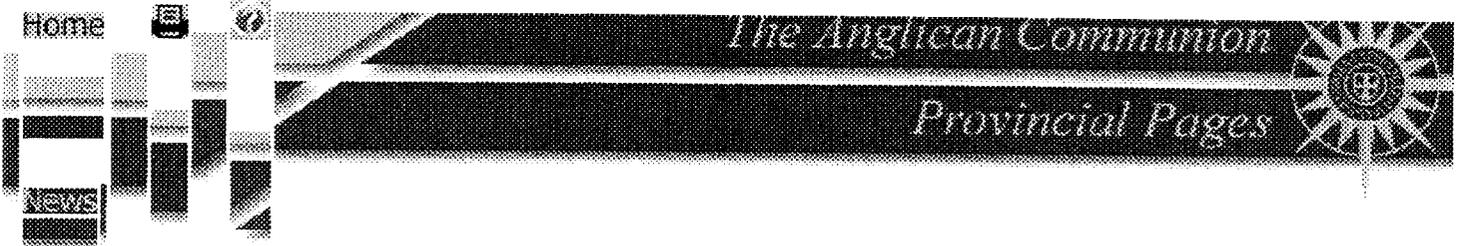
Should you require further information, please let me know.

Yours sincerely,


(Mrs Betty Ip)

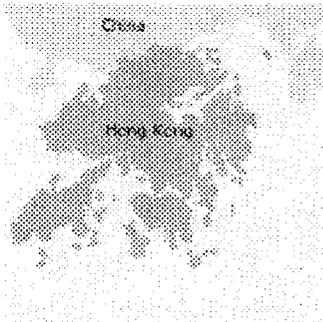
for Secretary for Education and Manpower

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Hong Kong Sheng Kung Hui



In the course of development of the Anglican Church in Hong Kong and Macau, we have witnessed the establishment of the Diocese of Victoria in 1849 under the See of Canterbury; the establishment of the Kong Yuet Diocese under the Province of the Chung Hua Sheng Kung Hui (the Holy Catholic Church of China) in 1913; and the birth of the Diocese of Hong Kong and Macao in 1951, which was subsequently completely separated from the national Chung Hua Sheng Kung Hui.

In the Anglican Communion, a province is a self-governing church composing of several dioceses operating under a common constitution and having one supreme legislative body. The Sheng Kung Hui Diocese of Hong Kong & Macao ("the Diocese") was one of the few dioceses in the Anglican Communion which did not belong to a province.

In the 40th Diocesan Synod of the Diocese held in December 1991, it was resolved that steps be taken to expand the Diocese into a province, a fully autonomous member within the Anglican Communion, having independent ecclesiastical authority vested in the General Synod. The Province of Hong Kong Sheng Kung Hui was in place on October 25, 1998.

Hong Kong and Macau have gone through political and sovereign changes in the past and Hong Kong has, since 1st July, 1997, rejoined while Macau will in the near future rejoin and become part of China, in the form of Special Administrative Regions.

At this critical moment in history, the Anglican community in Hong Kong and Macau have considered the past, consolidated the present and resolved that missionary works and services of the Church in Hong Kong and Macau would be greatly enhanced under the independent status of a province. In the new structure of a province, we shall take full responsibility for all our acts; have access to maximum resources; and be able to unify our best efforts in the building of the Kingdom of God in Hong Kong and Macau and thereby exalting the Grace of our Lord Jesus Christ, the Love of God and the fellowship of the Holy Spirit.

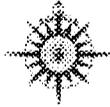
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|-----------------------|-------------|
| Geographical Area: | 1,070 Sq Km |
| Population: | 6,900,000 |
| Number of Anglicans: | 31,404 |
| Number of Christians: | 539,400 |
| Number of Parishes: | 50 |
| Number of Clergy: | 75 |

Primate: The Most Revd Peter Kwong
Provincial Secretary: The Revd Paul Kwong
Website: Hong Kong Sheng Kung Hui

Diocese of Eastern Kowloon
Diocese of Hong Kong Island
Diocese of Western Kowloon
Missionary Area of Macau

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