

**President's ruling on
the amendment proposed by
Hon LEUNG Kwok-hung to the motion on
"Introducing legislative amendments to open up community radio stations"
to be moved by Hon James TO Kun-sun
at the Council meeting of 23 January 2008**

Hon James TO Kun-sun will move the following motion at the Council meeting to be held on 23 January 2008:

(Translation)

"That existing legislation restricts the setting up of community radio stations by the public and the Government has unrestricted power to reject the applications from members of the public for a licence to operate a radio station, which has led to criminal prosecution against members of the public for setting up and participating in community radio stations, thus depriving the public of the right to express opinions through different channels and violating human rights; this Council urges the Government to amend the Telecommunications Ordinance and the Broadcasting Ordinance to open up public service broadcasting, including setting up channels for digital television and radio broadcasting for use by the public and allowing the community to set up and operate radio and television broadcasting services, so as to safeguard the freedom of speech of the public."

2. Hon LEUNG Kwok-hung has proposed to amend the motion. If I allowed the amendment and if it was passed by the Council, the motion moved by Mr TO, as amended by Mr LEUNG, would read:

(Translation)

"That existing legislation restricts the setting up of community radio stations by the public and the Government has unrestricted power to reject the applications from members of the public for a licence to operate a radio station, which has led to criminal prosecution against members of the public for setting up and participating in community radio stations, thus depriving the public of the right to express opinions through different channels and violating human rights; this Council urges the Government to *cease abusing judicial procedures, prosecuting the relevant persons and applying for injunctions to debar Citizens' Radio Station from broadcasting, immediately undertake to expeditiously* amend the Telecommunications Ordinance and the Broadcasting Ordinance to open up public service broadcasting, *and abolish the existing privilege enjoyed by the Chief Executive in the issue of licences which is contrary to*

protecting freedom of speech as provided in the Basic Law, including setting up channels for digital television and radio broadcasting for use by the public and allowing the community to set up and operate radio and television broadcasting services, so as to safeguard the freedom of speech of the public."

3. Mr LEUNG's proposed amendment is to add to the original motion actions that this Council would urge the Government to undertake. It consists of three parts, namely:

- (a) "cease abusing judicial procedures, prosecuting the relevant persons and applying for injunctions to debar Citizens' Radio Station from broadcasting";
- (b) "immediately undertake to expeditiously amend the Telecommunications Ordinance and the Broadcasting Ordinance"; and
- (c) "abolish the existing privilege enjoyed by the Chief Executive in the issue of licences which is contrary to protecting freedom of speech as provided in the Basic Law".

4. Rule 41(2) of the Rules of Procedure provides: "Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case."

5. Having regard to Rule 41(2) of the Rules of Procedure, I am of the opinion that part (a) of the proposed amendment is out of order as the subject matter of this part of the proposed amendment concerns cases which are pending in a court of law, and to admit this proposed amendment for debate would result in Rule 41(2) not enforceable in a fair and reasonable manner.

6. Mr LEUNG enquired through the Secretariat on 17 January 2008, which was one day after the deadline for giving notice of amendment, that should I rule his original wording out of order, whether he could revise the wording of his amendment. He also informed the Secretariat of his proposed revised wording which involves a substantive change. I cannot see any reason for me to waive the required notice requirement for the revised proposed amendment under the Rules of Procedure.

Ruling

7. For the reasons stated in paragraph 5 above, I rule that the proposed amendment is out of order in its present terms, and should be returned to Hon LEUNG Kwok-hung. However, I am prepared to waive the required notice for Mr LEUNG to submit for my approval, by 3:00 pm today, the following

amendment which is in effect his original proposed amendment but without part (a).

(Translation)

“That existing legislation restricts the setting up of community radio stations by the public and the Government has unrestricted power to reject the applications from members of the public for a licence to operate a radio station, which has led to criminal prosecution against members of the public for setting up and participating in community radio stations, thus depriving the public of the right to express opinions through different channels and violating human rights; this Council urges the Government to *immediately undertake to expeditiously* amend the Telecommunications Ordinance and the Broadcasting Ordinance to open up public service broadcasting, *and abolish the existing privilege enjoyed by the Chief Executive in the issue of licences which is contrary to protecting freedom of speech as provided in the Basic Law*, including setting up channels for digital television and radio broadcasting for use by the public and allowing the community to set up and operate radio and television broadcasting services, so as to safeguard the freedom of speech of the public.”

8. Should Mr LEUNG submit his notice for the replacement amendment by the above deadline, I am prepared to waive the required notice for Members to move amendments, if any, to Mr LEUNG's amendment, if the amendments are submitted to the Secretariat by 12:00 midnight today.

(Mrs Rita FAN)
President
Legislative Council

21 January 2008