

**President's ruling on
Hon Ronny TONG Ka-wah's proposed amendment to
Hon CHAN Kam-lam's amendment 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 CHAN Kam-lam will move an amendment to the motion. If it was passed by the Council, the motion moved by Mr TO, as amended by Mr CHAN, 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~~ *stipulates that members of the public and organizations must, prior to the setting up of radio stations, apply to the Government* for a licence to operate a radio station, ~~which has led~~ *members of the public who conduct and participate in illegal broadcasting are liable* 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;~~ *to make the public fully aware of the factors that the Government will take into consideration in issuing*

licences and to allow them to express opinions through different channels, this Council urges the Government to amend Administration to, under the principle of protecting freedom of speech of the public while ensuring that legitimate communications will not be interfered, review 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."

3. Hon Ronny TONG Ka-wah has proposed an amendment to Mr CHAN's amendment. If I allowed Mr TONG's amendment and if it was passed by the Council, the motion moved by Mr TO, as amended by Mr CHAN and Mr TONG, 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 ***stipulates that after the existing legislation is finally determined by the Court as constitutional, members of the public and organizations must should, prior to the setting up of radio stations, apply to the Government*** for a licence to operate a radio station, which has led *members of the public who conduct and participate in illegal broadcasting are liable* 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; *to make the public fully aware of the factors that the Government will take into consideration in issuing licences and to allow them to express opinions through different channels, this Council urges the Government to amend Administration to, under the principle of protecting freedom of speech of the public while ensuring that legitimate communications will not be interfered, review 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."*

4. The effect of Mr TONG's proposed amendment amounts to anticipating that the court will finally rule the relevant legislation constitutional.

I think that it is not appropriate to include in the wording of a motion or an amendment, which is to be debated by this Council, any anticipation of how a court may rule on a particular case before it, as this could be perceived by the public as an attempt by this Council to interfere with the independence of the Judiciary. In arriving at this decision, I have taken into consideration the practices of some legislatures in common law jurisdictions.

Ruling

5. For the reasons stated in paragraph 4 above, I rule under Rule 30(3)(c) of the Rules of Procedure that the proposed amendment is out of order and should be returned to Hon Ronny TONG Ka-wah.

(Mrs Rita FAN)
President
Legislative Council

22 January 2008