

(Translation prepared by the
Legislative Council Secretariat)

CB(3)/M/MM
2869 9461
2877 9600

17 June 2009

Hon Albert CHAN Wai-yip
9A, G/F, Wing Hong House
Fuk Loi Estate
Tsuen Wan
New Territories

Dear Mr CHAN

Legislative Council meeting on 17 June 2009

**Proposed amendment to the motion on
“Proposal on the constitutional reform in Hong Kong”**

On my instruction, the Clerk to the Legislative Council informed you on 12 June 2009 of my ruling on your proposed amendment to the motion on “Proposal on the constitutional reform in Hong Kong”. I consider your amendment, as boldfaced below, to be out of order:

“That this Council urges the Government to enact legislation on referendum and conduct a referendum on the proposal on constitutional reform in Hong Kong, so as to realize the principle of a high degree of autonomy for Hong Kong people, allow Hong Kong people to decide on the selection of the Chief Executive and the election of all Legislative Council Members by universal suffrage in 2012, fully comply with the relevant requirements of the International Covenant on Civil and Political Rights of the United Nations, and return the political power to the people; *and also appeals to the people of Hong Kong to actively participate in the great march on 1 July and express their determination to fight for dual universal suffrage in 2012.*”

You wrote on 16 June 2009 asking me to review the ruling on your proposed amendment.

In your letter, you quoted a paper submitted by the Security Bureau to the Panel on Security in November 2000 (LC Paper No. CB(2) 303/00-01(02)) to support your view that “any application for public procession for which a notice of no objection or notice of objection has not been issued cannot be taken as an activity held not in accordance with the requirements of the law”. That paper does not actually mean what you stated. It only explains that in case a notice of no objection or a notice of objection has not been issued by the Commissioner of Police “within the specified time limit”, it is deemed that a notice of no objection has been issued and the public procession can be held as scheduled. This is a requirement provided for in section 9(3) of the Public Order Ordinance (Cap. 245). As far as the public procession referred to in your amendment is concerned, “the specified time limit” is 48 hours before the time of commencement of the public procession. Therefore, as of this moment, section 9(3) does not yet operate on the procession so as to enable it to be held as scheduled without a notice of no objection issued by the Commissioner of Police.

You pointed out that since 2003, this is the seventh year that the “great march on 1 July” is held, and that the “great march on 1 July” was lawfully held every year. I am aware of such a situation and have taken this into consideration when I made the ruling. It is inappropriate for me to speculate how the Police will deal with the issuance of notice in respect of every activity, and even more inappropriate for me to be satisfied, solely on the ground that this activity has been held for a number of years, that the Police will certainly issue a notice of no objection for the relevant activity to be held on 1 July this year.

Lastly, I must point out that as the President of the Legislative Council, I have to protect the freedom of speech of Members on the one hand but, on the other hand, I should not allow the Legislative Council to appeal to the public to participate in a forthcoming activity, the holding of which is still subject to confirmation that it meets the legal requirements.

For the reasons stated above, I maintain my original ruling.

Yours sincerely

(Jasper TSANG Yok-sing)
President
Legislative Council

c.c. Other Members of the Legislative Council