

立法會
Legislative Council

LC Paper No. CB(2)523/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/98

Bills Committee on District Councils Bill

Minutes of Meeting
held on Thursday, 4 February 1999 at 8:30 am
in Conference Room A of the Legislative Council Building

- Members Present** :
- Hon Ambrose LAU Hon-chuen, JP (Chairman)
 - Hon James TIEN Pei-chun, JP
 - Hon David CHU Yu-lin
 - Hon Cyd HO Sau-lan
 - Hon Lee Kai-ming, JP
 - Hon Ronald ARCULLI, JP
 - Hon Ambrose CHEUNG Wing-sum, JP
 - Hon CHAN Wing-chan
 - Hon CHAN Kam-lam
 - Hon SIN Chung-kai
 - Hon Andrew WONG Wang-fat, JP
 - Hon Jasper TSANG Yok-sing, JP
 - Hon Howard YOUNG, JP
 - Hon YEUNG Yiu-chung
 - Dr Hon TANG Siu-tong, JP
 - Hon TAM Yiu-chung, JP
- Members Absent** :
- Dr Hon Raymond HO Chung-tai, JP
 - Hon LEE Wing-tat
 - Hon Fred LI Wah-ming
 - Hon MA Fung-kwok
 - Hon CHEUNG Man-kwong
 - Hon Christine LOH
 - Dr Hon LEONG Che-hung, JP
 - Hon WONG Yung-kan
 - Hon LAU Wong-fat, GBS, JP
 - Hon Emily LAU Wai-hing, JP

Hon Andrew CHENG Kar-foo
Hon SZETO Wah

- Public Officers :** Mr Robin IP
Attending Deputy Secretary for Constitutional Affairs 2
- Mrs Maureen CHAN
Deputy Secretary for Constitutional Affairs 3
- Mr Paul WONG
Principal Assistant Secretary for Constitutional Affairs
- Mr Augustine CHENG
Deputy Director of Home Affairs
- Mr James O' NEIL
Principal Government Counsel (Elections)
- Mrs N DISSANAYAKE
Senior Assistant Law Draftsman
- Mr Vidy CHEUNG
Senior Assistant Law Draftsman
- Clerk in :** Mrs Constance LI
Attendance Chief Assistant Secretary (2) 2
- Staff in :** Mr Jimmy MA
Attendance Legal Adviser
- Miss Flora TAI
Senior Assistant Secretary (2) 2
-

I. Clause-by-clause examination of the Bill

Members continued clause-by-clause examination of the Bill starting from clause 77.

Clause 77 - Proceedings against members on grounds of disqualification

2. In response to Mr Ronald ARCULLI's enquiry about sub-clause (2), Principal Government Counsel (Election) (PGC(E)) advised that no proceedings could be brought against a person after six months from the date on which the person concerned acted or claimed to be entitled to act as a member. PGC(E) informed members that there were similar provisions in section 26 of the Provisional District Boards Ordinance (Cap. 366) and section 26 of the previous District Boards Ordinance. He added that the purpose of setting a period was to provide certainty that proceedings could not be instituted after a long time.

3. Mr Ronald ARCULLI queried that the drafting of clause 77 could give rise to ambiguity as to whether the provision would also cover cases of impersonation. PGC(E) responded that the main thrust of the provision was to stop a disqualified District Council (DC) member from continuing to act in such capacity but it could also cover impersonation of a DC member. In this connection, Legal Adviser (LA) sought clarification from the Administration whether the intention of clause 77 was to stop a disqualified DC member from acting in such capacity rather than to deal with impersonation cases. He pointed out that according to sub-clause (1), the Secretary for Justice might bring proceedings against a person who acted as a DC member on the ground that the person was "disqualified" from acting as such. He therefore had doubts that clause 77, in its present form, could cover impersonation cases. PGC(E) said that sub-clause (6) did cover two separate situations, i.e when a person was either "not qualified" or "disqualified" to be a member of a DC. The first part of the sub-clause might catch those cases where a person who did not meet the qualifications as a DC member but claimed to be a DC member.

4. Some members then queried whether the clause would apply to cases where a candidate who did not meet the qualifications as a DC member was nominated and elected, but his lack of qualifications was not discovered during his term of office. In response, Deputy Secretary for Constitutional Affairs 2 (DS(CA)2) explained that if the disqualification was not discovered, no proceedings would be brought against that person.

5. Mr Andrew WONG referred to sub-clauses (2) and (6) and inquired whether proceedings could be instituted against an "unqualified" member, if his lack of qualification was not discovered until six months after his term of office had expired. DS(CA)2 advised that a candidate nominated for election was required to make a declaration that he met the conditions for nomination as a DC member. If his ineligibility or disqualification was not discovered during the six months period as specified in sub-clause (2), no proceedings would be brought against him. However, making false statements was an offence for which proceedings could be instituted against the person concerned. In this connection, Mr Howard YOUNG suggested that appointed and ex officio

Action

members should also be required to sign similar declaration forms for acceptance of office. Mr Andrew WONG remarked that there was no specific provision in the Bill requiring a candidate to make a declaration to that effect. He pointed out that the declaration for nomination of candidates under clause 33 only included the requirements to "uphold the Basic Law and pledge allegiance to Hong Kong Special Administrative Region". DS(CA)2 undertook to consider members' concerns.

Adm

6. Mr TSANG Yok-sing said that sub-clause (6) had added ambiguity to the application of the clause. He opined that a person who was "not qualified to be" a DC member would include a person who had never stood for the DC election but claimed to be a DC member. He considered that clause 77 should not be used to deal with impersonation cases which should more appropriately be dealt with under other legislation. Mr Andrew WONG held a similar view. Mr WONG opined that the six months' period for instituting proceedings should not be applicable to impersonation cases. PGC(E) responded that the provision had existed in similar legislation for a long time, and that there were other criminal offences such as obtaining an advantage by deception which might apply to impersonation, depending on the circumstances of each case.

7. The Chairman sought further clarification on the meaning of the phrase "not qualified to be a member" under sub-clause (6)(a). PGC(E) responded that it referred to those qualification criteria for elected and appointed/ex officio members. Mr Ronald ARCULLI added that sub-clause (6) actually covered both the nomination process and the entire term of office of an elected DC member. The phrase "not qualified to be a member" was necessary as it referred to cases where a member was not properly nominated as he did not meet the conditions or qualifications set out in clause 21. The latter part of sub-clause (6)(a) was to cater for cases where a duly elected DC member subsequently became disqualified from holding office under clause 24. However, he shared the concern that the phrase "not qualified to be a member" would not cover impersonation cases. Mr ARCULLI further commented that if it was the policy intention not to cover impersonation cases under this clause, sub-clause (6)(a) should be amended to include reference to clauses 21 and 24. DS(CA)2 undertook to consider Mr ARCULLI's suggestion.

Adm

8. The Chairman then asked whether there would be any formal procedures for disqualifying a DC member. DS(CA)2 advised that a person would be disqualified from being nominated or being elected under clause 21(1)(f). PGC(E) added that a duly elected member could be disqualified under clause 26(c).

9. Mr Ronald ARCULLI asked whether a person who had been proved in court to have acted as a member while disqualified would be allowed to stand for the subsequent election. PGC(E) replied that a person subject to proceedings

Action

under clause 77 would not automatically be "disqualified" from being a candidate at future elections.

10. LA also drew members' attention to sub-clause (1) which proposed that only the Secretary for Justice could bring proceedings against a person on grounds of disqualification, whereas section 73 of the Legislative Council Ordinance (Cap. 542) also allowed an elector to bring such proceedings. DS(CA)2 responded that as the DC Bill covered also appointed and ex officio members, it would be more appropriate for the Secretary for Justice to institute such proceedings.

Clause 78 - Period within which complaint or information is to be laid

11. Members did not raise any queries.

Clause 79 - Chief Executive in Council may make regulations

12. Members did not raise any queries.

Clause 80 - Chief Executive in Council may amend Schedule 4 or 5

13. Members did not raise any queries.

Clause 81 - Designated Officer to give notice of membership

14. Members did not raise any queries.

Clause 82 - Designated Officer to give notice of vacancy

15. Mr SIN Chung-kai asked about the reasons for requiring the Designated Officer to give notice of the vacancy in the Gazette within 21 days after becoming aware of the vacancy. DS(CA)2 responded that the 21 days period was a reasonable timeframe to allow necessary administrative arrangements to be made.

Clause 83 - Directions by Chief Executive to a District Council

16. Members noted that the Administration would amend clause 83(1) to make it clear that directions given by the Chief Executive were "in relation to matters which affect the public interest". Mr SIN Chung-kai was of the view that the provision which was contained in previous editions of the District Boards Ordinance was of a colonial nature. He maintained the view that the Chief Executive as the head of the executive authorities should not be empowered to give directions to an elected council. Mr Andrew WONG disagreed with Mr SIN, pointing out that it was not uncommon for the Chief Executive being the

Action

head of the territory to give directions to a local council. DS(CA)2 said that similar provisions could also be found in other legislation.

Clause 84 - Protection of members

17. Responding to LA, PGC(E) said that the protection under clause 84 would cover any member of a DC or its committees. In reply to Mr LEE Kai-ming, Deputy Director of Home Affairs (DD(HA)) advised that members of Areas Committees who performed similar functions as those of DC members did not have similar protection under any legislation.

Clause 85 - Repeal

18. Members did not raise any queries.

Clause 86 - Consequential and miscellaneous amendments

19. Members did not raise any queries.

Schedule 1 - Number of and declaration of Districts

20. Members did not raise any queries.

Schedule 2 - Establishment of District Councils

21. Members did not raise any queries.

Schedule 3 - Number of elected members and appointed members

22. Mr Andrew WONG said that if appointed membership was to provide for participation of professionals in the deliberation of district business, a fixed number of appointed seats should be set for each DC. Deputy Secretary for Constitutional Affairs 3 (DS(CA)3) responded that the Administration proposed to retain appointed members at the proportion of roughly 20% of the total membership of a DC. However, more appointed members would be required for some large DCs in order to share out the heavy workload. It was therefore difficult to devise a fixed number of appointed members which could be applicable to all DCs. Mr Andrew WONG disagreed with the Administration's argument, pointing out that as more elected members would be provided for those large DCs, there should be less appointed members on these DCs. He said that he would consider moving a CSA to fix a standard number of appointed members for all DCs. Mr Ambrose CHEUNG also suggested that the Administration could consider setting the minimum and maximum number of appointed seats in each DCs to cater for the different sizes of DCs. DS(CA)3 undertook to consider these suggestions.

Action

Adm 23. In response to Miss Cyd HO, DS(CA)3 confirmed that the Administration would include the number of ex officio members for each DC in the Schedule.

Schedule 4 - Forms for acceptance of office

24. Members did not raise any queries.

Schedule 5 - Voting procedure under section 63 of this Ordinance

25. Mr Andrew WONG informed members that he had amended his proposed Committee stage amendments (CSAs) to the effect that a candidate could only stand for election as either the Chairman or a member of a DC. Members did not have other comments.

Schedule 6 - Consequential and miscellaneous amendments

Section 4 Post Office Regulations

26. Mr Andrew WONG asked whether it was in order to include amendments to the Post Office Regulations relating to the Legislative Council election under the DC Bill. PGC(E) responded that it was in order to include related miscellaneous amendments in the Bill. In this connection, LA advised that, in principle, any miscellaneous amendments must be relevant to the object of the Bill, although "relevance" was often a matter of degree. He further advised that it would be for members to decide whether the miscellaneous amendment was acceptable since no policy issue was involved.

27. PGC(E) explained that the Administration proposed to amend the interpretation under sub-regulation 6(1)(d)(i) of the Post Office Regulations by substituting "District Board election" by "elections under the District Councils Ordinance". Consequent to this amendment, it would also be necessary to change "Legislative Council election" to "election under the Legislative Council Ordinance" for consistency of drafting. LA said that the amendment in question was of a minor nature relating to the three-tier elections, and the purpose was to improve clarity of drafting. Mr Andrew WONG agreed that the amendment was not unrelated to the Bill.

Adm 28. Miss Cyd HO held a different view. She opined that it would cause confusion if miscellaneous amendments unrelated to DCs were included in the Bill. She considered that amendments relating to LegCo election should be included in the Legislative Council (Amendment) Bill. Mr LEE Kai-ming held a similar view, and suggested that only related amendments should be included in the Bill. DS(CA)2 undertook to consider the suggestion.

Action

*Section 15 Kowloon-Canton Railway Corporation (Permitted Activities)
(Consolidation) Order*

Adm 29. In response to Mr SIN Chung-kai, PGC(E) responded that the amendment was necessary because the Order made reference to District Boards elections. He said it was only a technical amendment to reflect the change of name of the election. At Mr SIN's request, DS(CA)2 undertook to provide a copy of the Order and to explain the need for amendment.

Sections 18 - 27 Electoral Affairs Commission Ordinance

30. DS(CA)2 informed members that the Administration would propose some technical amendments to the Electoral Affairs Commission Ordinance (Cap. 541) to clarify that the latter was to be responsible for the delineation of DC constituencies. He said that as explained in an earlier meeting, the Administration would also make amendment under section 25 in Schedule 6 so that the period for inspection of maps by the public for the first ordinary election and for making representation was adjusted to not less than 14 days (instead of the usual period of not less than 30 days).

Adm 31. Referring to section 18 of Schedule 6, Mr Andrew WONG expressed concern about the Chinese version of "general election". He said that 換屆選舉 seemed to refer to "ordinary election" (一般選舉) rather than "general election". DS(CA)2 responded that the Chinese version (換屆選舉) was used in the Legislative Council Ordinance to mean "elections to elect person to be members for a new term of office of the Legislative Council". It was considered appropriate to use 一般選舉 to refer to "ordinary election" in the District Councils Bill. He added that "ordinary election" was used in previous District Board elections. Mr SIN Chung-kai was however of the view that the same term should be used for the elections of Legislative Council and DC. At Mr WONG's request, DS(CA)2 undertook to reconsider whether the Chinese version (換屆選舉) was appropriate for the Legislative Council Ordinance.

Other comments by members

32. Mr SIN Chung-kai was of the view that as a Chairman of a Rural Committee would be elected by Village Representatives (VRs) and would become an ex officio member of a DC, electors who had participated in the VR elections should not be eligible for voting at a DC election. The purpose was to ensure equity in elections so that VR electors would not have a double voting right in DC elections. Mr Andrew WONG did not agree with Mr SIN, as he considered that the proposal would go against the principle of fair election for all. However, he would support the proposal to regulate rural elections by other legislation. DS(CA)2 responded that it was the Administration's position that all persons who met the minimum eligibility criteria on age and permanent

Action

residency should be entitled to vote at a DC election. It was not appropriate to impose restrictions to exclude a certain category of people from participating in a DC election. DD(HA) added that elections for VR and DC members were separate elections. The purpose of VR elections was to elect a VR to be responsible for the affairs of the village concerned, and that an indigenous villager who was entitled to vote in a VR election might reside in another District. It was therefore unreasonable to exclude electors in VR elections from participation in a DC election.

II. Finalised Committee stage amendments to be moved by the Administration

33. As the Bills Committee had completed clause-by-clause examination of the Bill, DS(CA)3 expressed her gratitude to the Bills Committee for the time and efforts taken in the deliberation of the Bill. She informed members that the Administration would carefully consider views expressed by members and would provide a complete set of finalized CSAs for the Committee's consideration. In this connection, members noted that a letter from the Secretary for Constitutional Affairs dated 3 February 1999, enclosing Part I of the proposed CSAs to be moved by the Administration, was tabled at the meeting (the letter was subsequently issued to members vide LC Paper No. CB(2)1245/98-99). Members would discuss these CSAs at the next meeting.

III. Date of next meeting

34. Members agreed that the next meeting would be held on Tuesday, 9 February 1999 at 10:45 am to consider the Administration's CSAs and written responses to outstanding issues.

35. The meeting ended at 10:45 am.

Legislative Council Secretariat

1 December 1999