

立法會
Legislative Council

LC Paper No. CB(2)529/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/17/98

Legislative Council
Bills Committee on Elections (Corrupt and Illegal Conduct) Bill

Minutes of the ninth meeting
held on Wednesday, 5 May 1999 at 10:45 am
in Conference Room B of the Legislative Council Building

- Members Present** : Hon Ronald ARCULLI, JP (Chairman)
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon NG Leung-sing
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Yuen-han
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon CHOY So-yuk
- Members Absent** : Hon Gary CHENG Kai-nam
Hon Ambrose LAU Hon-chuen, JP
- Public Officers Attending** : Mr Robin IP
Deputy Secretary for Constitutional Affairs
- Mr Tony CHENG
Assistant Secretary for Constitutional Affairs
- Mr James O'NEIL
Deputy Solicitor General
- Mr Michael LAM
Government Counsel

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Meeting with the Administration

Legislative time-table for the Elections (Corrupt and Illegal Conduct) Bill (the Bill)

The Chairman drew members' attention to LC Paper No. CB(2)1838/98-99(02) in which the Administration had advised that it was the intention of the Administration to apply the provisions of the Bill to the 1999 District Councils election to be held in November 1999. With this objective, the Bill had to be passed by the Legislative Council (LegCo) before 14 July 1999 which was the date of the last LegCo meeting before the summer recess, so that the Electoral Affairs Commission (EAC) could reflect the relevant provisions in its regulation to provide for the procedure at the election.

2. Deputy Secretary for Constitutional Affairs (DS/CA) said that as the Bill had yet to be passed, the EAC would draft the Electoral Procedure Regulation for the District Councils election based on the existing Corrupt and Illegal Practice Ordinance (CIPO) and introduce the Regulation into LegCo for negative vetting in early June 1999. If the Bill could be passed before 14 July 1999, the Administration would move consequential amendments in the Bill to amend the Regulation. If the Bill could not be passed before 14 July, the CIPO would instead apply to the 1999 District Councils election. He said that the Administration did not see any insurmountable problem with this because both the CIPO and the Bill basically dealt with the same unlawful acts at an election.

3. In response to members' enquiries, DS/CA advised that the Working Group established to review the conduct of village representatives (VR) elections was expected to complete its study by October 1999. If the outcome of the review was that it was necessary to legislate for matters relating to VR elections, a bill for that purpose would be introduced for the consideration of LegCo at a later stage, with the necessary consequential amendments to provide that the provisions in the enacted Elections (Corrupt and Illegal Conduct) Ordinance would apply to VR elections.

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4. After some discussion, members agreed that the Bills Committee should make its best efforts to meet the schedule in order to enable the Bill to be passed by LegCo on 14 July 1999. Working backward from that date, the Bills Committee would have to complete its scrutiny of the Bill before July, preferably by 25 June, so that a report on the Bills Committee's deliberations could be made to the House Committee on 2 July.

Discussion on the Administration's response to the concerns raised at the meeting on 20 April 1999

(LC Paper No. CB(2)1805/98-99(02))

Corrupt conduct of treating

5. Mr LEE Wing-tat said that in the situation of a person or an organization hosting a sumptuous banquet in which the persons being invited to attend the function were called upon to vote or not to vote for a particular candidate or candidates, both the party providing the food and drink or entertainment as well as the attendees could be caught as committing the offence under clause 12 of the Bill, provided that the element of inducement could be proved. He further pointed out that the phrase "at an election" in the Bill carried no specific time element in that it was taken to mean "before, during or after the election period". He suggested that detailed guidelines should be promulgated and extensively publicized to enable all parties concerned to be clearly aware of the relevant offence provisions.

6. Members also noted that the offence under clause 12(3) did not require proof as to whether or not a person who accepted refreshments or entertainment had actually voted or not voted at an election. It only required proof of accepting the treating as an inducement to vote or not to vote.

7. In response, Deputy Solicitor General (DSG) said that treating arose in different situations. A function organized for election campaigning purpose at which refreshments were served would be deemed to be an election meeting, and the expenses so incurred would be counted as election expenses. However, it would be a corrupt conduct to offer treating outside the context of an election meeting and with a view to influencing another person's voting decision. The solicitation or acceptance of any such treating was also a corrupt conduct. For the offence in clause 12 to occur, it had to be shown that the refreshments and entertainment being served was an inducement for someone to vote, or not to vote, for a candidate or group of candidates at an election. He said that the Bill provided no specific time-frame for determining the commission of an act of corrupt treating as cases had to be judged on their particular circumstances.

8. In response to Mr Andrew WONG, DSG said that there would be no question of treating if the persons paid for their own food and drink provided at a meeting. For a

self-funding fund-raising activity organized for the purpose of promoting the election of a candidate or candidates, the expenses incurred in holding the activity would be treated as election expenses.

9. On the matter of publicity, DS/CA advised that the EAC would soon finalize its electoral guidelines in respect of the District Councils election following public consultation. The Independent Commission Against Corruption had also prepared a Handbook on Supporting Clean Elections to facilitate candidates and their agents to understand the legal provisions and the pitfalls in election campaign activities. In addition, the Administration would organize briefings and provide telephone hotline service to answer public enquiries on election matters.

10. Ms Cyd HO enquired about the criteria used by Provisional District Boards for vetting applications for funds to organize district activities, particularly those made by incumbent councillors seeking re-election. In reply, DS/CA said that only applications made by organizations, rather than by individuals, would be considered. An applicant had to provide specific details such as the purpose for which the activity was held and the target participants etc. He added that the concern raised by Ms Cyd HO about possible abuse could also be addressed by section 28 of the District Councils Ordinance which empowered the Director of Home Affairs to suspend the operation of the District Councils temporarily to facilitate the holding of an ordinary election.

Discussion on the Administration's response to the concerns raised at the meeting on 28 April 1999

(LC Paper No. CB(2)1838/98-99(01))

Media commentaries

11. Members noted that, according to section 75(1) of the Representation of the People Act 1983 (the UK Act), "no expenses shall, with a view to promoting or procuring the election of a candidate at an election, be incurred by any person other than the candidate, his election agent and persons authorized in writing by the election agent on account of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate." However, this section should not restrict the publication of any matter relating to the election in a newspaper or other periodical or in a broadcast made by the British Broadcasting Corporation or the Independent Broadcasting Authority.

12. In response to members' enquiries, the Administration agreed to provide information on the following –

- (a) whether or not there was a definition of the term "other periodical" as referred to in the above section of the UK Act; and

- (b) whether or not there were restrictions on media commentaries relating to candidates in the electoral laws of other jurisdictions.

(Post-meeting note : The Administration's response has been circulated to members vide LC Paper No. CB(2)2053/98-99(02) dated 20 May 1999.)

13. Mr TSANG Yok-sing pointed out that in the past, some media commentaries had been published apparently with the intention of promoting or prejudicing the election of a particular candidate or candidates. In reply to his question, DS/CA said that under the proposed revised definition of election advertisement (EA) based on the purpose test, whether media commentaries would be treated as EAs would depend on the purpose for their publication.

14. The Chairman opined that the revised definition for EA still failed to address the anomaly created by the EAC's guideline that "any newspaper is at full liberty to express its support for or disapproval of a candidate." (Appendix to Chapter 8 of EAC's Proposed Guidelines in respect of the 1999 District Councils Election) DSG responded that both clause 34 of the Bill and section 19 of CIPO imposed no restriction on the content of an EA. The Administration was of the view the approach based on the purpose test had struck a balance between freedom of expression and fair election.

15. Members envisaged a number of problems which would be difficult to resolve if media commentaries satisfying the purpose test were to be treated as EAs –

- (a) how to determine the cost of such media commentaries for the purpose of reporting it as election expenses;
- (b) difficulty to comply with clause 34(4) of the Bill which required that two copies of a printed EA to be lodged with the appropriate returning officer before the EA was published; and
- (c) in the case of a negative commentary which could also fall within the definition of EA, such as a newspaper article disparaging a candidate or candidates, it was highly unlikely that the author or the publisher could seek consent and authorization from any candidate for its publication. Hence, the publication of any negative commentary in relation to an election would entail unauthorized election expenses.

16. Mr LEE Wing-tat said that in view of the above difficulties and due to the fact that there was no control over the media by a private person or political party in Hong Kong, he preferred a liberal approach similar to section 75(1) of the UK Act.

17. Members requested the Administration to consider whether section 75(1) of the UK Act, with suitable modifications if necessary, should be adopted in the Bill.

(*Post-meeting note* : The Administration's reply has been circulated to members vide LC Paper No. CB(2)2053/98-99(02)).

Voluntary service

18. Mr LEE Wing-tat informed the meeting that the view of the Democratic Party was that voluntary services provided free of charge to a candidate or group of candidates should not be regarded as election donation, irrespective of whether the occupation of the person offering the voluntary service involved the provision of that kind of service.

19. Ms Emily LAU and Ms Cyd HO reiterated their concern that a broadbrush approach to exclude all kinds of voluntary service from the definition of election donation would open the "backdoor" for abuse, rendering the imposition of an upper limit of election expenses meaningless. They considered that certain service, despite provided voluntarily, should be treated as election donation, such as –

- (a) professional service provided to a candidate or group of candidates by a team of public relations consultants in the form of a comprehensive election campaign strategy; or
- (b) service provided by a person who received money or money in kind (e.g. paid leave in addition to his normal leave entitlement) from his employer for the offering of that kind of service.

Furthermore, the value of goods and materials incidental to the provision of voluntary service should also be counted as election donation.

20. To facilitate further discussion of the issue of voluntary service at the next meeting, the Chairman requested the Clerk to prepare a paper to summarize the previous deliberations of the Bills Committee for members' consideration.

Clerk

II. Next meeting

21. The dates for the next meetings were scheduled as follows :

- 13 May 1999 at 10:45 am
- 14 May 1999 at 4:30 pm
- 19 May 1999 at 8:30 am

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(Post-meeting note : The above scheduled meetings have been subsequently cancelled to give way to a series of special House Committee meetings to discuss the issue of right of abode in the Hong Kong Special Administrative Region. Accordingly, the next meeting of the Bills Committee has been rescheduled for 5 July 1999 at 2:30 pm.)

22. The meeting ended at 12:40 pm.

Legislative Council Secretariat
23 November 1999