

立法會
Legislative Council

LC Paper No. CB(2)1161/99-00
(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 16th meeting
held on Tuesday, 5 October 1999 at 8:30 am
in Conference Room A of the Legislative Council Building

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon Cyd HO Sau-lan
Hon NG Leung-sing
Hon CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
Hon Jasper TSANG Yok-sing, JP

Members Absent : Hon LEE Wing-tat
Hon Mrs Selina CHOW, JP
Hon Andrew WONG Wang-fat, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon CHOY So-yuk

Public Officers Attending : Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

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

Clause-by-clause examination of the Bill

Clause 46 - consequential amendments

Item 1 of Schedule - Section 10A(1)(1)(ii) of the Provisional Urban Council Ordinance

Members noted that section 10A of the Provisional Urban Council Ordinance (PUCO) dealt with grounds for disqualification of a person from being appointed or from holding office as a member of the Council. The existing section 10A(1)(1)(ii) stipulated that -

"[where the person has been convicted] of a corrupt or illegal practice within the meaning of the Corrupt and Illegal Practices Ordinance (Cap. 288), other than the illegal practice of contravening section 19(2) of that Ordinance, or of a corrupt or illegal practice within the meaning of any other Ordinance for the time being in force providing for punishment of corrupt or illegal practices;".

The Chairman enquired about the reasons for the present proposed amendment to section 10A(1)(1)(ii) by removing the above underlined part of that section.

2. Deputy Solicitor General (Constitutional) (DSG(C)) explained that section 19(2) of the Corrupt and Illegal Practices Ordinance (CIPO) concerned the requirement for a person to deposit two copies of any address, bills and notices etc. with the relevant returning officer. In the Bill, the lodgment requirement in relation to election advertisement was set out in clause 34(4), a contravention of which would not result in a candidate being disqualified from standing for election and holding office. Furthermore, all the corrupt or illegal conduct which carried the consequence of disqualification of a candidate would be set out in the Elections (Corrupt and Illegal Conduct) Ordinance upon its enactment. The present proposed amendment to section 10A(1)(1)(ii) of PUCO reflected these elements.

3. DSG(C) further advised that corrupt or illegal conduct were dealt with under different parts of the Bill. The former came under Part 2 of the Bill whereas the latter

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under Part 3. As Clause 34 fell under Part 5, a breach of clause 34(1) or (4) was not a corrupt or illegal conduct. It would not therefore result in disqualification of a candidate.

4. Deputy Secretary for Constitutional Affairs (DS/CA) supplemented that the publication of an election advertisement in contravention of clause 34 was considered to be a technical breach which should not subject a candidate to any disqualification.

5. In response to a further question from the Chairman, DSG(C) advised that the disqualification provisions for the purposes of different elections were specifically set out in the relevant electoral laws.

Clauses 31 and 34

6. The Chairman noted that under clause 31(3), it was stated that a contravention of clause 34(1) or (4) was taken to be illegal conduct for the purpose of a person's application (including an application by a candidate) for a court order under clause 31(2) to relieve the person's liability. He said that this provision gave rise to the impression that a contravention of clause 34(1) or (4), if committed by a candidate, was an illegal conduct which would result in disqualification of the candidate.

Adm 7. The Administration agreed to review the drafting of clauses 31 and 34 to remove the anomaly.

Item 6(c) and (d) of Schedule - sections 39 and 40 of the Legislative Council Ordinance

8. The Chairman enquired about the difference between proposed sections 39(1)(e)(i) and 40(1)(b)(iii)(D) of the LegCo Ordinance. DSG(C) advised that the amendments only sought to substitute the reference to the Corrupt and Illegal Practices Ordinance with Elections (Corrupt and Illegal Conduct) Ordinance in the two sections. Under proposed section 39(1)(e)(i), a person was disqualified from being nominated as a candidate and from being elected if he had been convicted of an offence and sentenced to imprisonment for a term exceeding three months. Section 40(1)(b)(iii)(D) was related to a promissory oath given by a person as a requirement for the person to be validly nominated as a candidate for an election.

Items 6(i) and 7(i) of Schedule - section 67 of the LegCo Ordinance and section 53 of the District Councils Ordinance

9. The Administration advised that proposed section 67(7) of the LegCo Ordinance and section 53(7) of the District Councils Ordinance set out a new arrangement under which the Court was required to provide the Director of Public Prosecutions (DPP) with a report if in the course of the hearing of an election petition it appeared to the Court that a specified person might have engaged in corrupt or illegal conduct in relation to the election.

10. Members were of the view that it would be unnecessary for the Court to make any report to DPP if at the end of the trial of an election petition the Court found that there was no corrupt or illegal conduct by any person in relation to the election.

11. The Administration was requested to consider recasting the provision to the effect that if it appeared to the Court that a person might have engaged in corrupt or illegal conduct, the Court was required to provide DPP with a report giving details of the conduct at the end of the trial of an election petition.

Adm

Administration's further response to concerns raised at the meeting on 8 September 1999

(LC Paper No. CB(2)27/99-00(01))

Newspaper election advertisements

12. Members noted the practices in some overseas jurisdictions relating to election advertisements placed in newspapers.

13. DS/CA reiterated that clause 34(2) exempted election advertisements placed in registered local newspapers from the printing details requirement specified under clause 34(1). As foreign newspapers circulating in Hong Kong were not subject to the provisions of the Registration of Local Newspapers Ordinance and therefore the printing details were not readily known to the public, the Administration considered it undesirable to extend the exemption in clause 34(2) to foreign newspapers.

Administration's response to concerns raised at the meeting on 21 September 1999

(LC Paper No. CB(2)27/99-00(02))

Commercial advertisement and election advertisement on electronic media

14. Referring to the question of whether a commercial advertisement in which a candidate at an election had taken part would be treated as an election advertisement, DS/CA said that the determinant factor was whether the advertisement was published for the purpose of promoting the election of the candidate. In deciding whether an advertisement was an election advertisement or purely a commercial advertisement, the Court would look at all the relevant circumstances including the content of the advertisement and the manner of and conditions affecting its publication.

15. Mr CHENG Kai-nam reiterated his concern that as illustrated in the examples he gave of the Economist magazine's television advertising and the Asia Television's daily news programme featuring the appearances of two Members of the Legislative Council respectively, similar frequent exposures of a candidate in the electronic media would have the objective effect of promoting the election of the candidate. However, neither the electoral guidelines promulgated by the Electoral Affairs Commission

(EAC) nor the relevant broadcasting legislation could apply in those circumstances because the programmes were apparently not related to an election.

16. In response, DS/CA said that political advertising was prohibited in the electronic media. Where a complaint was lodged with EAC alleging that a certain media advertising, e.g. a commercial advertisement, was an election advertisement, EAC would look into the circumstances of the case to decide if the complaint could be substantiated. If it was established that a particular advertisement was an election advertisement, the relevant provisions in the Bill relating to election advertising would apply. On the other hand, if it was found that an election advertisement was published without prior authorization of the candidate concerned, the person who published the advertisement would be caught by the offence provision under clause 23 of the Bill.

17. DS/CA added that under the relevant EAC guidelines, if EAC came to know of unfair or unequal treatment of candidates by any broadcaster or publisher, it might make a reprimand or censure in a public statement which might include the names of the candidates favourably and unfavourably treated and the broadcaster or publisher concerned. The EAC might also refer the matter to the Broadcasting Authority or other relevant authorities for appropriate action to be taken.

(Post-meeting note: The Administration's response to the concerns raised at the meeting has been circulated to members vide LC Paper No. CB(2)84/99-00(01) dated 13 October 1999.)

II. Date of next meeting

18. The next meeting was scheduled for 14 October 1999 at 2:30 pm.

19. The meeting ended at 10:30 am.

Legislative Council Secretariat
2 February 2000