

立法會
Legislative Council

LC Paper No. CB(2)2075/99-00
(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 21st meeting
held on Tuesday, 7 December 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 Mrs Selina CHOW, JP
Hon CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
Hon Jasper TSANG Yok-sing, JP
Dr Hon TANG Siu-tong, JP

Members Absent : Hon LEE Wing-tat
Hon Andrew WONG Wang-fat, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, 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)

Ms Phyllis KO
Deputy Principal Government Counsel (Elections)

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. Confirmation of minutes of meeting
(LC Papers Nos. CB(2)529/99-00 and 530/99-00)

The minutes of meetings held on 5 May 1999 and 5 July 1999 were confirmed.

II. Revised Committee Stage amendments (CSAs) proposed by the Administration
(LC Paper No. CB(2)536/99-00(01))

2. Deputy Secretary for Constitutional Affairs (DS/CA) briefed members on the proposed CSAs. He said that the CSAs were prepared having regard to the views expressed by the Bills Committee at the last meeting when issues relating to "voluntary service" were discussed. The CSAs sought to -

- (a) define "voluntary service" provided to a candidate or candidates at an election; and
- (b) amend the definitions of "advantage" and "election donation" to provide expressly that advantage and election donation excluded voluntary service.

Voluntary service

3. Members noted the proposed definition of "voluntary service", which read -

"voluntary service" means any service provided free of charge to or in respect of a candidate or group of candidates at an election by a natural person, voluntarily and personally, at the person's own free time for the purpose of -

- (a) *promoting the election of the candidate or group; or*
- (b) *prejudicing the election of another candidate or group."*

4. In response to the Chairman, Deputy Solicitor General (Constitutional) (DSG(C)) said that under the proposed definition of voluntary service, a person who utilized his own paid leave entitlement and spent the time voluntarily campaigning for a candidate at an election without being offered any reward in return would not be regarded as providing an advantage or election donation to the candidate. Such service would be treated as voluntary service.

5. Mrs Selina CHOW opined that the word "free" in the expression of "a person's own free time" did not appear to serve a constructive purpose.

6. In response, Deputy Principal Government Counsel (Elections) advised that "a person's own free time" was intended to denote the time when the person was not normally occupied with official commitments such as performing the work and duties as required by his occupation, so that he was free to engage in something else as he wished.

7. Mrs Selina CHOW said that the word "free" in this context seemed to be redundant because she could not see any difference between "a person's own free time" and "a person's own time". She suggested to replace the former expression with the latter to avoid unnecessary arguments over how the word "free" should be literally interpreted. Furthermore, she pointed out that the expression of "a person's own time" matched the Chinese version 「私人時間」 better than "a person's own free time".

Adm 8. DSG(C) agreed that "time" used in this context had the same meaning as "free time". He undertook to reconsider the drafting of the definition.

Advantage

Clause 7

9. The Chairman pointed out that clause 7(1)(a)(i) provided that it was a corrupt conduct for a person to offer an advantage to another person as an inducement for the other person to stand as a candidate at an election. He opined that this provision could have the effect of stifling the development of politicians and participation in political affairs. His view was shared by Mr TSANG Yok-sing, who said that in practice, political parties sometimes provided some of their employees with training and other assistance with a view to developing them into politicians.

10. DSG(C) advised that clause 7(1) aimed at preventing any person from bribing another to stand as a candidate at an election so as to spoil the chance of election of other candidates. He added that this provision reflected an existing provision in the

Corrupt and Illegal Practices Ordinance.

Adm 11. The Chairman and Mr TSANG Yok-sing considered that there was nothing unlawful for political parties to encourage and field candidates to run in elections as a means to develop experience in elections or as a tactical move to defeat opponents in the elections. However, in doing so, they might be caught by the offence in clause 7(1) of inducing someone to stand as a candidate at an election. The Chairman requested the Administration to reconsider the need for including such an offence.

Clause 11

12. Assistant Legal Adviser said that the revised definition of "advantage", which excluded voluntary service, might impact on the offence in clause 11 in relation to corrupt conduct to bribe electors and others at elections.

13. DSG(C) responded that the legislative intent was that only voluntary service provided for the purpose of promoting the election of a candidate or candidates, or prejudicing the election of another candidate or candidates, would be excluded from the definition of advantage. This intention was expressly set out in the proposed definition of "voluntary service" and the revised definition of "advantage". Hence, voluntary service offered to electors and other persons would still be treated as an advantage for the purpose of clause 11.

Election donation

14. Members noted that under paragraph (c) of the proposed new definition of "election donation", election donation included "service" as well as "facility" provided to or in respect of a candidate or candidates. Members expressed concern that this would cover a wide range of situations which could be regarded as a donation of facility. For example, a person might open his shop premises to enable a candidate to conduct election campaign activities. In some cases, candidates might be allowed to display election advertisement materials in housing estates, on a vacant land or in other private areas without having to incur any expenses. It would be extremely difficult to calculate the value of such facilities if required.

Adm 15. Members also noted that the word "facility" was not included in paragraph (c) of the original definition of "election donation" in clause 2 of the Bill. In view of the difficulties envisaged, members considered that the reference to "facility" in the definition should be removed. The Administration noted members' suggestion.

16. Referring to paragraphs (b) and (c) of the revised definition of "election donation", Mr TSANG Yok-sing said that it was difficult to understand how any goods or services given to a candidate as election donation, as opposed to money donation, could be used to meet, or contribute towards meeting, the candidate's election expenses.

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Adm 17. After some discussion, members agreed that the expression of "for the purpose of meeting, or contributing towards meeting, the candidate's election expenses" in the two paragraphs should be replaced with "for the purpose of promoting the election of the candidate or of prejudicing the election of another candidate". The Administration agreed to revise the CSAs.

Adm 18. As the above amendments would also affect clauses 18 and 19 of the Bill, where the reference to "meeting, or contributing towards meeting, the candidate's election expenses" also appeared, the Administration agreed to prepare consequential amendments to the two clauses to achieve consistency.

(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)756/99-00(01) dated 3 January 2000.)

III. Date of next meeting

19. The next meeting was scheduled for 10 December 1999 at 8:30 am.

20. The meeting ended at 10:25 am.

Legislative Council Secretariat
18 April 2000