

立法會
Legislative Council

LC Paper No. CB(2)2140/99-00

(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 22nd meeting
held on Friday, 10 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 Jasper TSANG Yok-sing, JP
Dr Hon TANG Siu-tong, JP

Members Absent : Hon LEE Wing-tat
Hon Mrs Selina CHOW, JP
Hon CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
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

Action
Column

I. Revised draft Committee Stage amendments (CSAs) proposed by the Administration
(LC Paper No. CB(2)391/99-00(01))

Members continued to scrutinize the CSAs proposed by the Administration.

Clause 7

2. Assistant Legal Adviser (ALA) asked the Administration to clarify, from a policy point of view, whether prosecution of the proposed new offence of offering or accepting an advantage as an inducement or reward for not using best endeavours to promote the election of a candidate required evidence of some pre-arrangement between the parties concerned. He pointed out that the opening words of clause 7(1) which read "*A person engages in corrupt conduct at an election if the person offers an advantage to another person as an inducement for the other person...*" had no mention of a mental element, i.e. a guilty intent on the part of the parties, thus making the offence an absolute offence.

3. Deputy Solicitor General (Constitutional) (DSG(C)) responded that clause 7 should be looked at in the overall context of Part 2 of the Bill. Like the other clauses in Part 2, clause 7 sought to define what corrupt conduct at an election was. It provided that when a person did a specified act (i.e. offering an advantage to another person) to induce another person to do certain thing, the first person engaged in a corrupt conduct. The mental element, namely the motive to bribe, was built-in in the way the clause was structured. Deputy Secretary for Constitutional Affairs (DS/CA) added that it was inconceivable that without some kind of prior agreement or promise, a successful candidate would offer an advantage to another candidate as a reward for the latter not using his best endeavours to stand at an election.

4. ALA pointed out that certain election offences in English law required a corrupt intention to be proven. For example, section 107 of the Representation of the People Act 1983 on corrupt withdrawal from candidature stated that -

"Any person who corruptly induces or procures any other person to withdraw from being a candidate at an election, in consideration of any payment or promise of payment, and any person withdrawing in pursuance of the inducement or procurement, shall be guilty of an illegal payment."

Furthermore, paragraph 691, Vol 15 Halsbury's Laws stated that -

"...If the act of bribery is committed after the voter has voted, it must be shown to have been done corruptly and for this purpose it is at least important to see whether it was done in pursuance of an antecedent promise."

5. The Chairman said that evidence of an unlawful intent was required for prosecution under criminal law. It was not an act per se that constituted a criminal offence. He pointed out under the Corrupt and Illegal Practices Ordinance and the Prevention of Bribery Ordinance, there were references to "corruptly" and "without lawful authority or reasonable excuse". He suggested that the same references might be added before the phrase "offers an advantage" in clause 7 to spell out the element of corrupt intent.

6. DSG(C) said that adding the word "corruptly" in a clause that sought to define a corrupt act appeared to be unnecessary and tautological. In addition, there could not be a reasonable excuse for offering or accepting a bribe.

7. Echoing the views expressed by ALA earlier on, the Chairman said that the way in which clause 7 and the other clauses in Part 2 of the Bill were drafted effectively meant that the offence was complete by a bona fide act alone, without having to prove a corrupt intent. This might result in some innocent people being caught by the offence provisions. He considered that the Administration should clarify whether as a matter of policy the clauses in Part 2 of the Bill were intended to create absolute offences in relation to corrupt conduct at elections. He said that if the answer was negative, it might be necessary to include a requirement to prove a guilty intent in the relevant offence provisions.

8. The Administration agreed to reconsider the drafting of the offence clauses in Part 2 of the Bill in the light of members' views and provide a written response for further discussion at the next meeting.

Adm

Clause 19

9. DS/CA advised that the Administration would move CSAs to clause 19 in the light of the consensus views of members on the matter. The CSAs included raising

the amount of election donation for which a candidate was required to issue a receipt to the donor from “\$500 or more” to “more than \$1,000” (clause 19(1)). Correspondingly, the amount of anonymous donation which must be given to a charitable institution would be increased to “more than \$1,000 (clause 19(2)).

10. Members held the view that there were practical difficulties for candidates at an election to be aware of the exact amount of every donation received in fund-raising activities, especially in the situation of donations collected in “street-corner” fund-raising campaigns. For example, a candidate or his election agents/helpers might be totally unaware that a passer-by had dropped in some cash exceeding \$1,000. In that case, the candidate might be inadvertently in breach of clause 19(2) if he used the election donation for meeting his election expenses.

11. The Administration advised that the objective of clause 19 was not to restrict the solicitation of election donations by candidates but to seek to provide transparency in the funding of election expenses through election donations. Candidates and their election agents/helpers conducting fund-raising campaigns were expected to take appropriate steps to draw the attention of donors to the requirements of clause 19. The Administration added that the existing arrangement governing election donations had been in place for more than 10 years. Past experience had not indicated any major problems for candidates to comply with the provisions.

12. Mr TSANG Yok-sing pointed out that clause 19 imposed requirements on “a candidate” receiving “an election donation”. He said that in reality, funds collected were often used by more than one candidate. It was also not uncommon that some people made donations more than once. He opined that the Administration should clarify how clause 19 applied in the situation of solicitation of election donations collectively for a group of candidates, and whether “an election donation” referred to and covered the aggregate of donations made by the same donor on separate occasions.

Adm 13. The Administration agreed to provide a reply at the next meeting to address members’ concern.

Clause 21

14. The Chairman asked whether an election petition or election appeal could be withdrawn in the event of a settlement between the petitioner and the respondent before the petition or appeal was heard by the court.

15. DSG(C) advised that the existing electoral legislation provided that a withdrawal of an election petition required the leave of the court. There were also legal provisions empowering the court to make order for costs at termination of proceedings.

16. The Chairman cited the example of a situation where both parties to an election

petition agreed on certain arrangements relating to how the costs should be disposed of between themselves as a pre-condition for the petitioner to withdraw the election petition, subject to the leave of the court. He requested the Administration to clarify whether it was the policy intent that the corrupt conduct to withdraw election petition or election appeal for a bribe under clause 21 could cover such out-of-court settlement between the parties concerned. He said that similar to the clauses in Part 2 of the Bill, it might be appropriate to incorporate an element of corrupt motive in the offence provisions in clause 21.

Adm 17. The Chairman requested the Administration to respond to the above concern at the next meeting.

(Post-meeting note - The Administration's response to the concern raised at the meeting has been circulated to members vide LC Paper No. CB(2)756/99-00(02) dated 3 January 2000.)

II. Date of next meeting

18. The following meetings were scheduled -

- (a) 5 January 2000 at 8:30 am;
- (b) 6 January 2000 at 8:30 am; and
- (c) 10 January 2000 at 2:30 pm.

(Post-meeting note - The meeting scheduled for 10 January 2000 was subsequently cancelled.)

19. The meeting ended at 10:25 am.