

立法會
Legislative Council

LC Paper No. CB(2)1663/99-00
(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 20th meeting
held on Friday, 12 November 1999 at 10:45 am
in Conference Room A 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 CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon CHOY So-yuk
- Member Absent** : Hon Mrs Selina CHOW, JP
- 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
Acting Deputy Principle Government Counsel (Elections)

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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. Meeting with the Administration

Election advertisement

(LC Paper No. CB(2)272/99-00(03) - paper prepared by the Secretariat)

Members noted that the paper had summarized the Bills Committee's concerns relating to election advertisements and the Administration's response.

2. Ms Emily LAU sought the Administration's clarification on how the proposed new definition of election advertisement (EA) would impact on third-party individuals or organizations making comments on candidates at an election.

3. Deputy Secretary for Constitutional Affairs (DS/CA) replied that under the proposed new definition which adopted a "purpose test" in place of an "effect test", whether or not a particular publication was an EA would depend on whether it was published for the purpose of promoting or prejudicing the election of a candidate or group of candidates. If there was such a purpose, the publication would be treated as an EA. It was ultimately a matter for the court to decide in case of disputes having regard to all the relevant circumstance. He added that to provide a level playing field for all candidates, it was essential that all expenses incurred for promoting or prejudicing the election of a candidate or group be accounted for. Election expenses could only be incurred by the candidates concerned or their election expense agents. If it was found that an EA was published by a person without the authorization of the candidate concerned, the person's act might contravene clause 23 of the Bill.

Draft text of a set of revised Committee Stage amendments (CSAs) proposed by the Administration

4. A set of revised CSAs proposed by the Administration was tabled at the meeting (LC Paper No. CB(2)391/99-00(01)). The Administration advised that the revised version reflected the suggestion discussed at the last meeting on 9 November 1999 to introduce an offence of attempt in clause 42 of the Bill. Moreover, as a result of the decision to extend the application of the Bill to cover the Chief Executive election and village representatives election, it was necessary to define various terms in the Bill in the context of these elections.

5. Members proceeded to examine the text of the revised CSAs.

Clause 2 - "Advantage" and "election donation" to exclude free service

6. Members noted the paper prepared by the Secretariat (LC Paper No. CB(2)272/99-00(02)) which summarized the Bills Committee's previous deliberations on the issue of voluntary service provided to a candidate or group of candidates at an election and the Administration's revised proposal on the matter which was reflected in the CSAs to clause 2.

7. Mr TSANG Yok-sing informed the meeting that the Democratic Alliance for the Betterment of Hong Kong (DAB) had examined the Administration's revised proposal that a candidate was not required to include in his election return free service provided by a person personally and voluntarily if -

- (a) that person's occupation was not related to the free service provided to the candidate; or
- (b) that person's occupation was related to the free service provided to the candidate but it was provided outside the person's normal working hours.

DAB had come to the view that such a line of demarcation based on the elements of occupation and time could still lead to practical problems. For example, many occupations simply were not characterized by a fixed or normal pattern of working time for the purpose of earning income or profit.

8. Mr TSANG further said that DAB considered that the package of proposals set out in paragraph 10 of LC Paper CB(2)272/99-00(02) in relation to voluntary service was acceptable, namely -

- "(a) restrictions on voluntary service should be removed as much as possible, in view of the practical difficulties in determining the exact scope of voluntary service that should be accounted for or not accounted for in the election expenses return of a candidate;

- (b) there should not be restrictions on voluntary service that is provided by an individual personally, voluntarily and at his own time. It does not matter whether the voluntary service consists of work normally undertaken by the individual or is related to his occupation;
- (c) the voluntary service should not include any service that is provided by any other individual who provides the service as an employee, for reward/compensation from any person or under any pressure from a person of authority; and
- (d) the voluntary service should exclude all provision of goods or materials incidental to the service."

9. Members noted that the main difference between paragraph 10 of the paper and the Administration's revised proposal was whether the occupation of the person providing voluntary service was a factor to be considered in deciding whether the service should be counted as election donation.

10. Ms Emily LAU opined that past elections did not seem to have given rise to major complaints regarding free service offered to candidates which should be treated as election donation and reported in an election return. She was concerned that exempting all services provided free of charge to or in respect of a candidate or group from the definition of election donation would risk losing a level playing field for all candidates. She was not in support of adopting paragraphs 10(a) - (d) of the paper as a package to deal with the issue of voluntary service.

11. Ms Cyd HO added that one should not lose sight of the possibility that some people might procure free service to be provided to a candidate or group of candidates through undue influence or pressure. She said that to allow all free service not to be counted as election donation would defeat the purpose of imposing a maximum limit for election expenses.

12. On the two members' concerns, Mr TSANG Yok-sing and Ms CHAN Yuen-han said that according to paragraph 10(b) of the paper, only free service provided by an individual personally, voluntarily and at his own time was not to be counted as an election donation. They opined that if the legislation was clear in reflecting the policy intent and there were appropriate sanctions and channels for redress, cases of irregularities and abuses could be adequately dealt with. Ms CHAN added that too much restriction on voluntary service would work against promoting active public participation in election matters.

13. The Chairman drew members' attention to the Annex to the paper on "Regulation of election expenses in overseas countries". He pointed out that with the exception of USA, all the foreign countries specified in the Annex imposed no

restrictions on voluntary service, regardless of whether or not a maximum limit on election expenses was set.

14. Mr Andrew WONG said that the matter at issue was how to distinguish clearly between service which should be treated as election donation and service which should not be so treated. He agreed that to draw the line based on the factors mentioned in paragraph 10(b) of the paper was preferable to relying on the elements of occupation and normal working hours as suggested by the Administration.

15. Assistant Legal Adviser pointed out that "service provided free of charge" had no defined meaning in the Bill. It could be covered by the expression of "any other service" in paragraph (g) of the definition of "advantage" in clause 2. The Administration's proposed amendment to paragraph (g) of the definition, which expressly excluded voluntary service from the definition of "advantage", could give rise to policy implications relating to the corrupt conduct of offering and accepting of an advantage. This might affect the application of certain offence provisions in the Bill such as clause 7. He cited an example of a person offering a free service to another person as an inducement for the other person to stand as a candidate at an election. He said that in this situation, whereas the conduct might be caught by the existing clause 7(1)(a), the same conduct would not constitute corrupt conduct in view of the amendment now proposed to paragraph (g) of the definition of "advantage".

16. The Chairman and Mr Andrew WONG considered that it might be more appropriate to include a new definition of "voluntary service" to clarify the policy intention.

17. The Chairman also raised the question of whether the word "service" in the definition of "advantage" and "election donation" could be interpreted to cover facilities provided free of charge to a candidate or group of candidates. Quoting the example of a person such as an employer voluntarily making his shop available to a candidate to conduct electioneering activities, he asked whether the rental value of the premises should be regarded as election donation.

18. Noting that the majority of members present at the meeting were in support of paragraph 10 of the paper, the Administration agreed to reconsider the matter and review the drafting of the proposed CSAs relating to the definitions of "advantage" and "election donation". The revised CSAs would be submitted for further discussion at the next meeting.

Adm

Clause 6(3)(a) - "Agents" as opposed to "election agents"

19. In response to Dr TANG Siu-tong, Deputy Solicitor General (Constitutional) advised that clause 6(3)(a) dealt with persons receiving valuable consideration in connection with a corrupt conduct. Such persons did not necessarily refer to

candidates at an election and their election agents alone. Therefore, the reference to "election agents" in clause 6(3)(a) should be replaced by "agents". An agent generally referred to someone who acted in another person's authority.

Clause 7(1) - New offence of not making best endeavours at an election

20. In reply to Ms Emily LAU's question, DS/CA said that for a conviction of the proposed new offence of not making best endeavours at an election, it was necessary to prove the existence of a corrupt conduct such as the offering and acceptance of an advantage. In the absence of such a corrupt element, a candidate not trying his best to run an election would not be punished as having committed the offence.

(Post-meeting note : The Administration's revised CSAs on clause 2 relating to "advantage", "election donation" and "voluntary service" have been circulated to members vide LC Paper No. CB(2)536/99-00(01) dated 2 December 1999.)

II. Date of next meeting

21. The next two meetings were scheduled for 6 and 8 December 1999 at 8:30 am respectively.

(Post-meeting note : The meetings were subsequently re-scheduled for 7 and 10 December 1999 at 8:30 am respectively.)

22. The meeting ended at 12:45 pm.