

立法會
Legislative Council

LC Paper No. CB(2)1410/99-00
(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 17th meeting
held on Thursday, 14 October 1999 at 2:30 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon LEE Wing-tat
Hon NG Leung-sing
Hon Mrs Selina CHOW, JP
Hon Gary CHENG Kai-nam, JP
Hon Jasper TSANG Yok-sing, JP

Members Absent : Hon Cyd HO Sau-lan
Hon CHAN Yuen-han
Hon Andrew WONG Wang-fat, JP
Dr Hon TANG Siu-tong, 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)

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

Administration's response to concerns raised at the meeting on 21 September 1999
(LC Paper No. CB(2)27/99-00(02))

Inducement for a candidate not to use best endeavours at election

Deputy Secretary for Constitutional Affairs (DS/CA) informed members that the Administration had reservation about the proposal to create a new offence of offering an advantage by a person as an inducement for a candidate not to make his best effort to run an election. He said that it was difficult in the first place to define what was "best effort" in relation to an election campaign. Secondly, there might be various circumstances under which a candidate, for some legitimate reasons, was unwilling or unable to devote his full attention to election campaigning. For example, a candidate could have fallen ill at the time, or be required to deal with some unexpected family or employment matters etc. Hence, there might not be sufficient grounds for introducing such an offence provision.

2. Members shared the view that one could hardly think of any legitimate reason for a person offering money to induce a candidate not to do his best in running an election. The Chairman and Mr CHENG Kai-nam quoted the analogy of the offering or soliciting of an advantage for a jockey or a soccer player not making his best effort to win a race or match, which was a corrupt conduct. Yet, the existing clause 7 of the Bill had failed to catch conduct of this nature in relation to an election.

3. The Administration was requested to reconsider the proposal to introduce in clause 7 a new corrupt offence of offering or accepting an advantage as an inducement or reward for not using best endeavours in campaigning at an election.

The meaning of "inducement"

4. DS/CA explained that the use of the word "inducement" in clause 11, which dealt with the offence to bribe electors and others at elections, implied a corrupt element of guilty intent. In the example given by members at a previous meeting, a candidate who employed a person in good faith to assist in electioneering activities

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would not be caught by the clause. Moreover, clause 11 already provided a “reasonable excuse” defence proviso to deal with cases involving inducement for a person to vote or not to vote at an election.

Drinks served at election meetings

5. DS/CA advised that the intent of clause 12(5) was to allow a candidate to serve inexpensive drinks at an election meeting. Given the variety of drinks that were available and the varied price range, it would be impracticable to specify an exhaustive list of drinks which were allowed or not allowed to be served at election meetings.

6. Mr NG Leung-sing felt that it was not necessary to stipulate drinks of any kind in clause 12(5), other than non-alcoholic drinks, to avoid the clause becoming too restrictive.

Disqualification of a candidate after conviction of an offence

7. Referring to a precedent case in the 1994 District Board election, Mr LEE Wing-tat asked whether an elected candidate who was convicted of an offence under the Corrupt and Illegal Practices Ordinance (CIPO) could remain in office consequent upon the conviction being quashed on appeal. Deputy Solicitor General (Constitutional) (DSG(C)) said that the candidate would not be disqualified pending the outcome of his appeal against conviction. Once the appeal was decided, any disqualification that flowed from the result of the appeal would take effect, irrespective of whether or not there was a further appeal to a higher court. A successful appeal had the effect as if the original conviction and the penalty imposed had never taken place. He further advised that where the appeal in question was against sentence as opposed to an appeal against conviction, disqualification would still apply despite the appeal was successful.

8. In response to the Chairman, DSG(C) said that the disqualification provisions in relation to elections were spelt out in the relevant electoral laws.

Administration’s response to concerns raised at the meeting on 22 September 1999
(LC Paper No. CB(2)27/99-00(03))

“Tendered” ballot papers

9. DS/CA advised that in the 1998 Legislative Council election, there were four complaints in which the electors complained that when they went to vote at the polling stations, they were told by the polling staff that ballot papers had already been issued under their names. As a result, these electors were issued with ballot papers stamped with the word “tendered” which would not be counted. After investigation by the Electoral Affairs Commission (EAC), there was no evidence that the polling staff concerned had made any mistakes.

10. Mr NG Leung-sing expressed the view that there should be improved measures to ensure that issuing ballot papers to a wrong elector, or one person impersonating another as an elector at the polling station, would not occur. He asked whether video recording at the polling stations could be used as a precautionary measure.

11. DS/CA replied that there might be practical difficulties for making video equipment available at polling stations, owing to the large number of polling stations and the fact that most polling stations were operating on temporary locations for only a brief period. He said that there were adequate preventive measures to ensure that voting was properly conducted. He advised that polling staff were required to work in pairs while checking the identity of electors who turned up to vote before issuing ballot papers and crossing out the voters' names from the register. Furthermore, other polling officers and polling agents of the candidates would be monitoring the voting closely on the spot.

12. Members suggested that additional safeguards against abuse might be considered, such as the measure adopted in some foreign countries where, for identification purpose, polling officers applied a special kind of colourless ink onto voters' hands which would reveal if being exposed to a detector. Mr NG Leung-sing also suggested that the time at which a voter cast his vote could be recorded.

13. In response to the suggestions, DS/CA said that too many procedural steps in the voting process might prove to be counter-productive because electors might feel uncomfortable with a complicated mechanism which created excessive inconvenience. In the end, some electors might be deterred from turning up to vote.

14. Members pointed out that as a "tendered" ballot paper would not be counted as a valid vote, electors must be fully explained of the purpose of a "tendered" ballot paper and the circumstances under which a ballot paper would be issued in order to avoid misunderstanding.

15. DS/CA said that there would be clear and detailed directives given to polling officers on all matters relating to voting. He undertook to reflect members' concerns for the consideration of the EAC in drawing up its electoral guidelines.

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16. Regarding the four complaint cases reported in the 1998 LegCo election involving the issue of "tendered" ballot papers, members requested the Administration to provide information on the timing at which the individual complaints were made and how the cases were investigated.

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Clause 17

17. In relation to clause 17(d), DS/CA advised that the Administration would put forward an amendment to clarify that ballot papers were to be protected before, during and after the election until they were properly disposed of in accordance with the

relevant regulation made by EAC.

Clause 19

18. The Chairman advised that members of the Bills Committee were generally in favour of raising the limit of election donation requiring the issue of a receipt under clause 19(1) from “\$500 or more” to “more than \$1,000”.

19. Members noted the Administration’s proposal to amend the last sentence of clause 19(1) to “The receipt must specify the name and address of the donor as supplied by the donor.”

20. On clause 19(2), members noted the Administration’s proposal to replace the word “identity” with “name and address” to be consistent with the wordings in clause 19(1).

21. Members were still seriously concerned about the practical difficulties for a candidate to decide on how election donations should be spent and how any unused donation should be returned to the donors in accordance with the instructions given by the latter. Members requested the Administration to reconsider simplifying the mechanism for disposal of unspent election donation by amending clause 19 so that a candidate was required to give any unspent donation to a charitable institution or trust of a public character. Members considered that people who made voluntary donations were unlikely to be objectionable to such a requirement.

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Administration’s response to concerns raised at the meeting on 23 September 1999
(LC Paper No. CB(2)27/99-00(04))

“Advantage” and “reward”

22. Members noted that the Administration would propose an amendment to remove any inconsistency in meaning of the terms “advantage” and “reward” used in the Bill.

Clause 23

23. Members noted the Administration’s conclusion that it was neither appropriate nor necessary to introduce a defence of “public interest” or “reasonable excuse” in clause 23(1). According to the Administration, the inclusion of such a defence provision would enable a person other than a candidate to incur election expenses without the candidate’s consent or authority, which would not have to be accounted for in any return of election expenses. Moreover, it was already provided in clause 31 that a person could apply to the Court for an order to relieve him from penalties if he engaged in al illegal conduct due to inadvertence or some other reasonable cause.

Clause 27

24. Members noted that the Administration would propose an amendment to make it clear that it would be an offence if a candidate published an election advertisement that included the name or logo of a person or an organization, unless the person or organization concerned had given prior written consent. The Administration would also put forward an amendment to clarify the meaning of “support” in clause 27(9).

Clause 31

25. Members requested the Administration to provide statistics on the number of applications for a court order under section 26 of CIPO (the equivalent of clause 31) to except innocent acts in relation to unauthorized expenses in elections prior to 1998.

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Administration’s response to concerns raised at the meetings on 4 and 5 October 1999
(LC Paper No. CB(2)84/99-00(01))

Clauses 29 and 30

26. DSG(C) explained that clause 29(1) was a positive provision reflecting the existing legal position that a candidate could be held to have personally engaged in corrupt and illegal conduct when the acts were carried out by others with the candidate’s knowledge and consent. Clause 29(2) was a negative provision which provided a defence for the candidate from being held liable for the actions of his agents if he could prove that he was not aware of or had taken all reasonable steps to prevent the agent from engaging in the conduct concerned.

27. The Chairman said that when one read clause 29(2)(b) in conjunction with clause 30(1)(a), one had difficulty in understanding how a candidate could make out a defence to show that he had not personally engaged in corrupt or illegal conduct by an agent.

28. After some discussion, the Administration agreed to review the overlapping between the two clauses to remove the ambiguity.

Adm

29. Regarding the onus of proof of “all reasonable steps” under clauses 29 and 30 to except a candidate from corrupt or illegal conduct by an agent, members noted the Administration’s proposal to substitute “has taken all reasonable steps” with “has taken reasonable steps”. The Administration also proposed to add “and did not materially affect the results of the election” after “the conduct was of a trivial nature” in clause 30(1)(b).

30. The Chairman expressed the view that the phrase “the conduct was of a trivial nature” was not necessary as a trivial conduct already implied that it did not have any material effect on the results of the election. The Administration agreed to review the proposed amendment.

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Clause 31

31. In response to Assistant Legal Adviser (ALA), DSG(C) said that the objective of clause 31 was that where a prosecution against a person had been commenced, the person could still apply to the Court for an order for relief under clause 31(2). However, it was not the policy intention that a relief under clause 31 should be available after conviction of the applicant.

32. ALA asked whether the relevant criminal proceedings would be stayed once an application by a person for the granting of court relief under this clause was made. In response, the Administration undertook to clarify the matter in the light of policy and revise the drafting if necessary.

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(Post-meeting note : The Administration's response to the concerns raised at this meeting has been circulated to members vide LC Paper No. CB(2)128/99-00(01)) dated 19 October 1999.)

II. Date of next meeting

33. The next meeting was scheduled for 19 October 1999 at 8:30 am.

34. The meeting ended at 4:20 pm.

Legislative Council Secretariat

16 March 2000