

立法會
Legislative Council

LC Paper No. CB(2)1012/99-00
(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 12th meeting
held on Tuesday, 21 September 1999 at 4:30 pm
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 Mrs Selina CHOW, JP
Hon CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, JP

Members Absent : Hon Andrew WONG Wang-fat, 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 Tony CHENG
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. Confirmation of minutes of meetings

(LC Paper No. CB(2)2844/98-99 - minutes of meeting on 10 March 1999)

(LC Paper No. CB(2)2845/98-99 - minutes of meeting on 20 April 1999)

(LC Paper No. CB(2)2846/98-99 - minutes of meeting on 28 April 1999)

The three sets of minutes were confirmed.

II. Meeting with the Administration

Administration's response to the concerns raised at the meeting on 8 September 1999
(LC Paper No. CB(2)2836/98-99(01))

Election advertisement

2. In response to the enquiry raised at the last meeting, Deputy Secretary for Constitutional Affairs (DS/CA) advised that there were no specific statutory provisions in the UK Representation of the People Act 1983 on expenses incurred by a political party to promote the party in general election campaigning. He said that with the Administration's proposed new definition of election advertisement (EA), an advertisement published by a political party for the purpose of promoting or prejudicing the election of a particular candidate or group of candidates would be treated as an EA, and the expenses incurred for the publication of the advertisement would be counted towards the election expenses of those members of the political party standing as candidates at the election. Where a dispute arose as to whether a particular advertisement fell within the definition of EA, the court would look into all the circumstances of the case, including the content of the advertisement concerned and the manner of and the conditions affecting its publication.

3. Mr LEE Wing-tat said that in the event of a political party publishing a certain statement in promotion of its party "manifesto", it could be argued that such statement had the effect of promoting the election of the party's members standing as candidates. Mr LEE Wing-tat and Mr CHENG Kai-nam pointed out that to avoid unnecessary disputes, members of the Democratic Party and the Democratic Alliance for the

Betterment of Hong Kong who stood as candidates in the 1998 LegCo election had reported in their election returns the expenses incurred for the publication of advertisements to promote the parties.

4. Mr CHENG Kai-nam asked whether 'repeated exposure' of a candidate in the electronic media would be caught by the definition of EA. He cited firstly the "Economist" magazine which advertised on the television about one of its editions featuring in the cover page a particular Member of the LegCo, and secondly the Asia Television's daily news programme which contained opening title shots of a LegCo Member, as two distinct examples. He said that while such media exposures had the objective effect of promoting the election of a particular candidate, they were not of the nature of a media coverage to which the fair and equal principle of reporting as laid down in the Electoral Affairs Commission's (EAC) guidelines applied.

5. Mr NG Leung-sing said that a candidate might have appeared in a commercial advertisement well before he stood nominated as a candidate or declared candidature at a particular election. He asked whether such advertisement would be treated as an EA if broadcast during the election period, and whether the Administration would consider it desirable to impose restrictions such as to require that prior approval had to be sought from the appropriate authority before the advertisement could be released for public viewing. He opined that in dealing with the matter, a balance should be struck between fair election campaigning and legitimate commercial activities.

6. Mrs Selina CHOW expressed the view that there should be an effective mechanism to guard against possible loopholes in the law which permitted a candidate to use commercial advertising as a means to gain an unfair advantage over his opponents.

7. The meeting requested the Administration to respond to members' concerns after seeking the EAC's views on whether its electoral guidelines were adequate to deal with those issues.

Adm

Clause-by-clause examination of the Bill

Clause 9

8. Mr LEE Wing-tat considered that the offence provisions in clause 9 did not seem to catch the conduct of offering an advantage to a candidate as an inducement not to make his best effort to run an election. In his view, such activity involved a corrupt intent to promote the election of a candidate or group of candidates and therefore it should also be treated as a corrupt conduct.

9. In reply, Deputy Solicitor General (Constitutional) (DSG(C)) said that clause 9 in its present drafting did not cover the behaviour as pointed out by Mr LEE. At members' request, the Administration agreed to reconsider the drafting of clause 9 to

Adm see whether it was necessary to introduce a new offence provision to cover the conduct of inducing a candidate not to make his best endeavour in an election.

Clause 11

10. The Chairman enquired what could be a "reasonable excuse" for the offence of bribing electors and others at elections under clause 11. In response, DSG(C) said that a reasonable excuse could, for example, include a pledge made by a candidate to fulfil his election platform. Such campaign promises would not be considered as offering an advantage to another person as an inducement to vote at an election. He further advised that the existence of a "reasonable excuse" proviso in clause 11 would also ensure that the "voting arrangement" specified in clause 11(5) to (7) would not be treated as corrupt conduct.

11. Mr TSANG Yok-sing said that the following conduct might be caught by the offence in clause 11(1)(c) as offering an advantage to a second person as an inducement to get a third person to vote for a particular candidate at an election, i.e. a candidate paying another person to assist in electioneering activities or a candidate asking another person to engage in such activities without pay, but with a promise that an employment would be offered to that other person if the candidate eventually got elected. The Chairman opined that the definition of "advantage" in clause 2, which covered "any office, employment or contract", could apply in the above scenarios. In his view, the offence in clause 11 would be complete if the element of "inducement" was proved.

12. DSG(C) responded that clause 11(1)(c) was intended to cover situations of a person [A] offering an advantage to another person [B] as an inducement to get a third person [C] (i.e. the spouse of [B]) to vote for a particular candidate or candidates at an election. He said that clause 11 did not aim at covering normal electioneering activities, or situations where a normal employer/employee relationship existed.

13. Mr TSANG Yok-sing said that it could be argued that all electioneering activities were attempts to induce others to vote for a particular candidate or candidates at an election. The Chairman opined that "inducement" should carry an illegal connotation in the sense that "a person would not have acted in the way he did but for the inducement". He requested the Administration to review the drafting of the provisions in clause 11 and to clarify the meaning of the word "inducement", which also appeared in other provisions such as clause 12.

14. In relation to "voting arrangement", the Administration clarified that an offer involved in a voting arrangement excluded an offer of any monetary support made to a candidate or candidates. A voting arrangement also excluded an arrangement for a person not to stand as a candidate, or for a person to withdraw the nomination after being nominated as a candidate. A voting arrangement could be in relation to

different elections (i.e. LegCo election; District Councils election; geographical constituency /functional constituency /Election Committee elections etc) held at different points in time. Furthermore, voting arrangement applied not only between political parties but also between members of the same political party, or between independent candidates.

Clause 12

15. In response to Mr LEE Wing-tat, the Administration advised that the definition of "advantage" in clause 2 excluded "entertainment" because matters relating to the provision of refreshments and entertainment were specifically dealt with under clause 12.

16. Members pointed out that clause 12(5) as presently drafted could not cover the serving of expensive non-alcoholic drinks at an election meeting, which might be argued as having the effect of an inducement for someone to vote or not to vote for a particular candidate or group of candidates. Members queried whether this was consistent with the intent of clause 12. Mr LEE Wing-tat asked whether conduct such as singing a song by a candidate before a group of electors, or giving out mooncakes to a group of elderly persons without mentioning anything about the election, would be caught by the offence under clause 12(1).

17. DSG(C) replied that whether or not a court would consider an activity was corrupt conduct under clause 12 depended on whether there was sufficient evidence to prove beyond reasonable doubt that the act was done for the purpose of inducing an elector to vote or not to vote. He said that the fact that some mention had been made about the election at the time of providing the food, drink or entertainment would be a factor of evidential value to prove the offence under clause 12.

18. Regarding clause 12(5), DS/CA said that it mirrored the existing section 7 of the Corrupt and Illegal Practices Ordinance (CIPO) on serving of non-alcoholic beverages incidental to an election meeting.

19. In response to the Chairman, DS/CA said that the Administration considered it not appropriate to include a "reasonable excuse" defence in clause 12 in view of the nature of the offence.

20. The Administration was requested to reconsider whether clause 12(5) could reflect a reasonable policy and to provide information on a court case relating to giving out mooncakes by a candidate in the 1994 District Board election.

Adm

Clause 13

21. Mr LEE Wing-tat enquired the difference in meaning between "abduction" and "use or threaten to use force or duress". In response, DSG(C) said that "abduction"

did not necessarily involve the use of force or duress. It could include, for example, an act of someone deliberately taking an elector not to the polling station but to somewhere else in order to prevent the elector from voting. DSG(C) added that clause 13(1) and 13(2) served different purposes in that the former dealt with corrupt conduct of inducing a person to vote for a particular candidate or candidates, while the latter dealt with corrupt conduct preventing a person from voting. An act of abduction was not considered to be relevant to the former situation. DSG(C) further advised that clause 13 reflected the existing section 8 of CIPO on undue influence.

(*Post-meeting note* : The Administration's reply to the concerns raised at the meeting has been circulated to members vide LC Paper No. CB(2)27/99-00(02) dated 6 October 1999.)

III. Date of next meeting

22. The next meeting was scheduled for 22 September 1999 at 8:30 am.
23. The meeting ended at 6:30 pm.

Legislative Council Secretariat

27 January 2000