

立法會
Legislative Council

LC Paper No. CB(2)1013/99-00
(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 13th meeting
held on Wednesday, 22 September 1999 at 8:30 am
in the Chamber 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 Jasper TSANG Yok-sing, JP
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Mrs Selina CHOW, JP
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)

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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

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I. Meeting with the Administration

Clause-by-clause examination of the Bill

Clause 15

Deputy Solicitor General (Constitutional) (DSG(C)) advised that clause 15(a) and (b) of the Bill specified two separate offences, the effect of which was to ensure that a person could only vote once at the same election.

2. Members were concerned about what safeguards were in place to avoid electors being given wrong ballot papers by the polling officers. Deputy Secretary for Constitutional Affairs (DS/CA) responded that incidents of that, if any, should be extremely rare as the polling staff were required to check very carefully the requisite information (such as the identity and the address of an elector) when an elector turned up to vote. The staff also worked together in pairs in verifying such information to ensure that chances of a mistake were kept to a minimum.

3. The meeting requested the Administration to provide information on whether there were precedents of the following and how such cases were handled -

(a) complaints about an elector being given a ballot paper of another elector, inadvertently or intentionally, by the polling staff; and

(b) cases of an elector voting on behalf of another elector.

Adm

Clause 16

4. In response to the Chairman, DSG(C) said that an electoral officer who deliberately issued a ballot paper to an elector under the name of another elector could

be regarded as having engaged in corrupt conduct under clause 16(2)(a) or clause 17(1)(a).

5. The Chairman pointed out that a person who was eligible to be registered as an elector at the time of registration might be disqualified from voting on the election day, such as for reason of having been convicted of a criminal offence or ceasing to be a permanent resident of Hong Kong etc. He asked whether a person who was unaware of the fact that he had been disqualified from voting and had voted at an election would be caught by the offence provision under clause 16(1)(a).

6. The Administration replied that the chance of an elector who was on the electoral register having lost the right to vote was remote. Depending on the facts and circumstances of a case, a person was entitled to a defence against the offence under clause 16(1)(a) on the ground that he had no knowledge that he was not entitled to vote. Moreover, for a conviction under this clause, the prosecution was required to prove beyond reasonable doubt that the accused had knowledge of the disqualification which debarred him from voting.

7. In response to another question from the Chairman, the Administration said that in order to be eligible to vote as an authorized representative of a corporate elector for a functional constituency, a person must have a substantial connection with that body, such as being an employee of that body. Whether or not a person had a substantial connection with a corporate elector was a matter for the court to decide in case of a dispute. The Administration added that a person had to be an elector for a geographical constituency in order to be qualified as an elector for a functional constituency or the Election Committee.

8. On the question raised by Mr LEE Wing-tat relating to the Education functional constituency, the Administration advised that a person who was a registered teacher under the Education Ordinance, irrespective of whether the person was actually a teacher by profession at the time of voting, was entitled to vote in the Education functional constituency.

Clause 17

9. DSG(C) advised that the phrase "with intent to deceive" in clause 17(1)(b) and (c) reflected the word "fraudulently" in section 23 of the Corrupt and Illegal Practices Ordinance on offences relating to ballot papers. He said that the effect of using the phrase was that people who had inadvertently put papers other than a ballot paper into a ballot box did not commit an offence under this clause. The offence under clause 17(1)(b) covered, for example, putting in a counterfeit ballot paper; a ballot paper of another person; or a ballot paper obtained other than from an electoral officer in a polling station etc. The burden of proving an intention to deceive rested with the prosecution.

10. In relation to clause 17(1)(d) on safe protection of ballot papers, the Chairman

and Ms Cyd HO said that the phrase "then in use at the election" was ambiguous in meaning. They asked the Administration to clarify whether, in cases where a candidate requested for a recount of votes or raised a legal challenge against the result of the election, the phrase "then in use at the election" covered the period starting from the declaration of the election result up to the point where the ballot papers were properly disposed of.

11. DSG(C) replied that clause 6(2) of the Bill specifically provided that a corrupt conduct at an election covered a corrupt conduct engaged before, during or after the election period. He said that clause 6(2) also applied to clause 17(1)(d) in relation to the interpretation of the reference to "then in use at the election".

12. The Chairman said that the phrase "then in use at the election" appeared to refer to a specific purpose at a particular point in time. To avoid misinterpretation, the Chairman proposed that the phrase could in fact be deleted, in view of the reference to "at an election" in the opening sentence of clause 17(1).

13. The Administration agreed to reconsider the drafting of clause 17(1) having regard to members' views.

Adm

Clause 19

14. In response to Dr TANG Siu-tong, DC/CA said that the provisions in the Bill on election donations applied to candidates at an election. There were no statutory requirements governing donations to political parties. Election donations included donations given to a candidate or group of candidates by a political party for the purpose of meeting the candidates' election expenses.

15. Mr TSANG Yok-sing said that there were practical difficulties for a candidate to comply with clause 19(1) which required a candidate to issue a receipt to a donor where the election donation exceeded \$500. He pointed out that where donations were collected in public fund-raising activities, it was not uncommon that some donations were given by people whose identity was unknown to the candidate. Such being the case and by virtue of the requirements of clause 19(2), donations in excess of \$ 500 could not be used by the candidate.

16. DS/CA explained that clause 19 was intended to provide transparency in respect of election donations and to prevent a candidate from keeping a donation or any unspent portion of it for personal gain.

17. Members were of the view that clause 19 on election donations should aim at achieving a right balance between fair elections and facilitating a wider public participation in elections. They considered the following alternatives for the propose of issuing a receipt for donation under clause 19(1) -

- (a) raising the amount from "\$500 or more" to "more than \$1,000";

- (b) setting different limits for election donations received in public fund-raising activities and donations received from other sources; and
- (c) setting different limits for different elections (such as the LegCo election and the District Councils election), calculated at a certain percentage of the maximum election expenses limit in respect of the elections.

After some discussion, members generally felt that to avoid a cumbersome mechanism, option (a) above was a preferred approach.

18. In view of the difficulties in verifying the correctness of the names and addresses of donors, members also requested the Administration to consider redrafting clause 19(1) to the effect that the responsibility of a candidate was discharged so long as the candidate issued a receipt which specified the name and address of the donor as supplied by the donor.

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19. Mr TSANG Yok-sing asked whether a candidate would be liable to prosecution if the candidate, not being aware that a particular donation was in excess of \$500, used the donation in contravention of the requirements of clause 19. DSG(C) opined that a candidate who had taken reasonable and sensible steps to comply with the clause would not be prosecuted. In response to a further question from Mr TSANG, DSG(C) considered that a series of small donations given by the same donor would be treated as separate donations rather than a cumulative sum, unless there were indications showing that some prior arrangements had been made by the donor and the candidate concerned. In the end, each case would have to be judged on its particular circumstances.

20. On clause 19(2), the Chairman requested the Administration to consider replacing the word "identity" with "name and address" to achieve consistency with clause 19(1).

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21. Regarding the Chairman's enquiry about how to comply with clause 19(3), DSG(C) said that it was basically up to the candidates to decide the order in which election donations were spent for the purpose of meeting the candidates' election expenses. The policy intent was that any unspent donation should be returned to the donor if the donor had made such an instruction to the candidate concerned.

22. The Chairman pointed out that election donations normally consisted of donations given by both known and unknown donors. He envisaged that, without some clear guidelines, it would be difficult for a candidate to decide how any unspent election donation should be returned to the donors, such as whether the amount should be returned to all known donors on a pro-rata basis or whether it should be returned to just a few donors in the order of receipt of their donations. Ms Cyd HO suggested that to simplify the mechanism, any unused election donation should be given to a charitable institution or trust of a public character as defined under clause 19(9).

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23. The Administration was requested to respond to the above concerns at the next meeting.

(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)27/99-00(03) dated 6 October 1999.)

II. Date of next meeting

24. The next meeting was scheduled for 23 September 1999 at 2:30 pm.

25. The meeting ended at 10:30 am.

Legislative Council Secretariat

27 January 2000