

立法會秘書處法律事務部的信頭
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22 March 1999

Secretary for Constitutional Affairs
Constitutional Affairs Bureau
(Attn: Mr R IP
Dep Secy CA (2))
3/F, Main Wing
CGO

Dear Sir,

Elections (Corrupt and Illegal Conduct) Bill

At the meeting of the Bills Committee this morning, a number of questions were raised by Members for clarification by the Administration. Some of these questions concern clause 7 and the definition of “advantage” in clause 2 of the Bill and section 8A of the Corrupt and Illegal Practices Ordinance (Cap. 288) (the Ordinance)

Clause 7 criminalises, among other things, the offering, soliciting or acceptance of an advantage as an inducement or reward for standing as a candidate. These are comparable in many ways to the existing offences of bribery in relation to standing as a candidate under section 8A of the Ordinance. For the purposes of the said section 8A, bribery is expressed to be the doing of any of the activities referred to in section 5 of the Ordinance.

In comparing the substance of the activities listed respectively in section 5(1)(a) to (d) of the Ordinance and in clause 7(1)(a) to (h) of the Bill, a major difference is noted. The activities in the former provisions, in order to constitute bribery, have to be done “without lawful authority or reasonable excuse” but no such reservation is made with regard to the latter provisions in clause 7.

It would be helpful if the Administration could explain the reasons for and the effect of the difference as it seems to affect the scope of the offences under the. new regime

Turning to a separate issue, “advantage” is defined in the Bill to exclude “an election donation if particulars of the donation are given in an election return that has been lodged”. Under clause 36 of the Bill, an election return setting out a candidate’s election expenses and all election donations is to be lodged “within 30 days after the publication of the result of the election, or within such extended period as may be allowed by the Court”.

For the purposes of clause 7 of the Bill, and indeed those of other clauses, would the exclusion mean that it would not be possible to determine whether there is an advantage, once candidature is established, until the end of the period specified under clause 36?

I would be grateful if the Administration could also address these points and let me or the Bills Committee have a response before its next meeting.

Yours faithfully,

(Arthur CHEUNG)
Assistant Legal Adviser

c.c. Clerk to the Bills Committee