

Administration's Response to Concerns raised on 22 March 1999
by Members of the Bills Committee
on Elections (Corrupt and Illegal Conduct) Bill

- C1 : To advise the Government's position on and the implications of the court judgement on the Hang Hau Po Toi O Village Representative (VR) Election such as whether the judgement would impact on the District Council elections to be held in late 1999; whether it would affect the position of the ex-officio membership of the District Councils; whether it would affect the VR elections which have yet taken place; and if so, how the Administration would deal with such consequences.**
- A1 : The Administration is studying with care the court judgement and assessing its implications on VR elections which have yet to take place. The issues involved are complex and require careful examination. We will report back to the Bills Committee as soon as possible.

The election of the elected members of the District Councils will be conducted in accordance with the District Councils Ordinance. As the court has not questioned the legality of the relevant provision of the ordinance in this case, the court judgement should not have any direct effect on District Council elections.

Chairman of the 27 Rural Committees are ex officio members of the District Councils. Even if these ex officio members' status is challenged in Court as a result of certain village representative elections, section 72 of the District Councils Ordinance has provided that proceedings of a District Council will not be affected by any vacancy or defect in its membership.

C2 : To address members' concern that "any service provided free of charge to or in respect of the candidate or group by a person whose occupation involves the provision of that kind of service" is defined as "election donation" in the Bill. Members are concerned that there are practical difficulties in identifying the types of services rendered free of charge by volunteers which may be caught by the provision; in quantifying in money terms the value of such services; and in deciding whether, when and how particulars of such services should be reported in an election return.

A2 : The Administration considers that there should be a level playing field for candidates at an election. Hence, we propose to define "election donation" in such a way as to include volunteer service provided by a person whose occupation involves the provision of that kind of service. For the 1998 Legislative Council Election, the Electoral Affairs Commission had published clear guidelines on the calculation and reporting of volunteer work done for a candidate. An extract of them is at Annex. These guidelines were modelled on guidelines in previous elections and they have been working well. It is envisaged that the Commission will issue similar guidelines for the District Council elections.

If the definition of "election donation" is amended to exclude all volunteer services from being counted as election donation, some candidates will gain an unfair advantage over others if they can obtain volunteer service from people in various occupations. On the other hand, it is technically difficult to provide an exhaustive list of services to be counted as donation unless the term "election donation" is defined to include any free service provided by any person irrespective of his occupation.

C3 : To provide some examples of how the term "election donation" is defined and used in other jurisdictions for members' reference.

A3 : We are gathering the information required and will provide them to the Bills Committee as soon as possible.

C4 : To better clarify the meaning of “any other form of publication” under the definition of “election advertisement”.

A4 : In view of the diversity and evolution of election advertisements, it is impossible to provide an exhaustive list of different forms of publications. The key factor to determine if something published is an election advertisement is whether it has the effect of promoting or prejudicing the election of a candidate or candidates at the election.

C5 : To respond to members’ concern that an offer of employment or any other form of assistance, by an organisation such as a political party, to a person to enable the person to stand as a candidate at an election might be considered as offering an advantage under clause 7 of the Bill.

A5 : To remove “employment” from the definition of “advantage” or to grant an exemption which would allow a political party or any other organisation or person to offer employment as an inducement or reward to a prospective candidate to stand for election would open up a major loophole which could easily be exploited to circumvent the restrictions on bribery contained in the Bill.

Clause 7 does not prevent the hiring of those who want to be active in politics. Nor does it prohibit offering a job to such a person in the knowledge that he has a general desire to seek elected office. For the clause to operate in the circumstances referred to by Members, the offer of advantage must relate to a specific election and must be offered as an inducement to the prospective employee to stand as a candidate in a specific election.

Whether any particular offer of employment would be within the ambit of the clause would depend on the particular circumstances applying. A bona fide offer of employment by a political organisation to a person where he was to carry out genuine and specified duties and be paid the market rate would not be struck at by the clause merely because there was an understanding that at some future date he may stand for some unspecified elective office. On the other hand an offer of a relatively highly paid

post with little or no duties attached, to a prospective candidate, conditional upon and in order to facilitate his candidature in a specific election would be caught.

C6 : A member has referred to the arrangement of the Hong Kong University of Science and Technology to deduct wages from its employees who are elected members, but not those who are appointed members. To advise whether the arrangement would be regarded as using duress (which is defined to include financial loss to a person in the Bill) to induce a person not to stand at an election and is therefore in breach of clause 8(1)(a) of the Bill.

A6 : We are seeking further information from the University of Science and Technology on this matter. We will report back to the Bills Committee as soon as possible.

Constitutional Affairs Bureau

25 March 1999

Extract of Chapter 14 of EAC Guidelines

Donations in Kind

22. For services or goods obtained free of charge, a candidate must include in the return their estimated value as if the expenses had been incurred. Where the services or goods are furnished by a person who deals in similar services or goods with the public, their estimated value should be assessed at the lowest price at which the person offers his services or goods to the public at the time when they are furnished. Where such services or goods are furnished by persons who do not deal in similar services or goods with the public, their estimated value should be assessed at the lowest market retail price at the time when they are furnished.

23. Volunteer work is the only service rendered free of charge which may be excluded from being counted as election expenses. In addition to being free of charge, the work must be done by an individual personally, voluntarily, at his own time and without any obligation on his part. It must not be work normally undertaken by the individual and during such time for the purpose of earning income or profit. Otherwise, the work or service provided should be treated as a donation and counted towards election expenses at a fair estimated value.