

**Draft Paper for the
Bills Committee on Elections (Corrupt and Illegal Conduct) Bill
on 14 May 1999**

Voluntary service

Purpose

This paper sets out the deliberations of the Bills Committee on voluntary service and presents as far as possible the consensus views for the Administration's consideration.

Relevant definitions under the Corrupt and Illegal Practices Ordinance (CIPO) and the Bill

2. Members have noted the following relevant definitions in considering the issue -

CIPO (sections 2 and 27)

Donation- means any money received, whether before, during or after that election, by a candidate, his election agent and by any other person on the candidate's behalf for the purpose of meeting, defraying or contributing to, the cost of that candidate's election expenses at that election, and includes any part of a donation.

Money - includes any money's worth; any valuable security or other equivalent of money; and any valuable consideration.

Election expenses - means expenses incurred or to be incurred, whether before, during or after that election, by a candidate and by any other person on the candidate's behalf on account of or in respect of the conduct or management of that election or for the purpose of promoting or procuring the election of that candidate at that election.

The Bill (clause 2)

Election donation - includes inter alia "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".

Election expenses - includes inter alia the value of election donations consisting of goods and services used for the purpose of promoting or prejudicing the election of a candidate or group of candidates.

Electoral Affairs Commission (EAC)'s Guidelines on Election-related Activities in respect of the 1998 Legislative Council Elections

3. According to paragraph 23 of Part III of Chapter 14 of the EAC's Guidelines, 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.

Deliberations of the Bills Committee

Members' concerns

4. Members note that there is no definition on "voluntary service" in the CIPO. While the EAC has provided guidelines on "volunteer work", these are not reflected in the law. The Bill now proposes to treat any service provided free of charge to or in respect of a candidate or group of candidates by a person whose occupation involves the provision of that kind of service as a kind of "election donation". According to the Administration, the proposal will make the law clearer. Members are concerned about the policy intention of the existing law and whether the Bill has introduced any policy changes.

5. Members note that similar to the requirement stipulated under section 29 of CIPO, it is a requirement under clause 36(1)(b) of the Bill for a candidate at an election to lodge with the appropriate authority an election return setting out all the candidate's election expenses and all election donations received by or on behalf of the candidate in connection with the election. Under clause 37(1), a candidate who fails to lodge an election return commits an offence.

6. Some members have expressed concern as to whether some voluntary services provided by a member of a political party who is, for example, a lawyer or a public relations consultant by profession, to another party member who is a candidate at an election would be treated as election donation and counted as election expenses.

The Administration's proposal

7. To address members' concerns, the Administration has explained that the purpose of treating certain voluntary service as election donation is to provide a level playing field for all candidates at an election. If all kinds of voluntary services are excluded, some candidates may gain an unfair advantage over others if they can obtain voluntary services from people in various occupations. According to the EAC Guidelines for the 1998 LegCo elections, volunteer work will be counted as donation if it is the work "normally undertaken by the individual and during such time for the purpose of earning income or profit". Subject to the Bills Committee's agreement, the Administration is prepared to include this time element to further narrow the scope of voluntary service to be counted as donation.

Arguments for and against removal of restriction on "voluntary service"

8. Members have had detailed discussions on the subject and the Administration's proposal. Some members suggest that no restriction should be imposed on voluntary service altogether and put forward the following arguments -

- (a) Voluntary services are diversified in nature and sometimes provided by a group of persons to a group of candidates at an election. If voluntary service is to be treated as a donation and counted towards election expenses, it would be extremely cumbersome and complicated to convert the service to money terms and then to apportion the money value of the service among the candidates concerned. One member has pointed out that in certain situations, such as in the heat of a large scale election campaign, a candidate may not be fully aware of the details of voluntary services provided by other people.
- (b) The Administration's proposal to add a time element in the definition of "election donation" does not help. Some people who provide voluntary services may not have "normal" or "fixed" working hours for the purpose of earning income or profit.
- (c) Too many restrictions on electioneering activities would not be conducive to promoting democratic elections and the proposal fails to take into account the evolving electoral systems.
- (d) Major overseas countries do not impose restrictions on volunteer services provided to candidates at an election. (Annex to LC Paper No. CB(2)1805/98-99(01) refers).

9. A few members are of the view that a balance has to be struck to ensure that there is a level-playing field for all candidates. They consider that voluntary services described below should be treated as election donation -

- (a) Voluntary service provided by a team of professionals or experts such as a publicity campaign devised by a public relations consultancy firm for a candidate at an election; and
- (b) Voluntary service provided by a person who receives money or money in kind (e.g. paid leave in addition to his leave entitlement) from his employer.

Consensus views

10. Having taken into account the opinions expressed by individual members, the Bills Committee agrees on the following consensus views -

- (a) In view of the practical difficulties in determining the exact scope of voluntary service that should be accounted for or not accounted for in the election expenses return of a candidate, restrictions on voluntary service should be removed as much as possible;
- (b) There should not be restrictions on voluntary service that is provided by an individual personally, voluntarily and at his own time. It does not matter whether the voluntary service consists of work normally undertaken by the individual or is related to his occupation;
- (c) The voluntary service should not include any service that is provided by any other individual who provides the service as an employee, for reward/compensation from any person or under any pressure from a person of authority; and
- (d) The voluntary service should exclude all provisions of goods or materials incidental to the service.

Legislative Council Secretariat

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