

立法會
Legislative Council

LC Paper No. CB(2) 2315/98-99
(These minutes have been seen
by the Administration)

Ref: CB2/SS/7/98

**Subcommittee on
subsidiary legislation relating to
District Councils election**

**Minutes of meeting
held on Monday, 24 May 1999, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon Ronald ARCULLI, JP
Hon Ambrose CHEUNG Wing-sum, JP

Members absent : Hon LAU Kong-wah
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 LI Wing
Chief Electoral Officer

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Lawrence PENG
Deputy Principal Government Counsel (Acting)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

I Election of Chairman

Mr Andrew WONG was elected Chairman of the Subcommittee.

II Meeting with the Administration

(LegCo Briefs (Ref: CAB C2/8, CAB C2/10 and REO 14/31/1 (CR)) and LC Paper No. LS 176/98-99)

Maximum Scale of Election Expenses (District Councils) Order 1999

2. At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DSCA) briefed members on the Maximum Scale of Election Expenses (District Councils) Order 1999 and highlighted the following -

- (a) the election expenses limit for the District Councils (DCs) election in 1999 was fixed at \$45,000. The limit was the same as that for the 1994 District Boards (DB) election; and
- (b) the proposal had been discussed at a meeting of the Panel on Constitutional Affairs and members of the Panel were generally supportive of the proposal.

3. On the maximum limit for election expenses, Mr LEE Wing-tat enquired whether the Administration had considered using the number of electors in a constituency as the basis for determination. He said that such a method was generally adopted in a number of overseas countries.

4. DSCA advised that the determination of the expense limit for DCs election

Action

was based on an estimation of the actual expenditure, such as expenses incurred in the printing of introductory leaflets, publicity banners and travelling, incurred by a candidate. An example of such a calculation had been considered at the meeting of the Panel on Constitutional Affairs on 19 April 1999. He said that elections in overseas countries differed from those in Hong Kong in that there was reimbursement of election expenses to candidates. The issue of whether candidates should be reimbursed election expenses had been fully deliberated at a meeting of the Bills Committee on the Legislative Council (Amendment) Bill 1999. The Administration considered it inappropriate to reimburse election expenses to candidates as subsidy was already provided in the form of free postage and free publicity in television programmes. It saw no need to use public money to further subsidize the electioneering activities by the candidates.

5. In response to Mr LEE Wing-tat, DSCA said that the election expenses incurred by candidates in the 1994 DB election were as follows -

<u>Election expense</u>	<u>Percentage of candidates within the range</u>
less than \$10,000	4%
\$10,001 to \$20,000	8.3%
\$20,001 to \$30,000	28.1%
\$30,001 to \$40,000	46.8%
over \$40,000	12.8%

He said that as the election expenses incurred by candidates for the 1994 DB election were mainly in the range of \$20,000 to \$40,000, the limit of \$45,000 should pose no difficulties for candidates.

6. Miss Cyd HO commented that an election expense limit of \$45,000 for an average of 17 000 electors in a DC constituency gave an average limit of slightly more than \$2 per elector. By applying this rate to her constituency in the 1998 LegCo election, the election expense limit should be about \$1.5 million. She questioned why the election expense limit for her constituency in the 1998 LegCo election was \$2.5 million. DSCA reiterated that the election expense limit was not determined on the basis of number of electors. The methods of formation of LegCo and DCs were different and therefore the two were not comparable. Miss Cyd HO said that she would raise the issue again at the future meetings of the subcommittee on subsidiary legislation for the 2000 LegCo election.

7. Members then proceeded to examine the Order clause by clause. No particular comments were made on the drafting of the Order.

District Councils (Subscribers and Election Deposit for Nomination) Regulation

Action

8. DSCA briefed members on the District Councils (Subscribers and Election Deposit for Nomination) Regulation and highlighted the following -

- (a) each person seeking nomination as a candidate in respect of any constituency needed 10 electors registered in the relevant constituency to subscribe on his nomination paper;
- (b) the deposit to be lodged upon the nomination of a candidate in a DC election was \$3,000. The threshold for forfeiture of the deposit was 5% of the total number of valid votes received in the relevant constituency; and
- (c) the number of subscribers and the amount of election deposit required for a nomination, and the threshold for forfeiture of election deposit were the same as those for the 1994 DB election.

He informed members that the proposals had been discussed at a meeting of the Panel on Constitutional Affairs and members of the Panel generally supported the proposal.

9. In response to the Chairman, Principal Assistant Secretary for Constitutional Affairs said that the main difference between the Regulation and the relevant subsidiary legislation of 1994 DB election was that the disposal of deposit after publication of election results or declaration of failure of election had been modified in the light of the new arrangement on the termination of election proceedings in the District Councils Ordinance.

10. The Chairman referred to the title of the Regulation and questioned why “選舉按金” preceded “簽署人” in the Chinese text while “Election Deposit” was preceded by “Subscribers” in the English text. Deputy Principal Government Counsel (Acting) responded that the order of the wording in the title followed that of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation made in 1998. As the difference of order would not result in any doubt about the meaning, he considered that an amendment to rearrange the order of texts was not necessary.

11. Members noted that where a deposit had been lodged and the person lodging the deposit died, the deposit would be returned to the estate of that person and the deposit would be paid to the legal personal representative of that person. In this respect, Mr Ronald ARCULLI enquired whether the rule of *bona vacantia* would apply if there was no legal personal representative. Deputy Solicitor General (Constitutional) advised that the rule of *bona vacantia* would probably apply, and the deposit would probably be reverted to the Government of the Hong Kong Special Administrative Region (HKSAR). At the request of Mr ARCULLI, he undertook to provide a written response on the treatment of

Action

Adm

deposit when a candidate died and the period for which the deposit would be held before it was reverted to the HKSAR Government.

12. In response to Mr LEE Wing-tat, Chief Electoral Officer (CEO) said that the most common problem found with nomination papers was that the addresses of subscribers were different from those in the voter register. In this connection, a candidate could verify the address of a subscriber from the voter registers kept at the Registration and Electoral Office (REO) or District Offices. Subscribers could also verify their own registered addresses through the telephone.

13. As regards whether the addresses of subscribers would be verified within a short time after the nomination paper was submitted, DSCA said that the Returning Officers (ROs) would have regard to the circumstances and offer assistance to candidates as far as possible. The verification of the addresses of subscribers was usually made shortly after the nomination papers were submitted. Mr Ronald ARCULLI said that it might not be possible to verify within a short time whether an elector had subscribed more than one nomination paper. DSCA advised that ROs would try to complete verification within a short time. Candidates were nevertheless encouraged to submit their nomination papers early and seek more subscribers.

14. Mr Ambrose CHEUNG and Mr LEE Wing-tat suggested the Administration to consider providing service to the prospective candidates to enable them to check whether the subscriptions of their nomination papers were valid before the candidates formally submitted their nomination papers. DSCA agreed to convey the view to the REO.

Adm

15. Members then proceeded to examine the Regulation clause by clause. No particular comments were made on the drafting of the Regulation.

Electoral Affairs Commission (Nominations Advisory Committees (District Councils)) Regulation

16. DSCA informed members that the functions of the Nominations Advisory Committees (District Councils) (NACs) were to advise any prospective candidate about his eligibility for nomination as a candidate at that ordinary election, and to advise ROs about the eligibility of a particular candidate for nomination as a candidate at an election.

17. The Chairman enquired why NACs would not provide election-related advice on matters other than the eligibility of candidates for nomination. DSCA advised that REO would provide advisory service to candidates through conducting briefing sessions for candidates. Hotlines for handling enquiries would be set up by the relevant departments. Apart from advice on nomination,

Action

candidates would have to obtain election-related advice on their particular circumstances from their own legal advisers. He informed members that in 1994, the former Boundary and Election Commission considered that such a service would be useful to candidates. The proposal was subsequently implemented in the 1995 and 1998 LegCo elections. As the provision of such advice was found useful by most candidates, it was considered that such a service should be extended to the 1999 DCs election.

18. Mr Ambrose CHEUNG said that the meaning of “ordinarily resided in Hong Kong” had been controversial and asked whether NACs would provide prompt advice on the issue. CEO responded that NACs would provide advice as soon as possible. In the 1998 LegCo election, a number of the 43 advice provided by NACs were related to the interpretation of “ordinary resided in Hong Kong”.

19. On the number of NACs to be formed, CEO said that EAC intended to form four to five NACs. Each NAC would consist of one member. Each request for advice would be handled by one NAC only. The advice given by NACs were not binding on candidates. Candidates were free to seek their own legal advice and furnish such advice to the ROs. Apart from some minor difference in view over the issue of nationality which was finally resolved, there was no objection to or challenge against the advice given by NACs in the 1998 LegCo election. On the question of why the term “committee” was used to describe a person, CEO said that the issue had been fully deliberated by a former sub-committee and it was agreed that a committee could comprise one person.

20. Members noted that besides advising the prospective candidates on their eligibility for nomination before an ordinary election, NACs also provide ROs with legal advice on the validity of any nominations in which they have doubts. The advice of NACs was not binding on the ROs. Where necessary, the ROs would seek advice from Government Counsel.

21. As regards whether NACs would provide advice on the nationality of candidates, DSCA said that no requirement was laid down in the District Councils Ordinance on the nationality of candidates.

22. Members noted that a NAC was remunerated at a rate of \$1,000 per case. Remuneration was also provided to NACs who attended meetings, convened by EAC on a need basis, at the close of the nomination period of an ordinary election.

23. In response to Miss Cyd HO, CEO said that 43 advice were provided in the 1998 LegCo election at a total cost of \$63,000, which was used to meet the

Action

remuneration to NACs for providing advice on the cases and attending a meeting convened at the end of the nomination period. The estimated remuneration of \$300,000 to members of NACs was based on a projection of 200 requests for advice.

24. Members then proceeded to examine the Regulation clause by clause. No particular comments were made on the drafting of the Regulation.

Report to the House Committee

25. As members had completed examination of the subsidiary legislation, the Chairman concluded that the Subcommittee supported the three items of subsidiary legislation and a report would be submitted to the House Committee at its meeting on 28 May 1999.

Further subsidiary legislation relating to District Councils election

26. DSCA informed members that three other items of subsidiary legislation on declaration of constituencies, electoral procedure and election petition procedure would be tabled in the Legislative Council shortly. He hoped that the scrutiny of all the subsidiary legislation could be completed before the end of this legislative session.

27. The meeting ended at 5:30 pm.

Legislative Council Secretariat
15 June 1999