

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

**Minutes of meeting
held on Thursday, 10 June 1999, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon LEE Wing-tat
Hon LAU Kong-wah
Hon CHOY So-yuk

Members absent : Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon Ambrose CHEUNG Wing-sum, JP

Public Officers attending : Item I(a)

Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Tony CHENG
Assistant Secretary for Constitutional Affairs

Mr Lawrence PENG
Deputy Principal Government Counsel (Acting)

Item I(b)

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Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Tony CHENG
Assistant Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer

Ms Phyllis KO
Deputy Principal Government Counsel
(Elections)(Acting)

Miss Marie SIU
Senior Government Counsel

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

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I Meeting with the Administration on the Electoral Affairs Commission (Electoral Procedure)(District Councils) Regulation and the District Councils (Election Petition) Rules

(a) District Councils (Election Petition) Rules
(LegCo Brief (Ref. CAB C2/15))

At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DSCA) briefed members on the District Councils (Election Petition) Rules, which were modelled on the Legislative Council (Election Petition) Rules. Deputy Solicitor General (Constitutional) (DSG(C)) informed members

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that apart from changes consequential to those in the principal legislation, the Rules were also very similar to the relevant subsidiary legislation under the former Electoral Provisions Ordinance.

2. In response to the Chairman, Assistant Legal Adviser 4 (ALA4) said that the drafting of the Rules were in order.

3. As members made no particular comments on the drafting of the Rules, the Chairman concluded that the Subcommittee supported the subsidiary legislation and a report would be made to the House Committee for consideration at its meeting on 25 June 1999.

(b) Electoral Affairs Commission (Electoral Procedure)(District Councils) Regulation
(LegCo Brief issued by the Registration and Electoral Office)

4. Chief Electoral Officer (CEO) informed members that the Electoral Affairs Commission (Electoral Procedure)(District Councils) Regulation, which comprised six parts and three schedules, was modelled on the relevant regulation for the 1998 LegCo election. He highlighted the following new measures adopted in the light of past experience -

- (a) Two months before the first ordinary election, the Electoral Registration Officer must compile and publish a register showing the names, addresses and constituencies of electors. To safeguard the privacy of the electors, their identity document numbers and sex would no longer be shown in the register;
- (b) Where it came to the knowledge of the Returning Officer (RO) before the election day that a validly nominated candidate had died or was disqualified from being nominated, the RO had to declare by a public notice or public announcement to that effect and to further declare which candidates remain validly nominated;
- (c) Within a no canvassing zone, door-to-door canvassing of votes would be allowed on the storeys above or below street level in a building, other than the building in which the polling station was situated;
- (d) An elector must use a “✓” chop provided at the polling station to mark against the name of the candidate of his or her choice. Any vote not made by using the chop provided would be invalid;
- (e) A validly nominated candidate was entitled to send one free postage item to each elector in the constituency for which he was

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validly nominated. Requirements on the minimum and maximum sizes and weight of a free postage item were laid down in the Regulation;

- (f) Within seven days after an election advertisement had been displayed, distributed or used, a candidate must submit a declaration in respect of the election advertisement and two copies of the advertisement to the RO; and
- (g) It was an offence for a person, in an election related document, to knowingly make a statement which was false, to recklessly make a statement which was incorrect, or to knowingly omit a material particular from that election-related document. Such an offence would lead to disqualification of the person from being nominated as a candidate, from being elected as an elected member and from holding office as an elected member.

Election advertisements

Requirement for submitting election advertisements to the RO within seven days

5. As regards the reason for imposing the requirement for candidates to submit an election advertisement to the RO within seven days after displayed, DSCA stated that the requirement was laid down in section 19(2) of the Corrupt and Illegal Practices Ordinance (Cap. 288) (CIPO). As the Elections (Corrupt and Illegal Conduct) Bill had been introduced to replace the CIPO, members having any views on the requirement might convey their views directly to the bills committee examining the Bill. CEO supplemented that the requirement would allow a RO to be kept informed of the election advertisements issued by a candidate, and facilitate the verification of election expenses. In response to Miss CHOY So-yuk, CEO stated that election advertisements transmitted by facsimile should also be submitted to the RO seven days within transmission.

6. On the violations of the seven-day requirement, CEO said that according to past experience, violations of the requirement were usually found with new candidates who were not familiar with the requirement.

7. Miss CHOY So-yuk commented that as a large number of new candidates would run for the District Councils (DCs) election, it was likely that some of them might unintentionally violate the requirement. She considered that flexibility should be exercised in enforcing the deadline for submitting election advertisements. DSCA responded that briefings for candidates would be held by the Registration and Electoral Office (REO), the Independent Commission Against Corruption (ICAC) and the Home Affairs Department. Hot lines would also be provided to handle the enquiries of candidates.

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Candidates should therefore be aware of what they were required to do.

Penalty for failure to comply with the seven-day requirement

8. In response to the Chairman, DSG(C) said that a person who committed an offence in respect of election advertisements under section 103(11) or 103(12) was liable to a fine at level 2 and to imprisonment for six months. However, it was unlikely for the court to impose the maximum or sentence a person to imprisonment for such an offence. As far as the provisions were concerned, there was no disqualification consequence. To his knowledge, no one had been prosecuted under the provisions in similar regulation in the past. False declaration could lead to disqualification under CIPO. Any person who contravened the provisions of section 19 of CIPO would be liable -

- (a) on summary conviction to a fine of \$50,000 and to imprisonment for one year; and
- (b) on conviction on indictment to a fine of \$100,000 and to imprisonment for three years.

Definition of an election advertisement

9. In response to Mr LEE Wing-tat, CEO stated that copies of election advertisements should be submitted to him if ROs had not been appointed. Mr LEE Wing-tat and Mr LAU Kong-wah considered that the Administration should give clear guidelines on what constituted an election advertisement. In this connection, DSG(C) referred to section 2 of the Regulation and stated that -

- (a) “election advertisement” meant any publicity material used or intended to be used by or on behalf of a candidate for the purpose of promoting or advertising that candidate in connection with an election;
- (b) in relation to election advertisement, “candidate” included a person who was being or had been nominated as a candidate to stand for election as an elected member, and a person who intended to stand for election as an elected member at an election, regardless of whether the person had submitted a nomination form.

It should be noted from these definitions that section 103 of the Regulation would apply once a person had the intention to stand for an election, regardless of whether the nomination process had started.

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10. DSCA further supplemented that in determining whether a certain material was an election advertisement, it would be necessary to examine the evidence and circumstances in respect of whether a person was regarded as a candidate, which depended on whether he had the intention to stand for an election.

11. In response to members, ALA4 said that the determination of when a certain material was an election advertisement would require the determination of whether the person concerned had the intention to stand for an election. It was possible for a candidate to have the intention before submission of a nomination form.

12. The Chairman and Mr LAU Kong-wah were of the view that it was very difficult not to conclude that a person, especially one who had served a district for many years, had the intention to stand for an election. Miss CHOY So-yuk considered that “intention” should be clearly defined. DSCA responded that when a case was brought to the court, the prosecution had to prove that a person had the intention to stand for an election.

13. The Chairman said that, to determine whether a material was an election advertisement, it would be necessary to determine whether a person had the intention to stand for election, and whether the material fell within the meaning of election advertisement.

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14. At the requests of Mr LEE Wing-tat and Mr LAU Kong-wah, CEO undertook to provide information on the number of complaint cases and prosecutions where candidates had failed to submit or submit before the required period copies of election advertisements to the ROs in the 1994 District Boards election.

Size and weight of free postage

15. In response to Mr LAU Kong-wah, CEO said that the requirements on the size and weight of free postage were not set out in similar regulations in the past.

No-canvassing zones

16. CEO informed members that canvassing was prohibited in all buildings within a no canvassing zone in past elections. The no canvassing zones of the 1998 LegCo elections had been enlarged in the light of past experience.

17. Mr LAU Kong-wah opined that no canvassing zones had been too large in the past and requested the Administration to consider reducing the size of the zones. He questioned why canvassing was prohibited in the lift lobby on the

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ground floor of a building within the no canvassing zone but allowed on the floors above street levels. He considered that more disturbance would be caused to residents if each candidate knocked on the doors of residents. CEO responded that disturbance would be caused to residents if canvassing was allowed at the lift lobby on the ground floor of buildings. In response to the Chairman, he said that there was no public consultation on such zones. DSCA added that the exact boundaries of no canvassing zones were not yet finalized. The Administration would have regard to the views expressed by members in the determination of such zones. Miss CHOY So-yuk commented that the no canvassing zone was introduced for the purpose of preventing undue disturbance to residents. The same purpose could be achieved through imposing restrictions on the numbers of election advertisements and election agents allowed in a no canvassing zone.

18. Mr LEE Wing-tat took the view that canvassing should be totally prohibited on the polling day. He considered that EAC should not relax the requirements on no canvassing. To his knowledge, canvassing of votes on the polling day was not allowed in most countries. Allowing canvassing above ground floor level in buildings would only cause disturbance to residents, especially inside lift cars.

19. Miss CHOY So-yuk however considered that to encourage more people, especially independents, to stand for the DCs election, canvassing of votes should not be prohibited on the polling day. The polling day was the day when independents could compete on equal terms with candidates from political parties. It provided a chance for candidates who were less well known to get in touch with electors. Prohibition of canvassing on the polling day would be unfair to the independent candidates. She considered that canvassing of votes on the polling day would help achieve a high turnout rate of electors. As excessive disturbance to residents would have a negative effect on canvassing of votes, candidates would take steps to avoid causing disturbance to residents. Mr LEE Wing-tat opined that canvassing of votes was not confined to the polling day. It could be carried out at any time, especially during the period between the submission of nomination form and the polling day.

20. As regards the practice in other jurisdictions, DSCA said that whether canvassing of votes was prohibited on the polling day varied from country to country. The Administration considered that candidates should be allowed to choose, according to their own needs, when and how to carry out canvassing activities, so long as they would not undermine the fairness of the election or cause undue disturbance to the electors. Allowing canvassing activities on the election day would help create a good atmosphere. According to experience, order on the polling day was generally satisfactory since -

(a) order at elections was regulated by the Electoral Affairs

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Commission Ordinance (Cap. 541) (EACO);

- (b) polling staff were discharging their duties effectively; and
- (c) candidates were generally aware of what they were allowed to do.

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21. Mr LEE Wing-tat requested the Administration to provide information on whether canvassing of votes was allowed on the polling day in other jurisdictions and the activities allowed on the polling day. Miss CHOY So-yuk however considered that the practice adopted by other countries might not be applicable to Hong Kong. DSG(C) expressed reservations about imposing a territory-wide ban on canvassing of votes on the polling day. He said that the right to freedom of expression was one of the fundamental rights guaranteed under the Basic Law. A complete territory-wide ban would be in conflict with the freedom of expression. It prevented an elector from getting the most current and up-to-date information prior to voting. In addition, it might be ultra vires of section 7 of EACO. Mr LEE Wing-tat said that such a ban was found in many countries which were parties to the International Covenant on Civil and Political Rights (ICCPR). He questioned whether these countries had contravened ICCPR by imposing the ban. DSG(C) responded that to his knowledge, such a ban was adopted in France. However, he was not in a position to comment on whether France had violated the provisions of ICCPR since he had no information on whether any reservation had been made by the country when becoming a state party to ICCPR. He said that any restriction imposed on freedom of expression must be necessary and proportionate to the harm to which it purportedly addressed. Mr LEE Wing-tat requested the Administration to provide written response on whether a territory-wide ban on canvassing of votes on the polling day would violate the provisions of ICCPR, and whether the states parties to ICCPR which had adopted such a ban had violated the provisions of ICCPR. He asked whether a no canvassing zone could be extended to cover the whole constituency. He also requested ALA4 to examine whether a territory-wide ban on canvassing would be ultra vires of the provisions of EACO.

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ALA4

Uploading the register of electors onto the Internet

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22. Mr LEE Wing-tat suggested the Administration to upload the register of electors onto the Internet. CEO agreed to look into the suggestion and examine the technical feasibility. Consideration would also be given to the implications on the privacy of electors. He added that copies of the register would usually be made available for inspection at District Offices two months before an election. Electors could also check their address records in the register through a telephone hotline.

Vote planting

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Adm 23. CEO informed members that complaints about “vote planting” had been received in the past and some of them had been referred to the Police for further actions. Miss CHOY So-yuk opined that the Administration should adopt a proactive role in the investigation of any suspected “vote planting”. CEO responded that the REO was always vigilant on suspected cases. With the adoption of a standardized format for address records, the number of electors in an address could be easily identified and any peculiarity should be easily noticed. Mr LAU Kong-wah requested the Administration to provide the number of complaint cases in respect of “vote planting” by candidates since 1994.

Timing for announcement of polling hours, polling stations and counting stations

Adm 24. Members noted that at least 10 days before the polling day, the CEO must gazette the polling hours, polling stations and counting stations for the election. Mr LEE Wing-tat suggested the Administration to advance the time of gazettal to the end of the nomination period, which was about five weeks before the polling day.

False declaration

25. As regards the major difference between the provisions in the Regulation on false declaration and relevant provisions in the past, CEO explained that an offence of false declaration would lead to disqualification described in paragraph 4(g) above. The disqualification consequences were however not provided in the relevant provisions in the past.

Adm 26. Mr LAU Kong-wah commented that the enforcement of provisions on false declaration had been too strict in the past. As there were reports that even the omission of a punctuation had been regarded as a false declaration, he was concerned that the provisions might be open to abuse. He requested the Administration to convey his views to the departments and agencies responsible for enforcing the provisions. His view was shared by Mr LEE Wing-tat. Mr LEE said that new candidates were particularly affected psychologically by complaints about false declaration.

27. CEO responded that candidates would only be prosecuted for making deliberate false declarations. They would not be prosecuted for unintentional errors. Mr LAU Kong-wah and Mr LEE Wing-tat however considered that the harm would already have been done in the investigation process, as new candidates were particularly affected psychologically when notified of such complaints. Miss CHOY So-yuk added that it was very difficult to determine

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whether a person had the intention to give false declaration.

28. As regards whether REO would consider withholding investigations into complaints until after the election had been completed, CEO said that any delay on the processing of the complaints would not be fair to the parties concerned.

29. DSG(C) clarified that the provisions regarding false declaration applied only to election-related documents such as forms, declarations, authorizations and nomination forms. False statements and election advertisements were not covered by the provisions on false declaration. In response to Mr LAU Kong-wah, DSG(C) stated that false statements related to election advertisements were regulated by section 16 of CIPO.

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30. In response to Mr LEE Wing-tat, CEO said that at briefings to be organized by REO and ICAC, candidates would be advised of what they should and should not do. Mr LEE suggested the Administration to provide candidates with information on previous complaint cases about false declaration, without naming the persons concerned, so that candidates would be aware of particular areas where precaution had to be taken.

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31. As regards measures adopted by REO in maintaining consistency in the standards of returning officers, CEO informed members that whenever a clarification or ruling on a certain point of procedure was made, REO would circulate it to all returning officers for reference. Mr LAU Kong-wah requested the Administration to provide information on the number of cases in which polling officers failed to treat candidates impartially since 1994 and the penalty for such an act.

II Date of next meeting

32. Members agreed that a meeting would be held on 15 June 1999 at 4:30 pm to continue examination of the Regulation.

33. The meeting ended at 10:40 am.

Legislative Council Secretariat
22 September 1999