

立法會
Legislative Council

LC Paper No. CB(2) 41/99-00

(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 Tuesday, 15 June 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 LAU Kong-wah
Hon CHOY So-yuk

Members absent : Hon Ronald ARCULLI, JP
Hon Ambrose CHEUNG Wing-sum, JP

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)

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
(LegCo Brief issued by the Registration and Electoral Office and LC Paper No. CB(2) 2300/98-99(01))

The Administration's response to issues raised at the meeting on 10 June 1999

At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DSCA) briefed members on the Administration's response to the issues raised at the meeting on 10 June 1999.

Election advertisements

2. Referring to the Administration's response on election advertisements, Miss Cyd HO enquired how the Registration and Electoral Office (REO) had come to the knowledge that a candidate had not submitted copies of election advertisements displayed or distributed. CEO said that some of the cases were revealed by complainants, while some were discovered by the Returning Officers (ROs).

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Total ban of canvassing on the polling day

3. Miss Cyd HO questioned why a total ban of canvassing on the polling day was in contravention of the International Covenant on Civil and Political Rights (ICCPR), while the introduction of no canvassing zones was not in contravention of ICCPR. DSCA said that as canvassing of votes was allowed outside the no canvassing zones, the introduction of no canvassing zones would not result in a territory-wide ban of canvassing. This differed from a total ban on canvassing.

4. In response to members, Assistant Legal Adviser 4 (ALA4) said that freedom of expression was a fundamental right guaranteed under ICCPR. Any restriction on such freedom would have to be fully justified. In determining any dispute relating to this right, the court would consider whether the restriction was proportionate to the harm it purportedly addressed.

No canvassing zones

5. Mr LAU Kong-wah opined that no canvassing zones for the 1998 LegCo election were too large. In comparison, those for the 1995 LegCo election were more appropriate. He considered that undue disturbance would not be caused to electors if candidates were allowed to greet electors in no canvassing zones and no staying zones without being accompanied by any election agent.

6. Miss CHOY So-yuk shared the view that the no canvassing zones for the 1998 LegCo election were too large. She considered that in the determination of no canvassing zones for the 1999 District Councils (DC) election, reference to the size of no canvassing zones for the 1998 LegCo election would be inappropriate, as the sizes of constituencies of DC and LegCo elections were not comparable. For DC election, a constituency would be very small if it was densely populated. If a no canvassing zone was to be specified as the area within a certain distance of the polling station, it might take up a substantial part of the constituency. She opined that it was too strict to prohibit candidates from greeting electors in the no canvassing zones. Each candidate should be allowed to greet electors in the no canvassing zone with one election agent. DSCA agreed to consider the suggestion.

Adm

7. Chief Electoral Officer (CEO) said that the Electoral Affairs Commission (EAC) had considered the issue and agreed that where necessary, the size of individual no canvassing zones could be reduced, provided that such reduction would not cause undue disturbance to electors. Polling stations were designed for voting. Canvassing of votes should be made outside the no canvassing zones, the boundaries of which would be determined by ROs.

8. As regards whether the area of a “no canvassing zone” in a constituency

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could be the same as that of the constituency, ALA4 said that this would have the same effect as that of a territory-wide ban on canvassing. There was no provision in the Electoral Affairs Commission Ordinance (Cap. 541) that explicitly empowered such a ban.

Vote planting

9. In response to Miss Cyd HO, CEO said that out of 66 persons prosecuted for “vote planting” in the 1994 District Board election, 63 were convicted, among whom four were candidates. Miss CHOY So-yuk considered that REO should deploy a special team of staff to combat “vote planting”.

Failure of polling officers to treat candidates impartially

10. In response to Mr LAU Kong-wah, Deputy Solicitor General (Constitutional) (DSG(C)) said that the offence provision regarding polling officers who failed to treat candidates impartially could be found in section 8 of the Corrupt and Illegal Practices Ordinance (Cap. 288) (CIPO). DSCA added that the Elections (Corrupt and Illegal Conduct) Bill, which had been introduced to replace CIPO, contained new provisions related to the issue. Members could express their views, if any, to the Bills Committee examining the Bill.

Electronic voting

11. Miss CHOY So-yuk suggested that the method of voting by ballot papers should be replaced by electronic voting. She considered that this would increase the elector turnout rate, shorten vote-counting time, and enable electors to cast their votes even when in another district. The Chairman however considered that electronic voting might be open to abuse.

Clause-by-clause examination of the Regulation

12. Members then proceeded to examine the Regulation clause-by-clause. ALA4 advised that the drafting of the Regulation, which was very similar to the relevant regulation under the Legislative Council Ordinance (Cap. 542), was in order. At the request of the Chairman, CEO highlighted the provisions which were different from those of the relevant regulation in the past.

Section 2 (Interpretation)

13. Miss Cyd HO said that there was a difference between the definition of “election advertisement” in the Regulation and that in the Elections (Corrupt and Illegal Conduct) Bill. She considered that this inconsistency might result in confusion. DSCA responded that the definition adopted in the Regulation was the same as that under the existing CIPO. It had been decided that the new

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definition under the Bill, which was still under scrutiny by LegCo, would not be adopted for the 1999 DC election.

Section 4 (Electoral Registration Officer to compile register for the first ordinary election)

14. CEO informed members that the register of electors would be compiled two months before the first ordinary election, as opposed to 15 March in the past. As regards Miss Cyd HO's question on whether the provision would be changed in the future, DSCA said that flexibility had to be allowed, as the next general election would not be held until four years after the 1999 DC election.

Section 5 (Form of register)

15. On the register of electors, CEO informed members that the sex and identity document number of electors would no longer be shown in the register. The English names of the electors would be arranged in alphabetical order of their respective surnames, while the Chinese names would be arranged in accordance with the number of strokes of the Chinese characters of their respective surnames.

Section 12 (How to nominate a candidate for a constituency)

16. CEO said that if the RO was satisfied that a candidate was usually known by a name different from that shown on the candidate's identity document, he would be allowed to include that different name in the nomination form. Principal Assistant Secretary for Constitutional Affairs (PAS(CA)) supplemented that the provision aimed to deal with the situation where a person was known by his/her Christian name which was not shown on his/her identity documents.

17. Mr LAU Kong-wah and Miss CHOY So-yuk were of the view that the proposed provision might be prone to abuse, as it would be very difficult to verify that a candidate's name was usually known to other people. In view of members' concerns, DSCA agreed to look into the issue and provide a response at the next meeting.

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Sections 24 (Returning Officer to declare if a validly nominated candidate is known to have died) and 25 (Returning Officer to vary decision if a validly nominated candidate is known to be disqualified)

18. Members noted that if the death or disqualification of a candidate came to the knowledge of a RO before the election day, the RO must declare that the candidate had died or had been disqualified. If only one candidate remained

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validly nominated for the constituency concerned, the RO must declare the remaining candidate duly elected as an elected member for that constituency. In response to Mr LAU Kong-wah, DSCA said that such an arrangement was also proposed for the 2000 LegCo election. The arrangements for the election of the Chief Executive, a bill on which would be introduced into the LegCo in due course, had yet to be determined.

Section 31 (Chief Electoral Officer to designate polling stations and counting stations)

19. CEO said that, as opposed to centralized vote-counting in the past, vote-counting for the 1999 DC election would be performed in the counting stations of the respective constituencies. DSCA added that while the Administration had looked into the feasibility of performing vote counting in polling stations, it noted that the design of some polling stations were not suitable for such a purpose. The Administration would, in the light of experience from the 1999 DC election, propose a suitable vote-counting arrangement for the 2000 LegCo election.

20. In response to members, DSG(C) said that where there was more than one polling station in a constituency, section 76(2) of the Regulation required that ballot papers of two or more polling stations in the same constituency must be mixed before the votes in respect of that constituency were counted. This was to ensure that the voting preference of individual voters would not be identified in constituencies where the number of electors was small.

Sections 33 (Chief Electoral Officer to assign polling stations for constituencies and to allocate polling stations to electors) and 36 (Persons to vote at the correct polling station)

21. CEO said that the provisions of sections 33(4) and 36 would empower him to allocate an alternative polling station to an elector, who should only vote at the polling station allocated. Such provisions were drawn up in the light of experience gained in the 1998 LegCo election, when flooding was found in some polling stations.

Section 40 (Chief Electoral Officer to carry out other duties relating to polling stations)

22. Members noted that subsection (2) required CEO to ensure that the name of any deceased or disqualified candidate regarding whom a declaration was made, if printed on the ballot papers, was crossed out with the words "DECEASED" or "DISQUALIFIED".

23. CEO informed members that subsection (7) required CEO to provide

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chops bearing the mark “✓” at each polling station. Although a ballot paper might become invalid if the “✓” sign was marked beyond the required area, it was virtually very difficult to mark it beyond the required area. DSCA added that where the marking of a ballot paper was in doubt, ROs would have regard to whether the voting preference was clear and determine whether the ballot paper was valid. He said that publicity on the method of marking ballot papers would be launched for the 1999 DC election.

Sections 43 (Returning Officer to determine no canvassing zones and no staying zones) and 44 (Presiding Officer to keep order in no canvassing zone and no staying zone)

24. Members noted that provisions regarding no canvassing zones as set out under sections 43(13) and 44 (1)(a) were different from those of the regulation in the past.

Section 47 (Who may enter or be present at a polling station)

25. CEO said that besides ROs, Assistant Returning Officers would also be allowed under subsection (4) to enter or be present at a polling station.

Section 48 (What constitutes an offence at a polling station)

26. Members noted that ROs and members of EAC had been added to the list of persons who might permit filming, taking of photographs, audio or video recording within a polling station.

27. Referring to subsection (3), Mr LAU Kong-wah questioned why electors were not allowed to bring papers for personal reference into the polling station. CEO explained that the requirement sought to prevent election advertisements from being displayed within a polling station. Nevertheless, an elector could keep the paper in his pocket and take it out for reference inside the voting compartment. Mr LAU said that this should be clearly explained to polling officers.

28. Miss CHOY So-yuk expressed concern that there were many complaints against polling officers giving false guidance to illiterate electors in completing ballot papers. In this connection, CEO said that polling officers would be required to read out standard sentences whenever assistance was sought by an elector. Where further explanation to an elector was required, the presence of the Presiding Officer would be required. A polling officer who deliberately misled an elector committed an offence. Miss CHOY So-yuk suggested that the presence of polling agents of candidates be sought whenever such explanation was required.

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29. In response to Miss Cyd HO, DSG(C) said that the definition of “political organization” in subsection (8) was based on the definition under the Societies Ordinance (Cap. 151). PAS(CA) supplemented that bodies falling outside the meanings set out in subsection (8) might still be subject to subsection (5).

II Date of next meeting

30. Members agreed to schedule the next meeting for 24 June 1999 at 4:45 pm to continue with the clause-by-clause examination of the Regulation. They agreed that a decision on whether to extend the scrutiny period for examining the subsidiary legislation be deferred until the next meeting.

31. The meeting ended at 6:35 pm.

Legislative Council Secretariat

7 October 1999