

**Ruling by the President on
the charging effect of Hon LEUNG Yiu-chung's amendment to
the Holidays (Amendment) Bill 1998**

The Hon LEUNG Yiu-chung has given notice to move Committee stage amendment (CSA) to the Holidays (Amendment) Bill 1998. The objective of the amendment is to make the Sino-Japanese War Victory Day an additional general holiday with effect from the year 2000.

2. The views of the Secretary for Education and Manpower have been sought as to the charging effect of Mr LEUNG's amendment. Mr LEUNG has also been invited to comment on the Secretary's views, and the Secretary to comment on Mr LEUNG's response again. I have also taken into consideration the views of the Counsel to the Legislature when assessing whether Mr LEUNG's amendment has any charging effect.

The Administration's views

3. The Secretary for Education and Manpower does not support Mr LEUNG's CSA on the grounds that it will relate to Government policy and that it has charging effect as described in Rule 57(6) of the Rules of Procedure. His reasons are set out in paragraphs 4 to 5 below.

4. The CSA will increase the number of general holidays (other than Sundays) from 17 days to 18 days a year, from the year 2000 onwards. This will be contrary to the Government's declared policy of capping the number of general holidays to 17 days a year. The CSA will also extend the purposes of expenditure already authorised by statute, and therefore the amendment requires the recommendation of the Government.

5. The CSA, if passed, will have the effect that on the day of the extra general holiday, Government departments would not carry out work, and banks and other financial institutions would not transact business. The Government would therefore incur a resultant loss of productivity or revenue earning capacity while it would be obliged to pay civil servants, and might also receive a lesser amount of revenue from stamp duty and like sources. Although the amount of revenue lost (or increased expenditure) cannot be forecast with any accuracy, it will not be a minor charge on the revenue and therefore cannot be ignored under Rule 57(6) of the Rules of Procedure.

Hon LEUNG Yiu-chung's response to the Administration's views

6. Mr LEUNG has in turn responded to the points made by the Secretary for Education and Manpower. His responses are summarised in paragraphs 7 to 10 below.

7. One of the reasons advanced by the Administration to object to the CSA is that it will be contrary to the Government's declared policy. Mr LEUNG comments that this reason is not one of the restrictions laid down in Rule 57 of the Rules of Procedure.

8. The CSA, if passed, will not have any legal effect of increasing the Government's expenditure. Section 4 of the Holidays Ordinance (Cap. 149) provides that if required, the head of a government department can require his staff to perform any of their duties and functions on a general holiday. There is no provision to bind the Government to pay additional salaries to the civil servants working on that day.

9. The CSA only seeks to declare the Sino-Japanese War Victory Day as a general holiday. It does not impose any reduction on the total amount of business transacted for the community. And it cannot be said to have directly imposed "charge" in the sense of reducing revenue. There are two precedent rulings in the Legislature in support of such view. These two precedent rulings were respectively made on Mr MOK Ying-fan's CSA to the Holidays (1997 and 1998) Bill, and on Mr LAU Chin-shek's private Member bill, namely the Employment (Amendment) (No. 3) Bill 1997, which sought to add 1 May 1998 and 1 May as a statutory holiday respectively.

10. The CSA will have the effect of retaining the current position as approved by statute. It is the Bill which seeks to alter the existing arrangement.

The Administration's further response to Mr LEUNG's views

11. In response to Mr LEUNG's views, the Secretary for Education and Manpower considers that the Employment Ordinance, unlike the Holidays Ordinance, does not bind the Government and so the Government would not have to bear any new liability to grant a holiday. The assessment of whether there is charging effect must be made on the CSA proposed by Members, and not the Bill proposed by the Administration.

Counsel to the Legislature's Opinion

12. The views of Counsel to the Legislature are summarised in paragraphs 13 to 16 below.

13. The CSA will have the legal effect to increase the number of general holidays proposed in the Bill from 17 to 18 by adding the Sino-Japanese War Victory Day to the proposed new Schedule with effect from the year 2000.

14. By virtue of sections 2 and 4 of the Ordinance, offices and works of Government departments should normally close or not operate unless the head of a relevant Government department holds the opinion that the interests of the public service or the convenience of the public require otherwise. This statutory regulatory scheme would not be changed by the proposed addition of one general holiday nor would the Ordinance, in the way as it is proposed to be amended, require the expenditure of public funds to implement this statutory scheme. The Ordinance, by itself, does not have the effect of requiring expenditure.

15. Section 5 of the Ordinance is couched in the negative. Banks are not forbidden to transact business relating to negotiable instruments. The provision was made to tie in with how time should be computed for determining the date for payment of a bill of exchange. It does not regulate the substantive rights and obligations of parties to a bill of exchange. Nor does it forbid the entering into contracts which may attract a liability to pay stamp duty or other types of revenue.

16. The Administration's claim of loss of revenue may be considered as a claim that the proposed amendment would dispose of revenue collectable by law and therefore would have charging effect. In order to establish this claim, the Counsel is of the opinion that the President has to be satisfied that the revenue in question is authorised by law and the loss is due to the proposed amendment.

My Analysis

17. Having considered all these views, I now outline my analysis as follows.

18. The forming of an opinion under Rule 57(6) could not be an exact science. It is a balancing act which the President has to perform by taking into consideration all relevant aspects, legal or otherwise. There is no restriction in the Rules of Procedure that CSA proposed by Members cannot relate to Government policy.

19. Section 4 of the Ordinance provides an exception to the general rule provided by section 2 to enable a head of Government department to decide to open or operate any of offices or works in the interests of the public service or the convenience of the public. There is no legal sanction against non-compliance with section 2. The Ordinance does not have the effect of requiring expenditure, does not regulate conditions of employment and does not have the effect of varying conditions of employment contracts unless it has been incorporated by agreement between the employer and employee. The Government's obligation to pay civil servants stems from the latter's contracts with Government, and the Appropriation Ordinance authorises such payment. The Government can take administrative measures to cover the operation hours of some of its offices or works if they are opened or operated on that day, without incurring additional expenditure. So far, the Secretary for Education and Manpower has not been able to identify the exact amount of additional expenses for the opening of offices and works of Government departments during the additional holiday. In view of all these factors, I come to the conclusion that Mr LEUNG's CSA would not have the necessary consequence of compelling the Government to seek approval for additional funds to operate its services on account of the additional holiday.

20. The Holidays Ordinance is not legislation made for the Government to collect revenue. It does not regulate the substantive rights and obligations of parties to a bill of exchange. Nor does it forbid the entering into contracts which may attract a liability to pay stamp duty or other types of revenue. Therefore, it would not be relevant to consider productivity and revenue earning capacity in the context of this Ordinance.

The Ruling

21. For the reasons given in paragraphs 18 to 20 above, I rule that Mr LEUNG's amendment will not have charging effect within the meaning of Rule 57(6) of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

23 July 1998