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29 July 1998

Mr Joseph WONG Wing-ping, JP
Secretary for Education and Manpower
Education and Manpower Bureau
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Dear

Holidays (Amendment) Bill 1998

Thank you for your letter yesterday. Having considered the points raised by you, I remain of the opinion that the Hon LEUNG Yiu-chung's Committee Stage Amendments (CSAs) do not have charging effect within the meaning of Rule 57(6).

2. The relevant part of Rule 57(6) is, "An amendment, the object or effect of which **may, in the opinion of the President or Chairman**, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by-". This Rule requires the President to form an opinion on whether an amendment has "charging effect". I stated in the ruling dated 23 July that the forming of an opinion under this Rule could not be an exact science. It is a balancing act which I have to perform by taking into consideration all relevant aspects, legal or otherwise.

Paragraphs 4 and 5 of your letter

3. You put forward the view that Mr LEUNG's CSAs have "charging effect", because "the object or effect of [Mr LEUNG's CSAs] **may** be to dispose of or charge any part of the revenue or other public moneys of Hong Kong", within the terms of Rule 57(6) of the Rules of Procedure. You quoted Erskine May, Parliamentary Practice (22nd edition) to express your opinion about the correct approach for assessing whether a particular CSA has charging effect. And the quotation is:

"whether a proposal '**may** entail an extension of previously enacted purposes of expenditure or an increase in the expenditure **potentially** liable to be incurred in pursuit of such a purpose' (pages 763 and 767)."

4. The above quotation comes from page 763 of Erskine May under the heading of “**The expenditure involved must be new and distinct**”. The whole sentence in full is quoted as follows:

“If there is any doubt on the matter and it appears that the **new** proposal **may** entail an extension of previously enacted purposes of expenditure or an increase in the expenditure potentially liable to be incurred in pursuit of such a purpose (see p 767), a money resolution will be required.”

Earlier in the same paragraph, it also states that:

“In practice, this is interpreted to mean a proposal for new or increased expenditure which is **not already covered by legislative authorization.**”

I have no doubt in my mind that Mr LEUNG’s CSAs, which in no way relate to expenditure authorized by legislation, do not fall within this category. In fact, what you claim to be the correct approach is incorrect, since your opinion is based on a quotation which is incomplete and made out of context.

The relevance of a previous ruling made by the President (1995-97) on 28 March 1996 (Paragraphs 6 and 7 of your letter)

5. The private Member’s Bill, entitled the Employees’ Compensation (Amendment) Bill 1996, sought to require payment of compensation in respect of any injury which incapacitated an employee for at least one day instead of the present minimum qualifying period of three days, and to increase the amount of compensation to the full difference between earnings before the injury and earnings during the period of temporary incapacity, instead of the present 2/3rds differential. You draw an analogy between this Bill and the Holidays (Amendment) Bill 1998 in the matter of additional expenditure.

6. I am obliged to point out that the additional compensation payable by the Government, if the Employees’ Compensation (Amendment) Bill 1996 was passed into law, was a payment required by statute. It was on that basis that the Counsel on Legislature advised that, despite the fact that the amount of payment could not be forecast with accuracy, the Bill if passed, would have charging effect within the meaning of the then Standing Order No. 23. However, Mr LEUNG’s CSAs to the Holidays (Amendment) Bill 1998 do not seek to require additional expenditure as a matter of law.

7. You have quoted from paragraph 6 of the ruling of the President of the Legislative Council (1995 – 97) on the Employees’ Compensation (Amendment) Bill . Your quotation is from the later part of paragraph 6 of the relevant ruling. I now quote the earlier part:

“Counsel of the Legislature also considers that the proposed changes under the Employees Compensation (Amendment) Bill 1996 will result in all employers (including Government) being **legally obliged** to –

- (a) pay compensation in respect of any injury which incapacitates an employee for at least 1 day, instead of the present minimum qualifying period of 3 days; and
- (b) pay the full difference between earnings before the injury and earnings during the period of temporary incapacity, instead of the present 2/3rd differential.”

It is therefore obvious that the Counsel to the Legislature had established the fact that if the Employees’ Compensation (Amendment) Bill were passed, the Government would be obliged to pay the increased compensation, before he proceeded to render the advice you have quoted in your letter. Once again, you have omitted an important and significant element when making reference to the above-mentioned ruling.

Paragraphs 8 to 11 of your letter

8. You mentioned in paragraph 10 of your letter that the staff cost of the Government for one day is about \$160 million. The Government is committed to paying a monthly salary to civil servants, irrespective of whether there is any general holiday within that month. Even if there is an additional day of general holiday, I fail to see how the Government would incur any additional expenditure in terms of salary. Therefore, the staff cost of \$160 million for one day cannot be regarded as additional expenditure.

9. Regarding your point about the need to pay overtime allowance to cover the additional day of general holiday, Civil Service Regulation 547 clearly stipulates that

“No officer is entitled to claim a general holiday as a matter of right. An officer may be required by his Head of Department or other responsible officer to work on any general holiday and failure to obey such an instruction may form the basis of a disciplinary charge. If, however, an officer is required to work on a general holiday, he should be **given time off in lieu**; if it is impracticable to grant time off and if he is eligible, overtime allowance may be paid.”

If it is considered justified that overtime allowance has to be paid, such allowance is already provided under Subhead 002 Allowances in the relevant Heads of expenditure in the Approved Estimates of Expenditure.

10. You have quoted from page 767 of Erskine May to support your argument that Mr LEUNG's proposed CSAs have charging effect (will require authorisation by "money resolution"). The relevant paragraph in page 767 of Erskine May refers to statutory allowance and overtime allowance is not a statutory allowance.

11. You raised the point that Mr LEUNG's CSAs may have the effect of incurring on the part of the Government a resultant loss of productivity. This relates to the merit of Mr LEUNG's CSAs, a matter for the consideration of Members and not a matter for me to rule on. This is why in paragraph 20 of my ruling I have stated that it would not be relevant to consider productivity and revenue earning capacity in the context of this Ordinance.

12. You also raised the point about the loss of revenue on the part of the Government and gave the example of the potential loss of stamp duty on share transactions due to an additional general holiday. As a general principle, revenue collection legislation does not guarantee any amount of revenue collectable. What it does is to prescribe the conditions under which revenue is payable and at what rate it should be paid. In the scenario you have quoted it could only stand if the flow of revenue generated by business activity was of an even spread over the days when they open for business. However this cannot be the case as the level of trading activities which attract stamp duty liability fluctuates and is influenced by numerous factors. Under the circumstances, I am of the opinion that it has not been reasonably established that Mr LEUNG's CSAs will with certainty lead to a loss of revenue on an annual basis.

Paragraphs 12 to 14 of your letter

13. I fail to see any connection between the points made in the above-mentioned paragraphs and the ruling that I have made. Nowhere in my ruling was there any suggestion on how Government should adopt what policy and how government officials should exercise their discretion.

Paragraph 15 of your letter

14. The points you made have already been dealt with in paragraph 9 above.

15. Thank you for requesting me to reconsider my ruling. I note that your latest submission, although containing more detailed information, does not offer any significant new grounds. I therefore maintain my opinion that Mr LEUNG's CSAs do not have charging effect within the meaning of Rule 57(6) of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council