

**Ruling by the President on
Hon Christine LOH's proposed amendments to clause 59
(concerning the functions of District Councils)
of the District Councils Bill**

The Hon Christine LOH has given notice to move Committee Stage amendments (CSA) to clause 59 (concerning the functions of District Councils) of the District Councils Bill. The amendments, if enacted, would confer on District Councils the additional functions of exercising powers or duties conferred or imposed by legislation, and undertaking other functions as directed by the Chief Executive. The amendments also seek to increase the proposed functions which District Councils are to perform when funds are made available. These include (a) to undertake local public works and environmental improvements; (b) to promote, sponsor, assist or collaborate with other persons in organizing and providing recreational, sports or cultural activities; and (c) to establish and maintain places and facilities for recreation, relaxation, sports and cultural activities.

2. I am required to rule under Rule 57(6) of the Rules of Procedure whether the proposed amendments, if passed, will have a charging effect. If this is so, they will require the written consent of the Chief Executive.

The Administration's views

3. The Secretary for Constitutional Affairs considers that the amendments seek to widen the ambit of the functions of District Councils and therefore have a "charging effect" as the proposals, if enacted, 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 purposes. The Secretary points out that the consultative role of District Councils, as district organizations under the Basic Law, is omitted from Ms LOH's amendments which, if enacted, would imply that District Councils can take over the planning, construction, maintenance as well as the day to day management of existing facilities and would change the existing functions of District Boards drastically. The amendments therefore relate to "operation of government" and "public expenditure" and, according to Article 74 of the Basic Law, cannot be introduced.

Hon Christine LOH's response

4. Ms LOH has stated that it is out of place for the Administration to argue against her proposal because the President is not expected to rule on the basis of merits. The President can only rule on charging effect under the Rules of Procedure and not “operation of the government” or “public expenditure” under the Basic Law. She considers that her proposed amendments do not create any charge as expenditure associated with the added functions is not effectively imposed. Charging effect will arise only when future Bills impose added functions or when additional funds are made available. She accepts that only the Government may move such changes.

Counsel to the Legislature's Opinion

5. Clause 59 of the Bill provides for the functions of a District Council. They are of two categories. Under clause 59(a), a District Council is to advise the Government on a range of specified matters. Under clause 59(b), a District Council is to undertake certain activities where funds are made available.

6. Hon Christine LOH's proposed amendments are to add a new category of function to the existing two, to add other activities under the second category of functions which are to be undertaken where funds are made available and to delete from the advisory function the matter relating to local public works. The new category of function is put by way of a netting mechanism so that any powers or duties provided by law (existing and prospective) and functions directed by the Chief Executive would come under this category. The way the amendments are put does not raise charging effect issue because the imposition of substantive functions, if any, resulting from this netting mechanism would be prospective and the “financial initiative” of the Government would not be prejudiced by virtue of the proposed provisions. As regards the proposed addition of activities to the second category of functions, since the requirement to perform the specified activities would only have the force of law when funds are made available, the proposed amendments would not directly impose a charge on the General Revenue.

7. The Administration's comments seemed to have based on a misunderstanding of the legal effect of Hon Christine LOH's proposed

amendments. The Administration alleged that the consultative role of the District Councils, which is an important function of district organizations laid down in the Basic Law, is omitted from the amendments. That clearly is not the case. Articles 97 and 98 stipulate that the powers and functions of district organizations shall be prescribed by law and that these organizations are also responsible for providing services in such fields as culture, recreation and environmental sanitation etc. Neither clause 59 as it stands nor as proposed to be amended by Ms LOH would contravene the Basic Law.

Ruling

8. The President is bound by the Rules of Procedure made by the Legislative Council in pursuance of Article 75 of the Basic Law. Since the Rules of Procedure only require me to form an opinion as to whether the object or effect of an amendment may be to dispose of or charge any part of the revenue or other public moneys of Hong Kong, I shall not deal with other points arising from the Administration's view on the merit or otherwise of the proposed amendment or its understanding of the effect of Article 74 of the Basic Law.

9. Although Ms LOH's amendments to clause 59(b) may have the effect of widening the ambit of the functions of District Councils, whether they may be performed is dependent on whether funds are made available for each of such functions. The Government may, having regard to resources available, decide whether to provide funds for the purposes set out in clause 59(b). As such, the amendments, if enacted, would not directly impose a charge on the General Revenue.

10. For the reasons given in paragraph 9, I rule under Rule 57(6) of the Rules of Procedure that Ms LOH's amendments to clause 59 do not have a "charging effect".

(Mrs Rita FAN)
President
Legislative Council

8 March 1999