

立法會
Legislative Council

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seen by the Administration)

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Legislative Council
Subcommittee on subsidiary legislation
Relating to 2000 Legislative Council election

Minutes of third meeting
held on Friday, 7 January 2000 at 10:45 am
in the Chamber of the Legislative Council Building

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon David CHU Yu-lin
Hon Martin LEE Chu-ming, SC, JP
Hon Howard YOUNG, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Yuen-han
Hon YEUNG Yiu-chung
Hon CHOY So-yuk

Members Absent : Hon Cyd HO Sau-lan
Hon NG Leung-sing
Hon LEE Wing-tat
Hon Emily LAU Wai-hing, JP
Hon Jasper TSANG Yok-sing, JP

Public Officers Attending : Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Lawrence PENG
Senior Assistant Law Draftsman

Miss Shirley WONG
Government Counsel

Mr LI Wing
Chief Electoral Officer

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

Action
Column

The Chairman said that at a previous House Committee meeting, Members had expressed concern about the accuracy of the voter register. Some electors' names had been deleted from the voter register, despite the fact that they had not changed their addresses. Some electors had received poll cards addressed to them as well as the previous tenants. The Chairman asked about the procedure leading to disqualification of an elector.

2. Chief Electoral Officer (CEO) explained that in the event that a poll card sent to a registered elector was undelivered and returned to the Registration and Electoral Office (REO), the REO would make inquiry to the elector concerned in compiling the next provisional register. The purpose of the inquiry was to ascertain whether the address recorded in the existing final register against that person's name was still his principal address. The inquiry would be made in writing and sent by registered post addressed to the person concerned. If the letter was again undelivered and returned to the REO, the REO would then have reason to believe that the person was no longer residing in the address recorded in the existing final register. The person's name would be put on an omission list. The omissions list together with the provisional register would be published for public inspection. If no appeal was lodged by the person concerned by a specified date, his name would be omitted from the final register.

3. In response to Mr Martin LEE, Deputy Secretary for Constitutional Affairs (DSCA) said that door-to-door visits to all the two million households in both public and private housing estates would be conducted by the Home Affairs Department's temporary community organizers between 17 January 2000 to mid March 2000. The purpose of the household visits was to help all the potential electors to get registered and to verify and, if necessary, update the records of registered electors on the existing electoral rolls.

REO 4. The Chairman said that the REO should publicize the hotline number so that the public could make enquiries if they had any query on the accuracy of the voter register. CEO responded that the REO would do so.

I. Electoral Affairs Commission (Registration) (Electoral for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) (Amendment) Regulation 1999

Administration's response to concerns raised on 7 and 17 December 1999
(LC Paper No. CB(2) 752/99-99(01))

Item 1

5. The Chairman said that in the course of examining the Electoral Affairs Commission (Registration of Electors) (Geographical Constituencies) (Legislative Council) (Amendment) Regulation 1999, the Administration had been requested to provide information on the publication of electoral registers on the Internet in overseas countries. Members noted the Administration's reply.

6. In response to the Chairman, CEO said that he was not sure whether electoral registers of all the states in the United States were available on the Internet. For those states which they had researched on, their electoral registers were not published on the Internet.

Items 2 and 3

7. Members noted the reply.

Scrutiny of the Amendment Regulation

(LegCo Brief Ref: REO 14/30/2 (CR)IV, LC Paper Nos. LS 45/99-00 and CB(2) 622/99-00(01))

8. With the aid of the marked-up copy, the meeting continued scrutiny of the Amendment Regulation commencing from section 28. CEO briefed members on the proposed amendments on the rest of the Amendment Regulation. Members did not raise any queries.

II. Electoral Affairs Commission (Printing of Name of Organization and Emblem on Ballot Paper) (Legislative Council) Regulation
(LegCo Brief Ref: REO 14/32/1 and LC Paper No. LS 45/99-00)

9. At the invitation of the Chairman, CEO briefed members on the major provisions of the Regulation. In gist, the Regulation set out procedures to be followed for having certain particulars, i.e. the name, an abbreviation of the name or an emblem of an organization or a natural person printed on a ballot paper for use in a LegCo election.

10. The Chairman said that there had been criticisms in the past about some candidates abusing public facilities provided in connection with an election for the purpose of promoting their own businesses. He asked about the EAC's policy towards a candidate whose motive in standing at an election was to be able to promote his business by printing his company's logo on the ballot paper. Miss CHOY So-yuk added that a candidate who was sponsored by a company to run in an election could use the company's logo as an emblem on the ballot paper.

11. Deputy Solicitor General (Constitutional) (DSG) responded that the use of a party emblem or an emblem for a candidate was a form of political speech. The freedom of speech was one of the protected rights under the Basic Law and the international covenants. Any restriction imposed on the protected freedom of expression must be proportionate to the harm which was purportedly addressed by the restriction. It was the intention of the Regulation to impose minimum restriction.

12. CEO responded that the EAC would consider an application for registration of emblem according to the vetting criteria set out in section 7. It was a matter for the candidate to consider whether a registered emblem would be used for commercial or other purposes.

13. Mr David CHU questioned whether the Government had the obligation to provide further assistance to promote candidates at elections, other than the existing subsidies in kind provided to candidates in their campaigning activities. His concern was two-fold. First, the emblem printed on a ballot paper could be identical or similar to a registered trade mark or an emblem of a commercial

organization. Secondly, the production of an emblem on the ballot paper might result in higher printing costs because of the need to ensure accurate reproduction of the colour of the emblem etc. He opined that there were too many technical problems and uncertainties and that the proposal should not be pursued.

14. The Chairman reminded members that the Regulation was made by the EAC in response to the repeated requests of the political parties. He held the view that the Government had the responsibility to promote candidates at an election.

15. CEO responded that the proposal was not meant to assist candidates, but rather to assist voters to identify the candidates. Addressing the concerns raised by Mr David CHU, CEO explained that the Regulation provided that the EAC might refuse to grant an application made by an organization or by a natural person for the registration of its or his emblem if the emblem was identical to or so nearly resembled that already registered or used by another organization or natural person. The Regulation had also made it clear that the EAC would only try its best to reproduce the colour of an emblem on the ballot paper for a candidate.

16. In response to members, CEO said that EAC might refuse to grant an application for the registration of an emblem bearing a "tick" or symbols that would be mistaken for any design of the EAC as part of the voting instructions. Emblems might consist of words and graphics. The grounds on which an application might be refused were set out in section 7 of the Regulation.

17. Mr David CHU quoted an example to illustrate that the printing of an emblem on ballot paper might not achieve the desired effect and would even cause confusion to electors. CEO reiterated that as long as an application for registration of emblem had complied with the requirements set out in the Regulation, EAC would consider the application. He said that he could not comment on hypothetical situations.

18. Miss CHAN Yuen-han asked whether candidates who were affiliated with more than one organization would be allowed to have more than one emblem printed on the ballot paper. Miss CHOY So-yuk asked whether an organization or a natural person could apply for registration of a number of emblems. DSCA replied that under sections 4(3) and 5(3), an organization or a natural person could make only one application for registration of emblem. Addressing Miss CHAN's concern, Miss CHOY So-yuk said that consideration could be given to merging the two logos to constitute an emblem. CEO responded that provided that the size of the emblem was not larger than two centimetres square, the EAC would consider the application. DSCA added that the final decision to refuse an application rested with the EAC.

19. In response to Miss CHAN Yuen-han, the Chairman advised that the use of emblem on ballot paper was not compulsory. As regards the question raised by Miss CHOY So-yuk, CEO said that for an emblem refused by the EAC, the applicant would have a chance to submit a revised emblem for consideration by the EAC. However, registered emblems were not transferable.

20. The Chairman asked that in the case of a list comprising several independent candidates, whether these candidates could use their emblems on the list. CEO responded that the purpose of printing an emblem on the ballot paper was to facilitate voters to identify the candidates. The EAC had decided that there could only be one emblem for one list of candidates in order to avoid confusion.

21. The Chairman asked whether a list of independent candidates each of whom had his own registered emblem could select one of the emblems for printing on the ballot paper. CEO replied in the negative. He added that if these candidates preferred to use a common emblem, they might apply for the registration of one emblem in the name of an organization. Then the organization could give consent to all the candidates in the list to use the emblem. Otherwise, a candidate who wished to use his own emblem could choose to run in a single candidate list.

EAC 22. The Chairman expressed concern that under the circumstances, independent candidates would be prevented from forming an alliance to run in the same list. He requested and CEO undertook to reconsider the policy.

23. In response to Mr Howard YOUNG, CEO said that the a Provisional Register would be compiled for all the applications that the EAC intended to grant. The Provisional Register, which contained the names and addresses of the applicants together with the particulars to be registered, would be published in the newspapers and open for public inspection. If no objection was received within 14 days from the date of publication of the Provisional Register, the EAC would make a decision as to whether or not the application should be granted. If an objection was received, public hearing would be conducted and the parties concerned might be represented by solicitor and counsel. Members noted that the application procedure for registration of particulars was illustrated in the flow chart in Annex C to the LegCo Brief.

24. Miss CHOY So-yuk asked whether there was sufficient time for hearing of objection. CEO responded that there was a time lag of six months between the date of application and the date of publication of the Register.

Scrutiny of the Regulation

25. The meeting proceeded to examination of the provisions of the Regulation. Deliberation of the Subcommittee was summarized below.

Section 2

26. Assistant Legal Adviser (ALA) drew members' attention to the definition of "organization" in section 2 of the Regulation and asked the Administration to clarify the kind of companies that would be excluded from the definition.

27. CEO explained that public bodies such as the Trade Development Council and the Hong Kong Monetary Authority would be excluded from the definition. In further response to ALA, CEO clarified that the Heung Yee Kuk which was constituted by statute would also be excluded from the definition.

Section 3

28. Members noted that under section 3(1), the EAC was required to specify a period of 30 days during which applications for registration could be made. This period known as the "relevant period" would fall within nine months immediately preceding the date of a general election. The Chairman expressed concern that the "relevant period" could fall on the month immediately preceding the date of a general election.

EAC 29. CEO explained that given that election activities were planned backward after the election date was set, the scenario quoted by the Chairman would not happen. He assured members that the "relevant period" would be set well before the election day so as to ensure that there was ample time to process the applications. The Chairman suggested that the EAC should reconsider the drafting of section 3(1) with a view to making it more specific.

EAC 30. Members noted that under section 3(2)(a), "general election" did not include a general election that immediately followed a dissolution of the LegCo by the Chief Executive in accordance with the Basic Law. This was because there would not be enough time to allow a new round of applications for emblem registration. The Chairman pointed out that a by-election would have the same problem. He requested and CEO undertook to consider including a reference to "by-election" in the section.

Registration procedure

31. In response to the Chairman, CEO said that organizations and natural persons would be required to apply to the EAC for renewing their registered particulars if they wanted to retain their registered particulars in the next register. This would enable the EAC to ascertain whether all the organizations and natural persons whose particulars were registered in the previous register still intended to sponsor candidates (or in the case of natural persons, to run) in the next general election. If an organization or a natural person did not apply for renewal, their particulars would cease to be registered.

32. The Chairman questioned the need for renewing registration of particulars by organizations or natural persons. He opined that whether an organization continued to exist or intended to sponsor a candidate was not a matter of concern to the EAC. Applicants should be allowed to retain the registered particulars until such time when the EAC decided that the particulars should cease to be registered such as when an organization had ceased operation. He queried why applications for registration could only be made during the relevant period as specified in section 3(1).

33. The Chairman opined that new applications for registration should be accepted by EAC at any time, and not just during a "relevant period". He cited the following example to illustrate the problem of restricting the timing for making new applications. An organization adopted an emblem which was similar to a registered emblem of another organization shortly after the 2000 LegCo election. When it made an application for registration of its emblem during a "relevant period" before the 2004 election, the EAC refused its application on the ground that the emblem was similar to that of another organization. It would be unfair to the organization as it had been using the emblem for over three years.

34. The Chairman further suggested that the registration procedure should be dispensed with. He pointed out that at present, candidates were at liberty to use any names and emblems in publicity materials in relation to an election (including election materials sent to electors through the two rounds of free postage provided by the Government), without subject to any registration procedure.

35. CEO responded that without a registration scheme, problem would arise when there were disputes on the use of particulars on the ballot paper. It would not be possible for the aggrieved parties to such disputes to state their cases to the EAC and for the EAC to resolve them within the nomination period if no prior registration was required.

36. Mrs Selina CHOW said that procedures relating to electoral arrangements should be user friendly. She opined that the EAC should not assume the role of a

"registrar". It was not the responsibility of the EAC to verify or to decide on whether or not to accept an application for registration of particulars. CEO disagreed with the view of Mrs Selina CHOW. He said that the EAC had the responsibility to regulate the content of ballot paper to ensure that the particulars so printed on the ballot paper would not confuse voters.

37. The Chairman said that members agreed to the principle of the Regulation but had reservations about the registration procedure. Mrs Selina CHOW opined that the EAC's role should be to ascertain whether an organization or a natural person was authorized to use the particulars on a ballot paper. For example, if an emblem used by an organization or a natural person was similar to another party's emblem, the party concerned was likely to object. It was not necessary for the EAC to verify registration of particulars. The Chairman echoed the view and said that although the EAC's approval per se was not required, it could still refuse to accede to the request for printing particulars of an organization or a natural person on ballot paper based on the vetting criteria set out in section 7. He further pointed out that in considering an application for registration, in particular in the case where refusal was to be granted, the EAC might involve itself in sensitive and political issues. He requested and CEO undertook to reconsider the policy having regard to members' views.

EAC

III. Date of next meeting

38. Members agreed that the next meeting should be held on 10 January 2000 at 2:30 pm.

39. The meeting ended at 12:50 pm.

Legislative Council Secretariat
30 May 2000