

立法會
Legislative Council

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

Minutes of 9th meeting
held on Thursday, 30 March 2000 at 1:00 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon Cyd HO Sau-lan
Hon NG Leung-sing
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Yuen-han
Hon Howard YOUNG, JP

Members Absent : Hon David CHU Yu-lin
Hon LEE Wing-tat
Hon Jasper TSANG Yok-sing, JP
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk

Public Officers Attending : Mr Bassanio SO
Acting Deputy Secretary for Constitutional Affairs

Miss Katy FONG
Assistant Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Lawrence PENG
Senior Assistant Law Draftsman

Mr Sunny CHAN
Senior Government Counsel

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

I. Scrutiny of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2000
(LegCo Brief issued by the Registration and Electoral Office on 14 March 2000, LC Paper Nos. LS110/99-00 and CB(2)1477/99-00(01))

Section 28

On improving the drafting of section 28(9)(a)(i) and (ii) as suggested by the Chairman at the last meeting, Deputy Solicitor General (Constitutional) (DSG) advised that while the second reference to "general election" in the provision could be omitted, the legal effect of the provision was in order. He suggested and members agreed that the legislative amendment should be made in the next available opportunity.

Adm

Section 55 - Marking of ballot paper

2. Chief Electoral Officer (CEO) said that section 55(1) provided that an elector voting for a geographical constituency (GC) must mark his or her ballot paper with the chop provided. Some members expressed concern about the rigidity of the proposal and asked whether it would increase the number of questionable ballot papers.

3. CEO said that given that the chop with a tick was well received in the 1999 District Councils (DC) election, the Electoral Affairs Commission (EAC) had decided that it should continue to be used in the GC and ordinary functional constituency (FC) elections. He said that as a result of the use of the chop, the number of questionable ballot papers ruled by Returning Officers (ROs) as void for uncertainty in the DC election had reduced by some 50%

from 1203 in 1994 to 658 in 1999. In the 1999 DC election, there were 2 722 blank ballot papers, 363 ballot papers not marked by a chop, and 1 494 ballot papers with ticks on more than one candidate. The total number of invalid papers was 5 401 as opposed to 6 730 in 1994.

4. Referring to new section 55(2), the Chairman asked whether a ballot paper would be regarded as invalid if a tick marked by the chop was outside the circle which was opposite the list of candidates of the elector's choice on the ballot paper. CEO explained that section 81 empowered the RO to make decisions on questionable ballot papers. As regards the example quoted by the Chairman, CEO believed that the RO might consider the ballot paper valid if the voter's choice of candidate was clear. In response to Miss Cyd HO, CEO said that there were instructions on how the chop should be applied to the ballot paper inside the polling station, the voting compartment and on the cardboard to which the chop with a tick was attached. The RO would also provide assistance to electors where necessary.

Section 56 - Marking of special FC ballot papers

5. Members noted that an elector must mark the ballot paper for special FC to indicate a first preference vote by entering "1" (Arabic numerals) against the name of a candidate on the ballot paper and mark, in the same manner, the other preferences in the descending order beginning with "2". Mr Howard YOUNG said that if an elector had marked the ballot paper with only one tick, the tick should be regarded as a first preference vote. The RO should not rule the ballot paper void.

6. The Chairman said that DSG had advised at a previous committee meeting that voters must mark the ballot paper in the manner prescribed under the Regulation. CEO assured members that clear instructions would be given inside the polling station on how to vote for special FC candidates.

Section 68 - Persons present at the counting of the votes

7. In response to the Chairman and Mr NG Leung-sing, CEO explained that section 68 stipulated the persons who might be present at the counting of the votes. Persons who were authorized to be present at the counting of the votes by a member of the EAC under section 68(1)(h) would be required to show the written permission to the RO prior to entry.

Section 68A - Offences at a counting station

8. Mr NG Leung-sing asked for the reason for adding new section 68A to the Regulation. Miss CHAN Yuen-han expressed concern about the enforcement of section 68A.

9. CEO explained that the reason for prohibiting a person to film or take photographs or make audio or video recording within a counting zone without permission was to avoid unnecessary disturbances created by such activities during the count. Similar arrangements were adopted in the 1999 DC election and no offence had been committed. He assured members that the EAC and the Information Services Department had established a good working relationship with the media and agents of the candidates. They were aware of their rights and responsibilities in the counting zone. In the event that a person had entered the counting zone, warning would be given. Only when the person continued to act contrary to the direction of the RO would enforcement action be taken against him.

ALA

10. Mr NG Leung-sing held the view that the word "或" at the end of the first line in new section 68A(3)(a) should be changed to "及". The Chairman requested the Assistant Legal Adviser to review the drafting of the section.

Section 101A - Free postage services

11. Mrs Selina CHOW expressed concern about the stringent requirements imposed on the postal materials to be sent to electors by a candidate free of charge. The Chairman said that for conservation purposes, the law should not impose limit on the minimum size of the letter.

12. CEO explained that the same requirements had all along been specified in the guidelines on electoral-related activities. As the requirements were made statutory in the 1999 DC election, the same was proposed for the 2000 LegCo election. CEO further said that the size of postal materials was specified by the Post Office to facilitate its operation. Mr NG Leung-sing pointed out that the Post Office might have difficulty in processing postal materials of very small size.

Section 102 - Election advertisement

13. CEO explained that candidates might apply to the EAC for election advertisement other than those specified in new section 102 (15A) to be exempted from the requirement of numbering. The Chairman expressed concern about the rigidity of section 102 (16) which required that any class or type of election advertisement to be exempted from the requirement of numbering should be published in the Gazette in the form of a notice. He held the view that a written approval from the EAC should suffice. It was possible that the EAC might be required to grant exemption to an election advertisement just a day before the election. CEO responded that in a fair election, candidates should have the right to know the class or type of election advertisement exempted from the numbering requirement well in advance.

Schedule 1- Procedure for nominations for the religious subsector and subsector elections

14. CEO explained that to improve clarity, the definition of "political body" was added to section 1 of Schedule 1.

15. Section 17 proposed that the requirement for publishing the notice of particulars of validly nominated subsector candidates in the Gazette within 7 days of the expiry of the nomination period should be changed to 14 days. CEO explained that for the 2000 LegCo election, the nomination period would commence on 31 May 2000 and end on 7 June 2000. To publish in the gazette the particulars of validly nominated subsector candidates on Wednesday, 14 June 2000 was considered unrealistic, given that the Chairman of the EAC would not meet the candidates until 10 June 2000 and the order of candidates to be published in the gazette had to be determined by drawing lots. The EAC expected that the particulars of validly nominated subsector candidates would not be gazetted earlier than 16 June 2000.

16. In response to the Chairman, CEO explained that having regard to the enactment of the Legislative Council (Amendment) Ordinance 1999 and the Elections (Corrupt and Illegal Conduct) Ordinance, section 21(6)-(10) was proposed to be repealed.

17. On the use of the word "1 week" versus "7 days" in section 38(5), DSG said that he had done a search and there were over 200 references in existing legislation using "1 week". He explained that "1 week" was construed as "7 consecutive days" and there was no difference between "1 week" or "7 days" from the legal point of view. He said that the drafting of proposed section 38(5) was in order.

II. The way forward

18. Members agreed to support the Regulation. The Chairman said that he would make a verbal report on the deliberations of the Subcommittee at the House Committee meeting on the following day, 31 March 2000.

19. The meeting ended at 2:10 pm.