

**Ruling by the President of the Legislative Council
on the Holiday (1999) Bill
proposed by the Hon LEUNG Yiu-chung**

On 29 June 1999, the Hon LEUNG Yiu-chung submitted the Holiday (1999) Bill which he intended to introduce into the Council, and requested me to rule whether it related to Rule 51(3) and (4) of the Rules of Procedure.

Rule 51(3) and (4) of the Rules of Procedure

2. Rule 51(3) and (4) read as follows:

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

As the President of the Legislative Council, I am required by BL 72(6) to apply the Rules of Procedure as they stand and as I understand them, taking into account all relevant considerations including views expressed by all parties concerned who have been given reasonable opportunities for doing so and advice from the Counsel to the Legislature.

3. In this connection, I have sought the views of the Secretary for Education and Manpower and Mr LEUNG's response to the Secretary's views. I have also sought advice from the Counsel to the Legislature.

Purpose of Holiday (1999) Bill

4. According to the Explanatory Memorandum of the Bill, the purpose of the Bill is to "provide for 31 December 1999 to be an additional statutory holiday for the purposes of the Employment Ordinance (Cap. 57)". Clause 2, which is the substantive provision in the Bill, provides that "31 December 1999 shall be a statutory holiday as defined in, and for the purpose of, the Employment Ordinance (Cap 57), as if specified as a holiday in section 39(1) of that Ordinance".

Views of the Secretary for Education and Manpower

5. The Secretary for Education and Manpower says that the existing Government policy on the number of statutory holidays, which are one of the employees' benefits provided in the Employment Ordinance, has been clearly set out in his reply to a question asked by Hon CHAN Wing-chan in the Provisional Legislative Council on 7 January 1998. Mr LEUNG's Bill therefore relates to the Government policy on statutory holidays.

Views of Hon LEUNG Yiu-chung

6. In response to the views of the Secretary for Education and Manpower, Mr LEUNG contends that the policy of increasing the number of statutory holidays in Hong Kong was not made by the Government. The increase from 11 to 12 statutory holidays was the result of the former Legislative Council's passage of the Employment (Amendment) (No 5) Ordinance 1997 introduced by Hon LAU Chin-shek, although the effective implementation of which was deferred subsequently to 1999 by another bill introduced by the Government and enacted by the Provisional Legislative Council in December 1997 as the Employment (Amendment) (No 6) Ordinance 1997.

7. Mr LEUNG also argues that his Bill is not seeking to amend the number of statutory holidays for 1999 and each year thereafter, but to make a one-off arrangement to designate 31 December 1999 as a statutory holiday. It therefore does not relate to any Government policy on statutory holidays because the one-off arrangement has no substantial influence on the number of statutory holidays stipulated in the Employment Ordinance. Furthermore, Mr LEUNG states that when the Legislative Council passed the resolution moved by the Secretary for Education and Manpower on 8 July 1999 to make 31 December 1999 a general holiday, the Secretary only said that it was not the Government's intention to provide additional employee benefit by that one-off arrangement. He therefore claims that the Government has no policy on the question of a one-off arrangement to designate 31 December 1999 as a statutory holiday. Hence, his Bill does not relate to an existing Government policy.

Ruling

8. In my earlier rulings on bills proposed by Members, when discussing the term "government policies" in Article 74 of the Basic Law, I have clearly stated my opinion that government policies include those that are reflected in legislation. Section 39 of the Employment Ordinance, Cap 57 unequivocally provides that an employee is entitled to 12 statutory holidays in each year with effect from 1999. It seems sufficiently evident to me that the introduction by

Government of the bill which led to the enactment of the Employment (Amendment) (No 6) Ordinance 1997 on 11 December 1997 reflected the Chief Executive in Council's decision to provide 12 statutory holidays a year for employees in Hong Kong with effect from 1999.

9. There can be no disagreement that Mr LEUNG's Bill is not seeking to make 31 December in each year a statutory holiday; it merely seeks to make 31 December in 1999 only an additional statutory holiday. However, the Bill relates to the government policy on the benefits that employees are entitled to enjoy in the form of statutory holidays, as provided under the Employment Ordinance. It therefore relates to the government policy, as reflected in existing legislation, on the number of statutory holidays employers have to provide for employees. Mr LEUNG considers that an additional statutory holiday in 1999 would have no substantial influence on the number of statutory holidays stipulated in the Ordinance. I do not agree. One will easily appreciate that to reduce or add even one single statutory holiday in one single year only would have substantive effect on the benefits to which employees are entitled and which employers must provide.

10. I therefore rule that Mr LEUNG's Bill relates to the Government policy on statutory holidays for employees under the Employment Ordinance; it may not be introduced without the written consent of the Chief Executive.

(Mrs Rita FAN)
President
Legislative Council

15 September 1999

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