

**Ruling by the President on
Hon Cyd HO's proposed amendment to clause 59
(concerning the functions of District Councils)
in the District Councils Bill**

The Hon Cyd HO has given notice to move a Committee Stage amendment (CSA) to clause 59 (concerning the functions of District Councils) of the District Councils Bill, by adding a new paragraph (c) stipulating that one of the functions of the District Councils is to “receive and handle complaints from residents of Hong Kong”.

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

The Administration's views

3. The Secretary for Constitutional Affairs considers that the amendment has a “charging effect” as the new proposal, if enacted, may entail an extension of the enacted purposes of expenditure or increase the expenditure potentially liable to be incurred in pursuit of such purposes. The Secretary assesses that the additional annual staff costs required to enable the District Councils to perform the proposed function is \$15 million at present day value. The Secretary also considers that the amendment falls within the meaning of “relating to public expenditure” under Article 74 of the Basic Law, since such an additional statutory function will require additional funding from public revenue.

Hon Cyd HO's response

4. Ms Cyd HO has stated that District Boards (DBs) current already have a “meet the public scheme” which is operated by DB members on a roster. Also the Home Affairs Department allocates funds to DB members to enable them to set up district offices to serve the public including handling their complaints. The purpose of her amendment is to formally include such work in the functions of District Councils and no additional expenses would be incurred.

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. Hon Cyd Ho's proposed amendment to clause 59 is to add a new category of functions by adding a new subclause to the effect that a District Council would have the function to "receive and handle complaints from Hong Kong residents".

6. According to information provided by the Administration to the Bills Committee studying this bill, existing Provisional District Boards are already administering "Meet the Public Schemes" to enable members of the Provisional District Boards to meet the public and to receive complaints from them. In considering whether a proposed amendment would have charging effect, the existence of a scheme or function which is administered or performed administratively and not pursuant to a requirement of the law does not exempt the proposed amendment from such consideration.

7. According to rulings made by former Presidents, where a new function is imposed upon a body created by statute in terms which require that it shall do a certain thing, the inevitable consequence is that there will be a charge on the public revenue if the doing of that act requires the spending of public money. Government is in those circumstances obliged to provide the money necessary to enable that act to be done. Furthermore, where a new discretion is conferred on that body, the body is of course free not to do the act, in which case no question of public expenditure will arise; but it is equally free to do the act, in which case the question of public expenditure will arise. It is in those circumstances that the effect of an amendment may be to dispose of or charge public revenue within the meaning of Rule 57(6).

8. The applicable test for considering whether the proposed amendment of this nature would have charging effect is whether the proposed statutory function required to be undertaken is one which is not provided for under existing law. If it is not, then if the President is satisfied that the performance of that new function will require the spending of public money, it may be held to have charging effect within the meaning of Rule 57(6). Although the practical effect of the proposed amendment would be to change an

administrative scheme to a statutory one, it does not exempt the proposal from charging effect considerations.

Ruling

9. 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.

10. By administrative arrangements, District Board secretariats currently provide assistance for those District Board members who participate in the "Meet the Public Scheme" on a voluntary basis. Ms HO's proposed amendment seeks to make it a statutory function of District Councils to receive and handle complaints from Hong Kong residents. This would be quite distinct from the existing administrative arrangements for District Board members to meet the public. The Government will be legally obliged to devote resources for this function if the proposed amendment is passed.

11. For the reasons given in paragraph 10, I rule under Rule 57(6) of the Rules of Procedure that Ms HO may not move the amendment to clause 59 without the written consent of the Chief Executive.

(Mrs Rita FAN)
President
Legislative Council

8 March 1999