

**Ruling by the President on
whether there is charging effect in Hon LEE Cheuk-yan's amendment to
the Administration's resolution under the
Pneumoconiosis (Compensation) Ordinance, Cap. 360**

Hon LEE Cheuk-yan has given notice to move an amendment to the Secretary for Education and Manpower's resolution to be moved under the Pneumoconiosis (Compensation) Ordinance (the Ordinance) at the Council meeting on 22 July 1998. Mr LEE's amendment seeks to raise the compensation for bereavement from \$70,000 to \$150,000, as against the Administration's proposed increase of the compensation to \$100,000.

The Administration's views

2. The Secretary for Education and Manpower claims that Mr LEE's amendment will have charging effect as described in Rule 31 of the Rules of Procedure of the Legislative Council. His reasons are set out in paragraphs 3 to 5 below.
3. Compensation made under the Ordinance is funded by a levy imposed on the construction works undertaken and quarry products produced in Hong Kong, which have a value above \$1 million. The Government is liable to paying the levy through the tendered contract prices to the contractors and quarry operators concerned for its construction projects. Mr LEE's amendment may result in an increase in levy and the Government may be required to incur increased expenditure through higher contract prices.
4. It has been the Government's policy to revise the levels of compensation under the Pneumoconiosis Ex-Gratia Scheme in step with the revision of levels of compensation under the Ordinance. Mr LEE's amendment may result in a depletion of the fund in the Scheme, leaving the Government with no choice but to inject public money into it.
5. The Secretary quotes from Eskiné May that a charge upon public funds (revenue) or upon the people (taxation or levy) cannot be considered by the legislature unless it is demanded by or recommended from the Crown. As the Secretary is of the view that Mr LEE's proposed amendment has charging effect, he therefore thinks that the amendment requires the recommendation of the Government.

Counsel to the Legislature's Opinion

6. The Counsel to the Legislature advises that the legal effect of Mr LEE's amendment, if passed, would be to increase the amount of compensation for bereavement from \$70,000 to \$150,000 instead of \$100,000 as proposed in the original resolution. The payment of compensation is a statutory obligation imposed on the Pneumoconiosis Compensation Fund. There is no statutory mechanism in the Ordinance to peg the level of levy to the amounts of compensation.

7. He further advises that section 27(b) of the Ordinance does not have the legal effect of requiring the Government to provide money to the Fund.

My Analysis

8. Having considered the Administration's views and the advice of the Counsel to the Legislature, I am of the opinion that Mr LEE's amendment will not have charging effect within the meaning of Rule 31 of the Rules of Procedure. I cannot accept the Administration's claim that the increased compensation for bereavement as proposed in Mr LEE's amendment would directly "require an increase in the levy" payable by contractors and quarry operators. And even if it were decided that the levy payable by contractors should be increased, contractors do not necessarily pass on the increased portion of the levy to their clients, who include the Government.

9. Although it is the policy of the Government to bring the level of compensation under the Pneumoconiosis Ex-Gratia Scheme in line with that under the Ordinance, it is not bound by law to do so. I therefore do not consider that Mr LEE's amendment will have the legislative effect of increasing Government's expenditure on the Pneumoconiosis Ex-Gratia Scheme.

10. Rule 31 of the Rules of Procedure refers to revenue or other public moneys of Hong Kong. Since the Pneumoconiosis Compensation Fund is a statutory fund and not the revenue of the Government, any consequence on the Fund, incidental or direct which I do not consider there is, would not have any charging effect on general revenue.

The Ruling

11. For the reasons given in paragraphs 8 to 10 above, I rule that Mr LEE's amendment will not have charging effect within the meaning of Rule 31 of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

20 July 1998