

本署檔號：OUR REF: SF4 to HAB/CR/1/20/154 Pt.6  
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25 November 2002

Miss Flora Tai  
Clerk to Bills Committee  
Bills Committee on Village Representative  
Election Bill  
Legislative Council  
8 Jackson Road  
Central  
Hong Kong

Dear Miss Tai,

Bills Committee on Village Representative Election Bill

At the Bills Committee meeting held on 16 November 2002,  
Members asked the Administration to:

- (a) provide information on civil servants currently holding the post of Village Representative;
- (b) consider amending the Bill to enable civil servants to hold the office of Village Representative;
- (c) consider amending the Bill to provide that an office of Village Representative may be left vacant until the next ordinary election for the Village; and
- (d) review the electoral boundaries of Ha Wan Tsuen.

My response to items (a) and (b) is at Annex A, to item (c) is at Annex B and to item (d) is at Annex C.

Please let me know if you have any further queries.

Yours sincerely,

(Stephen Fisher)  
for Secretary for Home Affairs

c.c. D of J (Attn.: Mr. Lawrence Peng  
Mr. Alan Chong)

DHA (Attn.: Miss Monica Chen)

**Why should civil servants be disqualified from holding office as Village Representatives?**

**Introduction**

Under clause 9(1)(a)(ii) of the Village Representative Election Bill, a person elected as a Village Representative is disqualified from holding office if the person is a prescribed public officer. Furthermore, under clause 23(1)(a)(ii), a person is disqualified from being nominated as a candidate at a Village Representative election, and from being elected as a Village Representative for a Village, if the person is a prescribed public officer.

2. Under clause 2, "prescribed public officer" means any of the following :-

- "(a) the Chairman of the Public Service Commission;
- (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap. 204);
- (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap. 397);
- (d) a member of the Electoral Affairs Commission;
- (e) the Chief Executive of the Hong Kong Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (f) the Privacy Commissioner for Personal Data and any person employed or engaged by him under the Personal Data (Privacy) Ordinance (Cap. 486);

- (g) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap. 480); or
- (h) any person holding an office, whether permanent or temporary, in a Government department and employed in the department; "

Civil servants are included under item (h).

### **Background**

3. In the past, Village Representative elections were regarded as "private" elections. Civil servants were advised to inform their respective departments before accepting the post of Village Representative. Approval would be given by respective departments on a case-by-case basis. However, the Court of Final Appeal ruled in December 2000 that Village Representative elections are public elections.

### **Current Position**

4. At present, 46 of the serving Village Representatives are civil servants. Of the 46, 16 are members of executive committees of Rural Committees. Of the 16, one is currently a Vice-chairman of a Rural Committee. Most of the 46 Village Representatives are frontline staff of departments.

### **Electoral Legislation**

5. Under the existing electoral laws in Hong Kong, a person is disqualified from being nominated as a candidate at an election for an office and from holding an elected office, if he is a prescribed public officer.

6. Under section 14(c) of the Chief Executive Election Ordinance (Cap. 569), a person is disqualified from being nominated as a candidate if he is a prescribed public officer.

7. Under Article 79 of the Basic Law, the President of the Legislative Council shall declare that a member of the Council is no longer qualified for the office when, inter alia, he accepts a government appointment and becomes a public servant. Under section 39(1)(a) of the Legislative Council Ordinance (Cap. 542), a person is disqualified from being nominated as a candidate, or from being elected as a member of the Council, if he is a prescribed public officer.

8. Under the District Councils Ordinance (Cap. 547), a member, including an appointed, ex officio and elected member, is disqualified from holding office if the member becomes a civil servant. A person is also disqualified from being nominated as a candidate, or from being elected as an elected member, if he is a prescribed public officer.

9. It is also normal practice in other jurisdictions not to allow civil servants to run for public offices.

### **Justifications**

10. The Administration's position is not to allow a civil servant to run for the office of Village Representative. The justifications are as follows:

(a) **Role Conflict**

A civil servant who is also a Village Representative may face a situation where his role as a civil servant conflicts with his role as a Village Representative.

(b) **Conflict of Interests**

A civil servant who is also a Village Representative may face a conflict between his official responsibilities as a civil servant (safeguarding the interests of his department) and his public duties as a Village Representative (safeguarding the interests of his village).

(c) **Divided Loyalties**

A civil servant who is also a Village Representative may experience or is perceived to have divided loyalties.

On the one hand, his villagers may not entirely trust him on certain issues concerning the village because he is a civil servant. On the other hand, his colleagues in the department may keep things from him because he is a Village Representative.

(d) Parity of Treatment

It would be difficult to allow only civil servants to hold office as Village Representatives without allowing other prescribed public officers to do so. However, it would be undesirable to allow other prescribed public officers (e.g. the staff of the Ombudsman and the Independent Commission Against Corruption) to do so.

(e) Unfair Competition

In some cases, a civil servant may have or is perceived to have certain advantages over other candidates. The participation of civil servants in public elections may create an uneven playing field for other candidates.

(f) Political Neutrality

It is important to maintain the political neutrality of the civil service.

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**Village By-elections**

**Issue**

The Administration has been asked to consider amending the Village Representative Election Bill to the effect that the Electoral Affairs Commission would not have to hold a village by-election for a Village where the election for that Village has failed more than once.

**Response**

2. Under clause 21 of the Bill, the Electoral Affairs Commission has to arrange for a village by-election for a Village to be held when there is a vacancy in the office of Village Representative for the Village. A village by-election does not have to be held if only 4 months remains of the current term of office. It follows that a village by-election has to be held repeatedly until the vacancy is filled or until only 4 months remains of the current term.

3. The procedure as now set out in the Bill is not entirely satisfactory. We propose to amend clause 21 of the Bill by adding :-

" (1A) The Electoral Affairs Commission is not required, on the making of a declaration under section 29(2) that an election for a Village has failed, to arrange a village by-election for the Village to be held if the election declared to have failed is a village by-election that was held on the making of another declaration under section 29(2) that an election for the Village has failed."

**Boundary Delineation of Ha Wan Tsuen**

**Question**

The Administration is asked to review the electoral boundaries for Ha Wan Tsuen.

**Response**

2. Ha Wan Tsuen is a non-indigenous village in San Tin, Yuen Long. It is included in Schedule 1 to the Village Representative Election Bill as an Existing Village. Its boundaries are delineated on a village electoral boundary map (VEB/2002/M/ST-16).

3. The boundaries are delineated in accordance with a set of guidelines issued to District Officers for the purpose of drawing up the boundaries for Existing Villages. A copy of the guidelines is at the Appendix.

4. The disputed part of Ha Wan Tsuen (New Fishermen's Village) has always been regarded as part of the village. The villagers in that portion of the village took part in past Village Representative elections.

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## Appendix to Annex C

### **2003 Village Representative Elections**

#### **General Guidelines on the Delineation of Village Boundaries for Resident Representative Elections**

##### (I) Basic Principles on Who/What Should be Included

1. Village Representative elections should be held for villages included in the present village representative system in the New Territories. There are around 700 villages. The existing number of villages should generally be maintained<sup>1</sup>.
2. In general, only rural-type settlements should be included in village elections. Multi-storey buildings should be excluded. Resite villages are to be included as far as possible.
3. Structures of occupants who voted in the previous rounds of Village Representative elections should generally be included.

##### (II) Drawing up of Village Boundaries

1. Boundary lines should generally be continuous. However, in the case of Existing Villages which are indigenous villages, the boundary delineation should take into account the historical development and in exceptional cases, distinct portions of the same village (e.g. with a public housing estate development in between) could be taken as belonging to one constituency.
2. Delineation should take account of ground features, such as contour lines, roads, stream courses, etc.
3. Odd-shape constituencies should be avoided as far as possible (e.g. a hole in the middle of the constituency).
4. In the case of Existing Villages which are indigenous villages,

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<sup>1</sup> Confirmed deserted/demolished villages may be deleted.

reference should be made to Village Environs Maps<sup>2</sup> prepared by the Lands Department (where available and as applicable).

5. Structures using the name of a village as the mailing address should be included in that constituency as far as possible.
6. It is expected that most arguments would arise with regard to 'peripheral areas'. In such cases, each case should be assessed on its own merits. Factors like affiliation with the respective villages should be taken into account in the assessment. In all, the test of 'reasonableness' should apply.

Note: The guidelines are drawn up to facilitate District Officers to determine the election boundaries for village elections. However, these are general principles, and individual cases may have to be considered on its merits. District Officers would have to exercise balanced judgement to ensure a fair and just arrangement.

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<sup>2</sup> "Environs of a recognized village", in general, refers to a 300-foot distance surrounding a recognized village where small house applications are considered.