

Bills Committee on Legislative Council (Amendment) Bill 2003

Withdrawal by Candidates after Close of Nominations

Introduction

In response to comments made by Members at the meeting of the Bills Committee on 5 May 2003, this paper sets out the measures that have been considered but not adopted for the purpose of addressing the question of a candidate wishing to give up his own candidature after the close of nominations.

Background

2. According to section 42 of the Legislative Council Ordinance (Cap. 542), a validly nominated candidate in a Legislative Council (LegCo) election is not allowed to withdraw from the election after the close of nominations. The only exceptions are if the candidate dies or if the candidate is disqualified from being so nominated. This is the established arrangement for LegCo elections. Similar arrangements apply to the Chief Executive (CE), the District Council and the Village Representative elections. Withdrawal of candidature after the close of nominations is also not allowed in elections in many countries including Australia, Canada, France and the Netherlands.

3. During the 2000 **LegCo geographical constituency (GC) election**, a candidate wanted to withdraw his candidature after the close of nominations. However, due to the above statutory provisions, he was not able to do so. In the light of this incident, the Administration proposed, in the CE Election Bill which was introduced into LegCo in March 2001, a provision that would allow candidates standing in a CE election to withdraw after the close of nominations. However, the then Bills Committee expressed grave concern on the proposal, fearing that it might provide opportunities for corruption and manipulation. In the end, the Administration dropped the proposal.

Withdrawal of candidature

4. The major argument for allowing a validly nominated candidate to withdraw from an election after the close of nominations is that it would obviate the need for a by-election in the event that the candidate wins the election and still decides not to take up office. Considerable public resources could be saved and voters would not be unduly inconvenienced.

5. However, allowing a validly nominated candidate to withdraw from election after the close of nominations would give rise to a number of problems.

- (a) First, as was recognized during the scrutiny of the CE Election Bill in 2001 and as discussed at the meeting of this Bills committee on 5 May, such an arrangement could be susceptible to abuse and manipulation, and could provide opportunity for corrupt activities. This would undermine the credibility of our election system. Further, it is not practicable to set up a mechanism to differentiate withdrawals with bona fide reasons from other withdrawals.
- (b) Secondly, the arrangement would mean that there would be no certainty as to who are standing for election right up to the polling day. This could cause confusion to the voters.
- (c) As a corollary to (b) above, it would be difficult to finalise practical electoral arrangements such as printing of ballot papers.

6. The above considerations are the very reasons that a stringent withdrawal provision has been put in place in our electoral legislation for years. We are of the view that the provision should stay to protect the integrity of the electoral process.

7. At the same time, we recognize that there may be cases where a candidate may, with legitimate reasons (e.g. health considerations) decide after the close of nominations not to take up office even if elected. As the law stands, however, he cannot withdraw from the election. If he is subsequently elected and still decides not to take up office, a by-election will have to be held. Some may consider such a by-election an unnecessary waste of public resources.

Automatic succession of the “next-in-line” candidate

8. One way to get round the problem in respect of **LegCo GC elections** would be to amend the law to provide that if a candidate, having won an election, decides not to take up office, the resulting vacancy would be taken up by the first of the remaining candidates in the same list as the winning candidate. This arrangement preserves the voters’ preference for a particular candidate list as reflected in the election results. It is in line with the spirit of a list voting system. It is also capable of smooth implementation.

9. By extension, this arrangement could also apply to situations whereby vacancies arise between two general elections from the death, resignation, or disqualification from holding office (under Article 79 of the Basic Law) of an elected LegCo GC Member. A similar arrangement is adopted in some countries which adopt the list voting system, such as the Netherlands, Greece, Portugal and Finland.

10. However, there are two main limitations with the above option. First, it can only be used in conjunction with the list voting system and, therefore, is not applicable to functional constituency elections which use the “first-past-the-post” voting system. Secondly, even under the list system, the option cannot be used in the cases where there is no next-in-line candidate on the list, for example, an independent candidate running on his own.

11. Moreover, there are two negative considerations which have to be thought through.

- (a) The option in effect binds the voters’ choice for a candidate list for up to four years. However, it is conceivable that when a vacancy arises, the voters may prefer to examine their choices afresh in the light of changed circumstances.
- (b) It is conceivable that certain political parties or political groups could field an experienced candidate of longstanding in the community by using him to “lead” the list, and after winning the election to arrange for his retirement and resignation, thereby enabling the candidate who is next-in-line to fill the seat.

Conclusion

12. For the reasons given in paragraphs 5, 10 and 11 above, we are of the view that candidates should not be allowed to withdraw their candidature after the close of nominations.

Constitutional Affairs Bureau
13 May 2003

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