

ETWB(T) 1/12/41, 1/12/44, 1/12/137

Tel. No. 2189 2182
Fax. No. 2104 7274

28 May 2005

Mr. Andy Lau
Clerk to Subcommittee
Legislative Council Secretariat
8 Jackson Road
Central, Hong Kong
(Fax : 2121 0420)

Dear

**Subcommittee to Study Four Items of Subsidiary Legislation
under the Road Traffic Ordinance**

Meeting on 30 May 2005

I refer to your letter dated 23 May 2005 on the captioned subject.
Our responses are as follows –

Whether standing passengers should be allowed on canvassing vehicles

Under the new regulation 53A of the Road Traffic (Traffic Control) Regulations, exemption from regulation 53(2) may only be granted to floats travelling at a specified speed (which will be a very low speed) at a specific time on a specific route, and the roads along such route will be used exclusively for the purpose of the parade. Given that the vehicles used for election-related activities do not operate under the same conditions, the safety requirements for standing passengers on such vehicles go beyond the ambit of the present legislative amendments. We will separately examine this proposal in detail.

Conditions to be imposed by the Commissioner for Transport (C for T)

At present, C for T is already empowered to impose on a movement permit any other conditions that he, in consultation with the Commissioner of Police and any other authority, considers necessary under the existing regulation 53(3) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (the Registration and Licensing of Vehicles Regulations). We have not proposed anything additional.

It is in fact a general rule that a permit issuing authority should be given the power to impose reasonable conditions. This is reflected by section 40(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1) which provides generally that where any Ordinance confers power to grant a permit, such power shall include power to impose reasonable conditions subject to which such permit may be granted. This is a practical rule because the permit issuing authority is usually in the best position to consider what conditions are necessary having regard to the specific circumstances. C for T is required by principles of administrative law to act reasonably. If he takes into account irrelevant considerations, he may be subject to legal challenge.

We have considered the suggestion to amend the new regulation 53(3A)(b) of the Registration and Licensing of Vehicles Regulations such that the "other conditions" to be imposed by C for T would only be confined to those relating to road safety. We are of the view that C for T is already bound by administrative law principles to act reasonably. The provision is also consistent with the general rule of allowing discretion to a permit issuing authority to impose reasonable conditions. We consider it necessary to maintain adequate flexibility in the regulations, so that C for T may impose reasonable conditions as required by the circumstances of the case. We therefore do not support the proposed amendment.

Yours sincerely,

(Elizabeth Tai)
for Secretary for the Environment,
Transport and Works