

Legislative Council Panel on Constitutional Affairs

Disqualification of Election Committee Members from Making Nominations and Voting in the Chief Executive Election

Introduction

Among the Election Committee (EC) Members who belong to the Chinese People's Political Consultative Conference (CPPCC) and District Councils (DC) subsectors, there are a number who are now no longer CPPCC or DC members. It has been suggested that such members may have lost their substantial connection with their subsectors and are thus disqualified from making nominations and voting in the Chief Executive (CE) election. A similar situation exists in the Heung Yee Kuk subsector. This paper informs Members of the relevant legal position on the matter.

Background

Compilation of Provisional Register and Omissions List

2. A vacancy in the office of the CE arose on 12 March 2005 following the acceptance by the Central People's Government of the resignation of Mr TUNG Chee-hwa. According to the relevant legislation, the Registration and Electoral Office (REO) shall publish a provisional register of EC members within 14 days after the declaration of the vacancy of the office of CE to provide a basis for EC by-elections. A provisional register was published on 16 March 2005 for public inspection until 23 March 2005.

3. In accordance with the relevant legislation, the REO had at the same time published an omissions list, setting out the names and personal particulars of 33 members who:

- (a) are deceased;

- (b) have resigned, or are deemed to have resigned¹, from the EC; or
- (c) have ceased to be registered or eligible to be registered, or have been disqualified from being registered, under the Legislative Council Ordinance (Cap. 542) as an elector for a geographical constituency (GC).

4. As the loss of DC, CPPCC and Heung Yee Kuk membership is not a ground for inclusion in the omissions list, and as none of the EC members who have lost membership in DC, CPPCC and Heung Yee Kuk belong to any of the three categories set out in paragraph 3, they have not been entered in the omissions list published on 16 March 2005. All of them have been included in the provisional register. During the public inspection period, notices of claim or objection² as regards the provisional register and omissions list may be lodged. Before the statutory deadline, one notice of objection was received but it was not in relation to the group of EC members in question. The Revising Officer³ had conducted a hearing and made a ruling on the case in accordance with relevant legislation.

5. Having regard to the provisional register and the ruling made by the Revising Officer with regard to the objection case, the Electoral Affairs Commission (EAC) announced on 8 April 2005 that there are altogether 33 vacancies in the EC which will need to be filled either by supplementary nominations or by-elections to be conducted on 1 May 2005. The group of EC members in question has remained on the final register of EC members published after the EC by-elections.

¹ According to section 3(2) of the Schedule to the Chief Executive Election Ordinance (CEEEO) (cap. 569), an EC member is deemed to have resigned from his original membership in the EC if he at the same time is an ex-officio member of the EC.

² According to section 30 of the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation, (Cap. 541B) a person who considers that a person who has been registered as a member of the EC has been wrongly so registered may object to the registration of that person. According to section 31, any person whose personal particulars are included in an omissions list may claim that he is entitled to be registered in the EC final register.

³ The Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap. 569B) provides that the Revising Officer shall fix hearings and make rulings on the objection and claim cases. According to section 46 of the Schedule to CEEEO, the Chief Justice may appoint any magistrate, or any legal officer within the meaning of the Legal Officers Ordinance (Cap. 87), to be a Revising Officer.

Disqualification from Voting and Making Nominations

6. Sections 16 and 26⁴ of the Chief Executive Election Ordinance (CEEEO) (Cap. 569) provide that an EC member whose name appears on the final register shall be disqualified from making nominations at the election and voting at the poll if he has, among other things, ceased to have a substantial connection with the subsector concerned.

Concept of “substantial connection”

7. According to section 1(3) of the Schedule to the CEEEO, the circumstances in which a person has a substantial connection with a subsector include, but are not limited to, being a member, partner, officer or employee of a body included in the subsector. It is clear from this provision that whether a person has a substantial connection with a subsector should not be determined solely by whether he is a member of a body included in the subsector.

Administration’s Position

Substantial Connection

8. The statutory provision is that cession of substantial connection, rather than loss of membership in a body included in the EC subsector concerned, is the ground for disqualifying a EC member from making nominations and voting. It is not our policy intention to automatically disqualify a EC member who has lost his membership in a body included in an EC subsector from making nominations and voting.

⁴ According to sections 16 and 26 of the CEEEO, an EC member whose name appears on the final register shall be disqualified from making nominations and voting at the poll if he-

- (a) resigns from the EC;
- (b) is serving a sentence of imprisonment on the polling date;
- (c) has ceased to have a substantial connection with the subsector concerned;
- (d) has ceased to be registered or eligible to be registered as an elector for a geographical constituency;
- (e) has in Hong Kong or in any other place been sentenced to death or imprisonment and has not either served the sentence or received a free pardon;
- (f) is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs;
- (g) is a member of the armed forces of the People’s Republic of China or any other country or territory; or
- (h) is or has been convicted, within the three years before the polling date, of having engaged in corrupt conduct or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201) or of any offence prescribed by the Electoral Affairs Commission Regulations.

9. An EC member who is no longer a DC, CPPCC or Heung Yee Kuk is not necessarily disqualified from making nominations and voting at the Chief Executive election. As long as he still maintains a substantial connection with the subsector concerned, he will continue to be qualified to vote. Whether the EC members concerned have lost their substantial connection with their respective subsectors needs to be considered on a case-by-case basis. It is possible that some of them may still maintain connection in one form or another with their respective subsectors. For example, an ex-DC member may be a co-opted member in a DC committee. Whether such connection amounts to “substantial connection” will have to be considered on the facts of each case.

Determination of qualification to vote

10. It is an offence under the Election (Corrupt and Illegal conduct) Ordinance (ECICO) (Cap. 554) for a person to vote at an election knowing that he himself is not entitled to do so. The REO will issue a letter reminding all EC members of the relevant provisions.

Determination of qualification to make nominations

11. Each nomination for CE candidature is required by law to be subscribed by at least 100 EC members. The nomination form will include a note to remind the candidate and the subscribers to consider the legal provisions relating to disqualification from making nominations; the provisions are reproduced in the explanatory note of the form. In the letter referred to in paragraph 10 above, EC members’ attention will also be drawn to these provisions.

Advice Sought

12. Members are invited to note the content of this paper.

Constitutional Affairs Bureau
24 May 2005