

# 立法會

## *Legislative Council*

LC Paper No. CB(2)2111/10-11(04)

Ref : CB2/PL/CA

### **Panel on Constitutional Affairs** **Background brief prepared by the Legislative Council Secretariat** **for the meeting on 20 June 2011**

### **Guidelines issued by the Electoral Affairs Commission** **on election-related activities in respect of the District Council elections**

#### **Purpose**

This paper summarizes the past discussions held by the Panel on Constitutional Affairs ("the Panel") on the guidelines issued by the Electoral Affairs Commission ("EAC") on election-related activities ("the Guidelines") in respect of the District Council ("DC") elections.

#### **Background**

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. According to section 6(1)(a) of the EAC Ordinance (Cap. 541), EAC may issue guidelines relating to the conduct or supervision of an election. EAC will update the guidelines before each election taking into account the operational experience and suggestions for improvements obtained from recent elections and by-elections.

3. According to the Administration, before the promulgation of each set of guidelines, a 30-day consultation period inviting representations from the public and other parties concerned on the draft revisions of the Guidelines will be conducted. The Guidelines will then be revised taking into account the views received during the public consultation period before they are finalized for issue to the public.

#### **Relevant discussions of the Panel**

4. The Panel discussed the Guidelines in respect of previous DC elections at its meetings held on 19 April 1999, 15 December 2003, 15 March 2004 and 21 June 2007. The relevant issues raised by members at these meetings are summarized in the following paragraphs.

### Limitation on media exposure

5. Referring to the 1999 Guidelines which proposed to prohibit presenters or regular contributors and columnists who were candidates or members of a political party or organization whose other members were candidates from appearing in programmes or contributing articles in the print media once the nomination period began, some members criticized that such guidelines were unreasonable and would infringe the freedom of expression as provided under Article 27 of the Basic Law. Members generally considered that media gag should only apply to candidates. Some members were of the view that it would be unfair if the guidelines were to apply to non-candidates affiliated with political parties, but not to those without political background who could continue to comment favourably on or write in support of a political party or a candidate.

6. The Administration advised that the purpose of the guidelines was to avoid unfair publicity for certain candidates. EAC had no intention to restrict freedom of expression. The proposal had made reference to the practice in the United Kingdom which imposed similar restriction on candidates, though not political parties. The reason for extending the restriction to political parties was to ensure fairness. EAC would take into account views of the public and Members before finalizing the Guidelines. Members may wish to note that according to the existing Guidelines, a presenter or a regular contributor should not appear in any programme in his normal programme role after he has publicly declared his intention to stand for the election or during the election period if he becomes a candidate.

### Election expenses

7. Some members sought clarification on the point of time when expenses incurred would be counted as election expenses. According to the Administration, under section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), "election expenses" in relation to a candidate meant expenses incurred or to be incurred, before, during or after the election period by or on behalf of the candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate. The same section defined "candidate" as a person who stood nominated as a candidate at an election and a person who at any time before the close of nominations for an election, had publicly declared an intention to stand as a candidate at the election. If a person had publicly declared his intention to stand as a candidate in an election and provided that there was evidence to prove the same, expenses incurred for the purposes of promoting the election of that person or prejudicing the election of another candidate would be counted as election expenses.

### Election advertisement ("EA")

8. Noting that a publicity material used for the purpose of prejudicing the election of a candidate should be regarded as an EA and the expenses incurred for producing the EA should be counted towards the election expenses of the candidate(s) concerned, some members considered that it would be difficult to determine whether an EA would indeed prejudice the election of a candidate and who should bear the expenses of producing the EA. The Administration advised that if an EA was displayed for the purpose of promoting the election of candidate A and prejudicing the election of candidate B, the expenses should be borne by candidate A. In the event that an EA was displayed by a third-party organization involving two candidates contesting with each other, the candidate whom the organization was in support of should bear the expenses, but the organization should obtain his authorization for incurring the expenses prior to the publication of the EA. A person who incurred election expenses without authorization committed an offence. The Administration further advised that whether the particular advertisement should be regarded as an EA and counted towards election expenses would need to take into account the content of the advertisement and the particular circumstances.

9. Some members considered that it was difficult for a candidate to decide whether the written consent of person(s) whose pictorial representation was included in an EA should be obtained, and to obtain the written consent if necessary. They were of the view that there were a lot of grey areas in the Guidelines which posed tremendous difficulties to candidates in conducting election activities. They requested that more specific guidelines should be published to assist candidates. The Administration undertook to reflect members' concerns to EAC for consideration.

10. According to the Administration, under section 27 of ECICO, any person including a candidate engaged in illegal conduct at an election if the person published or authorized the publication of an EA that included a pictorial representation of another person, in such a way as to imply or to be likely to cause electors to believe, that the candidate or candidates with whom the candidate was associated had the support of the person appearing in the pictorial representation unless, before the publication of the EA, that person consented in writing to the inclusion of the pictorial representation. Where the inclusion of pictorial representation of person did not imply support of the candidate concerned, prior written consent was not required.

### Electioneering in private premises

11. Noting that EAC would appeal to all management bodies of

organizations or buildings to provide equal opportunity to all candidates competing in the same constituency for the purposes of electioneering, some members enquired how EAC would deal with complaints about unequal treatment of candidates in this regard and whether the Administration would consider introducing laws to prohibit discriminatory treatment of candidates.

12. The Administration said that while the management bodies of organizations or buildings would be advised to adhere to the fair and equal treatment principle in handling electioneering activities, electioneering activities in private premises were outside the purview of the Government. In the event that a complaint was lodged against a management body for unequal treatment and was found to be justified, EAC could make a reprimand or censure in a public statement against the management body and/or the candidate concerned. Since the Basic Law provided Hong Kong residents with the right to vote and to engage in politics, the Administration considered it inappropriate to make laws to prohibit any organizations or individuals from supporting certain candidates.

### **Recent development**

13. When the Panel discussed the practical electoral arrangements for the DC, Election Committee subsector ("ECSS"), Chief Executive ("CE") and Legislative Council ("LegCo") elections to be held in 2011 and 2012 at its meetings on 17 January and 18 March 2011, some members considered it very inconvenient for candidates to submit hard copies of EAs to the Returning Officer ("RO"), especially when the EAs were disseminated through the Internet. They requested the Administration to facilitate candidates by accepting election materials transmitted electronically. The Administration has proposed amendments to the relevant regulations to allow the candidates of the DC, ECSS, CE and LegCo elections to submit, in the manner and format specified by EAC, a declaration and a copy of electronic EA to RO electronically. The relevant Subcommittee is scrutinizing the amendment regulations concerned.

14. Some members also expressed dissatisfaction with the existing mechanism for handling election complaints alleging technical and minor breaches of ECICO, particularly those cases involved insignificant excess amounts of election expenses incurred by candidates. They suggested that such minor irregularities should be exempted and a dedicated unit could be set up to handle election related complaints. They strongly urged the Administration to introduce the necessary legislative amendments within the current legislative session with a view to effecting the proposed amendments for the upcoming elections in 2011. The Administration has proposed to

introduce a deminimis arrangement for handling election returns with minor errors or omissions through appropriate amendments to the Electoral Legislation (Miscellaneous Amendments) Bill 2011. The relevant Bills Committee will discuss the proposed amendments at its meetings in June 2011.

15. The Administration is scheduled to brief the Panel on the proposed Guidelines for the 2011 DC election at the upcoming meeting on 20 June 2011.

**Relevant papers**

16. A list of the relevant papers available on the LegCo website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
16 June 2011

**Relevant documents on guidelines issued by the  
Electoral Affairs Commission on election-related activities  
in respect of the District Council elections**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	19.4.1999 (Item II)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	15.12.2003 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	15.3.2004 (Item VII)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	21.6.2007 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	17.1.2011 (Item IV)	<a href="#">Agenda</a>
	18.3.2011 (Item IV)	<a href="#">Agenda</a>

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