

Legislative Council Panel on Constitutional Affairs

Issues in relation to the display of roadside publicity materials during a District Council by-election

This paper aims to outline the current arrangement for the display of publicity materials at public premises by incumbent Legislative Council (LegCo) or District Council (DC) members during a DC by-election, its possible area for further improvement and the relevant recommendation.

Relevant regulation for the display of election advertisement

2. In accordance with section 104A of the Public Health and Municipal Services Ordinance (Cap. 132), necessary written permission or authorisation must be obtained for any person displaying or affixing a bill or poster on government or private land, otherwise such person commits an offence.

3. For election advertisement (EA), display spots for candidates are classified into two types:

(a) designated spots which are spots on government land/property and sometimes at premises owned or occupied privately that have been made available for Government use; and

(b) private spots which are spots on private land/property in respect of which written permission or authorisation for display of election advertisement has been obtained by the candidate himself from the owner or occupier concerned.

4. Designation of designated spots for the use of candidates to display their EAs is made by the Returning Officer (RO) concerned. Designated spots mainly include roadside banner spots managed by the Lands Department (LandsD), banner and poster display spots in housing estates managed by the Housing Department (HD) and display spots in venues managed by the Leisure and Cultural Services Department (LCSD). In accordance

with section 104A(1) of the Public Health and Municipal Services Ordinance (Cap. 132), the RO will seek the prior approval for candidates to display EAs at designated spots. Immediately after the allocation of designated spots, a copy of the necessary written permission under the relevant legislation will be provided to the candidates by the RO of the constituency concerned. For any display on private premises, written permission of the private owner or occupier will have to be obtained by the candidates themselves.

Relevant arrangements of the LandsD, the HD and the LCSD for display of publicity materials

5. At present, individual government departments allow individuals and organisations such as LegCo and DC members and non-profit making organisations to apply for the display of publicity materials at spots on government land/property under their management. Government departments providing such spots for the display of publicity materials mainly include the LandsD, the HD and the LCSD.

6. The LandsD has implemented the “Management Scheme for the Display of Roadside Non-commercial Publicity Materials” (the Management Scheme) since May 2003 to manage the display of non-commercial publicity materials on the roadside, and made revisions to the Implementation Guidelines of the Management Scheme (the Implementation Guidelines) in August 2011. The non-commercial publicity materials are displayed by non-profit-making organisations, DCs and their committees, as well as LegCo and DC members for the purpose of promoting/publicising activities that are non-commercial or of interest to the public, and disseminating information that is of general interest or use to the public.

7. For the purpose of implementing the Management Scheme, some officers of the LandsD are authorised by the Director of Food and Environmental Hygiene to give permission for the display of roadside non-commercial publicity materials under Section 104A(1)(b) of the Public Health and Municipal Services Ordinance (Cap. 132). The Food and Environmental Hygiene Department (FEHD) is responsible for removing publicity materials being displayed which are verified by the LandsD as being

unauthorised or non-compliant with the Implementation Guidelines and recovering the removal costs from the parties concerned under Section 104C(1) of the above Ordinance. The FEHD conducts joint operations with the LandsD regularly to remove publicity materials being displayed which are unauthorised or non-compliant with the Implementation Guidelines.

8. On the other hand, to ensure fairness and neatness in the display of publicity materials, display spots have been designated by the HD in public housing estates. All LegCo and DC members, government departments, local non-governmental organisations, local mutual aid committees/residents' associations other approved charitable/non-profit-making organizations with deserving applications may apply for the use of these spots to display publicity materials. In addition, display spots of publicity materials are designated by the LCSD in venues under its management. Generally speaking, display spots provided by the HD and the LCSD are fewer in number than spots under the Management Scheme.

Arrangements for the display of publicity materials during elections preceding the 2010 LegCo by-elections

9. Before the 2010 LegCo by-elections, the Registration and Electoral Office (REO) sought the assistance of the relevant departments before each LegCo general election or DC ordinary election to revoke all approvals previously given to persons and organisations (including incumbent LegCo and DC members, government departments, DCs and its committees and sub-committees as well as non-governmental organisations) to display publicity materials on government land and premises (including the roadside spots approved by the LandsD under the Management Programme, as well as display spots designated by the HD and the LCSD). The persons and organisations concerned were required to remove the publicity materials at their own costs before a deadline specified by the government departments. Any publicity material remaining after the deadline would be removed by the Government with the costs of removal claimed back from the persons or organisations. In respect of LegCo geographical constituency by-elections or DC by-elections, the above arrangement was also applicable in respect of all display spots in the relevant constituency.

Arrangements since the 2010 LegCo By-elections

10. During the preparation for the 2010 LegCo by-elections, the relevant departments notified the persons and organisations concerned that the approval for them to display publicity materials on government land and premises (including roadside railings on government land) would be revoked in line with the arrangement in the past and that they were required to remove such materials. Some LegCo Members and political parties raised concern over the removal arrangement in respect of a LegCo by-election. They considered that the arrangement seriously affected the normal work of incumbent LegCo and DC members. The removal and subsequent reinstatement of the publicity materials would also lead to a waste of resources.

11. In view of these concerns, the Government reviewed the removal arrangement and consulted the LegCo Panel on Constitutional Affairs¹ in March 2010 on this issue. Subsequently, the Government issued a press release², recognising the incumbent members' need to continue their normal service to the public and to communicate with them during the by-election period, and allowed incumbent LegCo and DC members to retain their display spots allocated in the relevant constituencies during the by-election period on the basis that the following policy objectives would be upheld:

- (a) no candidate should have any unfair advantage;
- (b) there should be a clear message of the election during the by-election period;
- (c) there should be adequate designated display spots for publicity by the candidates;
- (d) the public display spots, as a limited public resource, should be utilised reasonably and in line with public interest; and
- (e) interruptions and disturbance to normal services to the public should be minimised as far as possible.

¹ LegCo Paper No. CB(2)1094/09-10(03)

² Issued on 26 March 2010

12. The Administration also wrote to all LegCo Members and DC members on the same day advising them of the suspension of the temporary revocation of approval for their use of public display spots.

Situation after the 2010 LegCo By-elections

13. After the 2010 LegCo by-elections, there has since been no LegCo by-election but six DC by-elections³, during which the arrangement in paragraph 11 was adopted, i.e., allowing incumbent LegCo and DC members to retain their display spots allocated in the relevant constituencies during the by-election. The relevant departments would not revoke the approval given to incumbent LegCo and DC members to display publicity materials on government land and premises.

14. The Administration's observation is that, in general, incumbent LegCo and DC members have observed the principle that no public display spots should be used for the purpose of promoting or prejudicing the candidacy of a candidate in a by-election. The policy objective in paragraph 11 has been fulfilled.

Recommendation to improve the existing arrangement

15. Nevertheless, the possibility still exists for incumbent LegCo or DC members or other users to make use of their allocated public display spots to promote candidates in a by-election directly or indirectly, or prejudicing certain candidates directly or indirectly, resulting in individual candidates obtaining unfair advantage. For instance, during a DC by-election in the past, there has been an actual case where the name and photo of a person appeared in a public display spot of an incumbent LegCo Member as an assistant to the Member and this person subsequently stood in the by-election. The relevant content was amended by the incumbent LegCo Member upon advice tendered by the RO.

³ The six DC by-elections include the 2010 Southern District Council Pokfulam by-election, the 2011 Yuen Long District Council Shap Pat Heung North by-election, the 2011 Tsuen Wan District Council Fuk Loi by-election, the 2012 Sha Tin District Council On Tai by-election, the 2013 Sha Tin District Council Tin Sum by-election and the 2013 Kwun Tong District Council Ping Shek by-election.

16. The above shows that although in general incumbent LegCo and DC members have observed the principle that no public display spots should be used for the purpose of promoting or prejudicing the candidacy of a candidate in a by-election, further consideration may need to be made on whether the existing relevant guidelines and arrangements⁴ are adequate in addressing the issue of whether public display spots allocated to incumbent LegCo or DC member may promote or prejudice the candidacy of a candidate in a by-election (such as using their allocated public display spots to promote candidates belonging to the same political party), so that the principle of fairness could be implemented more effectively.

17. If Members agree, we will discuss with concerned government departments to review the relevant guideline currently in force and take improvement measures as necessary.

Views Sought

18. Members are invited to express views on the recommendation to improve the existing arrangements for dealing with publicity materials at public display spots during DC by-elections, as set out in paragraphs 15 to 17 of this paper. We will at the same time consider adopting the same improved arrangements in the event that it is necessary to hold a LegCo by-election in future.

Constitutional and Mainland Affairs Bureau
Registration and Electoral Office

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⁴ Including the current arrangements of the LandsD, the HD and the LCSD for display of publicity materials