

Appendix VII

(Translation)

Kowloon City District Council By-election on 3 November 2002

Kai Tak Constituency

Electoral Affairs Commission

Public Censure Against

Mr LIU Sing-lee

for Repeated Unauthorised Display of Election Advertisements

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Complaints

The Electoral Affairs Commission (“EAC”) received 18 complaints alleging that Mr LIU Sing-lee, a candidate of the captioned by-election, displayed election advertisements at non-designated spots during the period from 2 October to 3 November this year.

The Incident

2. Chapter 4, titled “Display of Election Advertisements”, of the Guidelines on Election-related Activities in respect of the 1999 District Councils Election (hereinafter referred to as “the Guidelines”) published by the EAC on 13 September 1999 states that the Returning Officer (“RO”) will designate spots for the display of election advertisements in

the constituency for which he is responsible to enable candidates to conduct their publicity exercise in a fair manner. For designating these spots, the RO will take into consideration the suggestions and views from the candidates. After the close of nominations, when the number of contesting candidates will have been ascertained, the RO will allocate to the candidates the designated spots either by mutual consent of the candidates among themselves or by the drawing of lots.

3. Paragraph 17 of Chapter 4 of the Guidelines clearly states that the RO will obtain prior approval from the relevant authorities under s104A of Cap 132 and s 4 of Cap 28 for the candidates to display their election advertisements at the designated spots. Immediately after the allocation, the RO will provide the candidates with copies of the necessary written permission or authorisation required by the relevant legislation. A person displaying an election advertisement without the necessary written authorisation or consent commits an offence punishable by a fine of up to \$10,000 [s104A of Cap 132], which will also be counted towards his election expenses. Moreover, the candidate must deposit a copy of the written consent with the RO within 7 days after the display of the election advertisement concerned in accordance with s103 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation.

4. The EAC has received altogether 18 complaints against Mr LIU Sing-lee regarding the display of his election advertisements at non-designated spots. The locations at which Mr Liu illegally displayed his election advertisements are listed out below (the date shown in

brackets being the date on which the complaint was received):

Complaint No. 1 (2 October)

in front of the Hung Hom (3 Districts) Kaifong Association premises at Station Lane, Hung Hom

Complaint No. 2 (15 October)

junction of Ma Tau Kok Road and Pak Tai Street

Complaint No. 3 (17 October)

junction of Ma Tau Wai Road and Bailey Street

Complaint No. 4 (17 October)

junction of Ma Tau Kok Road and Pak Tai Street

Complaint No. 5 (21 October)

junction of Ma Tau Kok Road and Pak Tai Street

Complaints No. 6 - 8 (22 October)

junction of Ma Tau Kok Road and Pak Tai Street

Complaint No. 9 (23 October)

junction of Ma Tau Kok Road and Pak Tai Street

Complaint No. 10 (24 October)

at the minibus terminal in 59-63 Pak Tai Street

Complaints No. 11, 12 and 13

(24, 26 and 28 October respectively)

junction of Ma Tau Kok Road and Pak Tai Street

Complaint No. 14 (30 October)

(1) junction of Ma Tau Kok Road and Pak Tai Street; and

(2) junction of Mok Cheong Street and Pak Tai Street

Complaint No. 15 (30 October)

junction of Ma Tau Kok Road and Pak Tai Street

Complaint No. 16 (1 November)

junction of Ma Tau Kok Road and Pak Tai Street

Complaint No. 17 (3 November)

- (1) junction of Ma Tau Kok Road and Ma Tau Chung Road;
- (2) junction of Mok Cheong Street and Pak Tai Street;
- (3) junction of Ma Tau Kok Road and Pak Tai Street;
- (4) junction of Ma Tau Kok Road and Kowloon City Road; and
- (5) near Jubilant Place in Ma Tau Kok Road

Complaint No. 18 (3 November)

junction of Ma Tau Kok Road and Pak Tai Street

Warnings

5. The RO investigated and found all of the 18 complaints substantiated. With regard to complaints no. 1-12, the RO wrote to Mr LIU Sing-lee on 16 and 24 October and 1 and 2 November this year, informing him that the complaints had been referred to the enforcement authorities for follow-up action, and warning him that he had to observe the electoral regulations and the Guidelines and not to make breaches again; otherwise the EAC would step up action and issue a public censure against him.

Opportunity to defend

6. As Mr LIU Sing-lee continued breaching the rules on the display of election advertisements despite having received warnings, the EAC considered it imperative to issue a public censure against him for the sake of maintaining fairness in the elections. Before issuing the public censure, the EAC gave Mr Liu an opportunity to make

representations in accordance with s 6(4) of the Electoral Affairs Commission Ordinance and wrote to him on 27 November 2002, asking him to submit, on or before 30 November this year, written explanations or representations regarding all the complaints against him.

Mr LIU Sing-lee's response and explanations

7. Mr Liu responded to the EAC on 30 November 2002, giving the following explanations on the complaints lodged against him:

Complaints No. 1 and 3

Mr Liu pointed out that there was a number of publicity banners he had displayed in the Kowloon City District before the election period. But these were put up outside the Kai Tak constituency. He did not consider these banners as election advertisements. Nevertheless, for the sake of fairness, he removed the banners immediately. He believed that these two complaints came about because of his oversight and it was never his intention not to remove them.

Complaints No.2 and No. 4-16

Mr Liu said that the breaches were made by his campaign assistants, who were not familiar with the electoral rules. The election advertisements in question were immediately removed to comply with the rules every time they received the complaint. They never meant to breach the rules intentionally or disregard the rules.

Complaints No. 17 and 18

The two cases took place on the polling day. Since the day was hectic with busy electioneering activities, his campaign assistants might inadvertently made the breaches because they were too much committed to carrying out their duties.

Investigation Results and Justifications

8. The evidence gathered by the EAC reveals that:

Complaints No. 1 and 3

Paragraph 4.2 of the Guidelines states that an election advertisement includes any publicity material published for the purpose of promoting or prejudicing the election of any candidate in an election. Therefore, even if these publicity materials are put up before an election, they are election advertisements by their nature. To continue displaying or putting up these publicity materials during the election, will necessitate fulfilling the requirements set out in the Guidelines and regulations. Moreover, as stated by paragraph 4.24 of the Guidelines, a candidate who wishes to display his election advertisements outside his constituency should apply to the Chief Electoral Officer with reasons, after he has submitted his nomination paper. This is to enable the RO to include the spots outside the constituency concerned when allocating the

designated spots to the candidates. Mr Liu displayed election advertisements outside his constituency but did not submit any application beforehand. So he has breached the Guidelines.

Complaint No. 2 and Complaints No. 4 to 16

In his response, Mr Liu explained that the breaches came about because his campaign assistants were not familiar with the electoral rules. He said that his campaign assistants removed the publicity items as soon as they learnt that they had breached the rules. This showed that they had no intention to breach the rules. The EAC finds such explanations unacceptable as a candidate should be accountable for the acts of his campaign assistants and that the campaign assistants are not familiar with the electoral rules is not an excuse.

Complaints No. 17 and 18

The EAC finds that being heavily involved in the electioneering activities on the polling day should not be an excuse for candidates to breach the Guidelines. Under all circumstances, a candidate has the obligation to comply with the Guidelines and should not put the blame on his campaign assistants. In hectic situations, especially when the candidate has been warned several times for breaching the rules, there is a greater need than ever for the candidate to give his campaign assistants clear instructions, sufficient information and serious caution so that they will not breach the rules again.

The Censure

9. What disappoints the EAC most is that despite all the advice, warnings and the opportunities given, Mr Liu continued to disregard the importance of maintaining fairness in the election. His breaching the Guidelines even after having been warned is indeed inexcusable. It is the obligation of all candidates to comply with the Guidelines and no candidates should shirk their responsibilities to the others or their campaign assistants. The Guidelines would be rendered ineffectual and inexecutable if the candidates were not held responsible for any unfair acts done to the other candidates simply because the canvassing activities were left to be dealt with by their campaign assistants. The EAC is therefore of the opinion that a public censure is appropriate and due and takes this opportunity to issue this public censure.

(Signed)

(WOO Kwok-hing)

Chairman

Electoral Affairs Commission

13 December 2002