

Guidelines for District Council Election released today

The following is issued on behalf of the Electoral Affairs Commission:

The Electoral Affairs Commission (EAC) today (September 6) issued the Guidelines on Election-related Activities in respect of the District Council Election according to the Electoral Affairs Commission Ordinance (Cap. 541). The guidelines apply to the District Council ordinary election in November this year and District Council by-elections afterwards.

The guidelines cover two different aspects, namely, to explain in simple language the relevant provisions under the electoral legislation and to promulgate a code of conduct in election-related activities based on the fair and equal treatment principle, in order to ensure that public elections are conducted in an open, fair and honest manner.

"Election is a solemn matter. The electoral procedures are strictly sanctioned by the relevant electoral legislation. Persons who wish to run for an election and other stakeholders must understand and comply with the legislative requirements so as to avoid committing any criminal offence inadvertently," a spokesman for the EAC said.

Nomination of candidates is an important part of an election and has drawn great attention from the community during the consultation of the proposed guidelines. The guidelines have therefore explained in greater detail the relevant legislative requirements and the corresponding electoral arrangements. Under the existing legislation, a candidate nominated must satisfy the requirements in two parts, namely (1) the eligibility to be nominated as a candidate and (2) the requirements to be complied with by a nominated candidate (including making a declaration in the nomination form to the effect that the person will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region). Otherwise, he/she is not a validly nominated candidate.

In accordance with section 104 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F), a person who makes a false statement in the nomination form commits a criminal offence. To ensure that all candidates clearly understand the provisions of the Basic Law and the legal requirements and responsibilities involved in making the declaration, the EAC has prepared a Confirmation Form for signature by the candidates since the 2016 Legislative Council General Election, and has adopted the same arrangement in the various elections and by-elections (including the District Council by-elections) held thereafter.

The spokesman pointed out that the Confirmation Form is not part of the nomination form. It is an explanatory document reflecting the requirements under the existing law to remind candidates of the requirements of the

relevant legal provisions. A candidate may sign the Confirmation Form on a voluntary basis to confirm that he/she has understood the legal requirements.

The spokesman supplemented that according to the judgment on an election petition in relation to the 2016 Legislative Council General Election (HCAL 162/2016), the Court stated that "the EAC is entitled and empowered to issue the non-mandatory Confirmation Form". Furthermore, the judgement handed down by the High Court on two judicial review cases in relation to the Confirmation Form (HCAL 133/2016 and HCAL 134/2016) reiterated that "it is lawful for the EAC to ask a candidate to submit the Confirmation Form together with the Nomination Form on a voluntary basis but not as a mandatory requirement".

The spokesman reiterated that whether a candidate's nomination is valid or not is solely determined by the Returning Officer (RO) according to the legal requirements. The EAC is neither empowered nor involved in the making of such decision and would not provide any advice on the decision made by the RO. The EAC would not provide any guidelines to the RO for determining whether a candidate's nomination is valid or not. The EAC will only make practical arrangements for the election according to the list of validly nominated candidates determined by the RO. If any person is discontent about the RO's decision, he/she may lodge an election petition to question the result of the election in accordance with the law.

The EAC may appoint the Nominations Advisory Committees (NACs) to provide advice to prospective candidates and the ROs as to whether a prospective candidate is eligible to be, or is disqualified from being, nominated as a candidate at the District Council ordinary election. However, as stipulated in the law, the NACs are not empowered to advise on any matter relating to the requirements to be complied with by candidates under section 34 of the District Councils Ordinance (Cap. 547) (including the candidate's declaration to the effect that he/she will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region). Therefore, the advice provided by the NAC on a prospective candidate's eligibility to be nominated as a candidate does not reflect whether his/her nomination is valid or not.

In addition, the guidelines also explain clearly the legislative provisions on election expenses. Under section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (ECICO), election expenses mean the expenses in promoting or prejudicing the election of a candidate. The definition of "candidate" means a person who stands nominated as a candidate at an election and also means a person who, at any time before the close of nominations, has publicly declared an intention to stand for election before the close of nominations.

The spokesman pointed out that the setting of a maximum limit of election expenses is to ensure that the candidates compete on a level playing field within a reasonable level of expenditures. It is a criminal offence for a candidate to incur election expenses in excess of the prescribed maximum limit. Hence, the candidate must, in accordance with the law, submit an

election return after the election within the statutory period to rigorously declare all the election expenses incurred by him/her; otherwise, he/she commits an offence.

On the other hand, it is also reiterated in the guidelines that media should treat all candidates in accordance with the principle of fair and equal treatment in producing and publishing election-related programmes and reports. To facilitate the operation of the media, a definition of "candidate" is specially given in Chapter 10 of the guidelines, i.e. "a person whose nomination form has been received by the Returning Officer". The list of "candidates" concerned will be uploaded onto the relevant election website for media and public information.

"It should be emphasised that the definition of 'candidate' in the chapter of media reporting only aims to facilitate the operation of the media and is not a legal definition under any legislation. For compliance with the requirements on election advertisement, election expenses or other requirements under the ECICO, the definition of 'candidate' under section 2 of the ECICO must be followed," said the spokesman.

The spokesman urged those who intend to run for the election to read carefully the guidelines and the relevant electoral legislation, and strictly abide by the relevant legislation and guidelines. The guidelines can be downloaded from the EAC's website (www.eac.hk). They are also available at the Registration and Electoral Office and the Home Affairs Enquiry Centres of District Offices.