

DC Election candidate penalised for false claims of support

24 February 2014

A candidate of the 2011 District Council (DC) Election, charged by the ICAC, was today (Monday) fined \$15,000 at the Kowloon City Magistracy for publishing an election advertisement which included false claims of support and failed to meet certain requirements.

Edward Leung Wai-kuen, 57, earlier pleaded guilty to one count of engaging in illegal conduct to publish an election advertisement that included false claims of support, contrary to Section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO).

Leung also admitted another count of publishing an election advertisement that did not meet certain requirements, contrary to Section 34(4) of the ECICO.

In sentencing, Principal Magistrate Peter Law Tak-chuen remarked that if a candidate only obtained verbal consent of support without any written consent as required by the law, the candidate had to shoulder legal responsibility.

The court heard that Leung was a candidate in the King's Park Constituency of the Yau Tsim Mong District in the 2011 DC Election.

The election was held on November 6, 2011, with its nomination period running from September 15 to 28. On September 15, Leung submitted his nomination form to the Yau Tsim Mong District Office of the Home Affairs Department (HAD).

At the election, Leung obtained 1,045 votes and defeated other four contestants in the constituency. However, one of the defeated candidates filed an election petition challenging the result of the election on one of the grounds that Leung had breached Section 27 of the ECICO.

The court heard that on November 28, 2011, HAD received a complaint alleging that Leung had failed to obtain the written consent of support from 58 persons/organisations before publishing an election advertisement, namely a pamphlet, which included their names.

According to HAD, Leung only submitted one written consent of support to its office after publication of the pamphlet. Leung was required to submit a written reply by January 4, 2012.

On January 3, 2012, Leung tendered a written reply to HAD, in which he admitted that he had failed to obtain written consent of support from supporters. The case was subsequently referred to the ICAC for investigation.

When interviewed under caution by ICAC officers on January 16, 2012, Leung stated that he had obtained verbal consent from all 58 persons/organisations before publishing the pamphlet.

Leung also said he had only obtained four written consent of support, but failed to obtain the remaining written consent before the pamphlet was published by post, the court was told.

On June 29, 2012, Leung made an application to the Court of First Instance (CFI) for an order to relieve him from any penalties. But his application was rejected by CFI on January 17 last year.

On March 22 last year, after hearing, CFI allowed the election petition and ruled that Leung was not duly elected at the election, which subsequently led to a by-election held on October 27 last year.

ICAC enquiries established that 35 persons had not given prior written consent of support to Leung for including their names in the pamphlet before it was published.

The court also heard that Leung had failed to furnish two copies of the pamphlet to the returning officer within seven days after publishing the pamphlet in the election.

The prosecution was today represented by Senior Public Prosecutor Dominic Ngai, assisted by ICAC

officer Jennie Sum.

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區議會選舉候選人發布假稱獲支持 選舉廣告被判刑

2014年2月24日

一名二〇一一年區議會選舉候選人，發布假稱獲得支持及不符合某些規定的選舉廣告，早前被廉政公署拘控。被告今日(星期一)在九龍城裁判法院被判罰款一萬五千元。

梁偉權，五十七歲，早前承認一項在選舉中作出非法行為罪名，即發布一則稱獲得支持的選舉廣告，違反《選舉(舞弊及非法行為)條例》第27條。

梁亦承認另一項發布不符合某些規定的選舉廣告罪名，違反《選舉(舞弊及非法行為)條例》第34(4)條。

主任裁判官羅德泉在判刑時指出，候選人如只是取得支持者的口頭答應，但欠缺法律要求的書面同意，便需負上法律責任。

案情透露，梁是二〇一一年區議會選舉油尖旺京士柏選區的一名候選人。

該選舉於二〇一一年十一月六日舉行，提名期為九月十五日至九月二十八日。被告於九月十五日向民政事務總署轄下的油尖旺民政事務處遞交其提名表格。

梁在該選舉中獲得一千零四十五票，擊敗該選區的其他四名參選人。不過，其中一名落敗候選人其後提出選舉呈請，要求推翻選舉結果，其中一項理據是梁違反《選舉(舞弊及非法行為)條例》第27條。

案情透露，民政事務總署於二〇一一年十一月二十八日接獲投訴，指稱梁在發布一則收納五十八人/組織的姓名或名稱的選舉廣告，即一份小冊子前，未有取得該批人/組織的支持同意書。

根據民政事務總署的記錄，梁只在發布該小冊子後，向該處遞交了一份支持同意書。梁被要求於二〇一二年一月四日或之前提交書面回覆。

梁於二〇一二年一月三日向民政事務總署提交書面回覆，承認未能取得有關支持者的支持同意書。有關案件其後被轉介至廉署以作調查。

廉署人員於二〇一二年一月十六日與梁會談，梁在警誡下表示，他在發布有關小冊子前，曾取得所有五十八人/組織的口頭同意。

梁又表示，他只能在有關小冊子以郵寄方式發布前，從有關人士/組織取得四份支持同意書，至於其餘的支持同意書卻未能取得。

梁於二〇一二年六月二十九日，向原訟法庭申請命令以寬免任何刑罰，但其申請於去年一月十七日被原訟法庭駁回。

去年三月二十二日，原訟法庭在聆訊後批准有關選舉呈請，並裁定梁並非正式當選，而有關補選則於去年十月二十七日

舉行。

廉署調查確定，梁在發布該小冊子前，未能從三十五人取得事先支持同意書，以收納他們的姓名在小冊子內。

案情又透露，梁未能在發布小冊子的七天內，向有關的選舉主任提供該小冊子的兩份文本。

控方今日由高級檢控官倪振邦代表出庭，並由廉署人員岑愛慈協助。

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