Support Clean Rural Elections

Reminder to Candidates on Election Return

Questions and Answers

Explanations of the legal requirements offered in this document are broad and often in summary form. Candidates and their election helpers are advised to refer to the text of the legislation and seek independent legal advice in case of doubt. They should also study in detail the relevant legislations and the guidelines issued by the Electoral Affairs Commission to avoid contravention of the related laws and regulations. The Independent Commission Against Corruption will accept no liability or responsibility for any loss caused to any person acting or refraining from acting in any way as a result of any material contained in this document. Throughout this document, the "male" pronoun is used to cover references to both the male and female. No gender preference is intended.

Candidates of rural representative elections should also make reference to the "Guide to Return and Declaration of Election Expenses and Election Donations" issued by the Home Affairs Department when filling in the election return.

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Q1: In order to save expenses, a candidate reuses old materials (e.g. publicity boards) that had been used at previous elections in his electioneering activities. Should the costs of these materials be regarded as election expenses? If the candidate has borrowed some of his friends' vehicles for use in his electioneering activities, how should he declare the relevant expenses and donations?

A1:

- A candidate should make sure that if the old materials are reused for the purpose of promoting his election, the cost incurred in refurbishing as well as the estimated value of the old materials (e.g. the value after depreciation) have to be counted towards the candidate's election expenses. The above estimated value and the cost incurred in refurbishing the old materials should be listed separately and set out clearly in the election return. If the cost incurred for refurbishing the old materials is $500 or above, the relevant invoices and receipts issued by the goods or service providers should be submitted with the election return so as to comply with the requirements of section 37(2)(b)(i) of the ECICO.
- According to section 2 of the ECICO, any goods or service (excluding voluntary service) provided to a candidate for the purpose of promoting the election of the candidate or prejudicing the election of other candidates is an election donation. Its value is also an election expense. Therefore, the candidate's use of his friends' vehicles free of charge for promoting his election is an election donation and its value is also an election expense. The candidate should simultaneously set out the market rent of the relevant vehicles as an election expense and an election donation in his election return. If the value of each donation is more than $1,000, the candidate concerned must, pursuant to the requirements of sections 19 and 37(2)(b)(ii) of the ECICO, issue a receipt to each of the donors (i.e. the friends concerned) specifying the name and address of the donor and particulars of the donation. Copies of the relevant receipt must also be submitted with the election return.
- The other relevant expenses incurred while the candidate has used the above vehicles for his electioneering, such as gasoline fees and vehicle decoration costs, should be counted as his election expenses and clearly set out in his election return. If the expense of any item is $500 or above, the election return must be accompanied by an invoice and receipt issued by the goods or service providers (e.g. gasoline supplier, supplier of decoration materials for vehicles, etc.) giving particulars of the expense (including date, details and costs of the goods or services, information of the organization or person providing the goods or services, and proof supporting the receipt of the relevant payment in full by the goods and service provider, such as name and signature of the recipient, or the stamp of the receiving organization or signature of its authorized person).
- It is important to note that relevant invoices and receipts should be issued by the goods or service providers. Invoices and receipts issued by the candidate himself, the personal office of the candidate or any person purchasing the expense item on behalf of the candidate, and the receipt for topping up the value of electronic stored value cards (e.g. Octopus Cards) do not meet the statutory requirements.

Q2: Will an elected candidate of a rural election commit an offence for hosting a celebration dinner to treat his election helpers and the villagers? Should the expenses incurred for the dinner be counted towards his election expenses? On the other hand, should the relevant costs for displaying publicity boards containing "thank you" messages in the village or sending electors "thank you" letters after the announcement of the election result be counted as election expenses?

A2:

- If the dinner is hosted solely for the purpose of celebrating the election of a candidate after he is elected and is in no way related to the promotion of his election, the relevant expenses incurred need not be counted towards his election expenses.
- However, if the dinner is hosted to honour the candidate's promise made previously to his election helpers, for instance, they would be rewarded with a dinner for their electioneering assistance after the election, the hosting of the dinner is related to the purpose of promoting his election and the expenses of the dinner should be counted towards his election expenses and be clearly set out in his election return in accordance with the law.
- If the dinner is hosted as a reward for the electors' having voted for the candidate, the candidate will contravene section 12 of the ECICO. If the electors accept the dinner as a reward for having voted for the candidate, they will also violate the ECICO.
- Since the publicity boards or the letters containing "thank you" messages are displayed or sent out after the announcement of the election result and do not serve the purpose of promoting the election of the above candidate or prejudicing the election of other candidates, the relevant costs are not required to be counted towards the candidate's election expenses.

Q3: A candidate has asked his friends to assist in his electioneering matters voluntarily and used the materials provided by them and other organizations. How should he count the relevant expenses and donations? Can the unused amount of these donations be appropriated by the candidate for providing community services in the future?

A3:

- If the candidate's friends handle the electioneering matters for the candidate in their own time, voluntarily, personally and free of charge, the service they rendered is regarded as "voluntary service" according to section 2 of the ECICO, and is not regarded as an election expense or an election donation. Therefore, the candidate is not required to include such service cost as his election expense or to set it out in his election return.
- The candidate has to include other relevant costs incurred incidental to the electioneering activities so arranged by his friends mentioned above, such as costs of buying publicity materials, postage of mailing election advertisements, etc. in his election expenses and clearly set out such costs, which do not fall within the definition of "voluntary service", in his election return. Section 37(2)(b)(i) of the ECICO states that a candidate must ensure that the election return is accompanied by an invoice and a receipt of each election expense of $500 or more. They should be issued by the goods or service providers (e.g. supplier of publicity materials, supplier of postage service, etc.) giving particulars of the expense.
- If the materials provided by the candidate's friends or other organizations are given for the purpose of promoting the election of the candidate or prejudicing the election of other candidates, they are regarded as election donations. The same should be clearly set out by the candidate in the election return. If the value of an election donation is more than $1,000, according to sections 19 and 37(2)(b)(ii) of the ECICO, a candidate is required to issue a receipt to the donor. A copy of the receipt must also be submitted with the election return. As the aforesaid candidate has used the said materials for his electioneering, he is also required to include the values of the materials in his election expenses and set out clearly such expenses in his election return.
- Section 18 of the ECICO provides that if a candidate or other person uses election donations for a purpose other than meeting, or contributing towards meeting, the candidate's election expenses, or for a purpose other than promoting the election of the candidate or prejudicing the election of another candidate, he engages in corrupt conduct at an election.
- If the above election donations have not been used for election purpose, the candidate must, pursuant to the requirements of sections 19 and 37(2)(b)(iii) of the ECICO, ensure that the relevant election donations are given to a charitable institution or trust of a public character chosen by the candidate before the submission of his election return. He is also required to submit a copy of the receipt issued by the recipient organization together with his election return.
- Hence, the candidate must not use his unused election donations for meeting expenses other than election expenses, such as those incurred for community services to be provided by him in the future.