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Secretariat
Committee on the Review of Post-service Outside Work
for Directorate Civil Servants
10th Floor
West Wing
Central Government Offices
11 Ice House Street
Central
Hong Kong

公共及社會行政學系
Department of
Public & Social Administration

Dear Sir/ Madam,

We have previously written to the Committee (on 5 February 2009) concerning the issues involved in the review. The views expressed in this letter should be regarded as supplementary to those comments. We follow the list of issues in the consultation document (p.87-89) together with some additional observations on the coverage of relevant concerns in the document.

Issue 1: Underlying Principles of the Control Regime

We agree with the quotation at the end of Chapter 2 (p.8) that there is a need for a balance between the public interest and protection of individual rights. The issue is where the line should be drawn. Our view is that the public interest is the overriding concern and that it should take precedence without infringing, as far as is possible, upon individual rights. In jurisdictions, such as Australia, where individual rights have been given greater precedence over the public interest, there have been numerous cases of ethical violations which have probably reduced trust in government. A control regime focusing principally on individual rights suffers from the difficulty that it cannot easily prevent conflicts of interest which offend the public. In the Australian case, for example, a Minister of Defence was able to leave office and immediately join an armaments' company despite public outrage.

Issue 2: Is the current policy objective appropriate?

We agree with the policy objective that avoidance of suspicion or perception of deferred reward is an important objective but we feel that inappropriate use of information obtained during previous government employment or lobbying for preferred advantages for future employers should also be included.

We agree with the sentiment of the policy objective focused on utilizing the skills of former public servants but we feel that it could be better worded. We suggest that it should be phrased as "maintaining the attractiveness of the civil service as a career and supporting the productive use of the abilities of former public servants."

Issue 3: Periods of Restriction

Government positions involve a variety of different kinds of access to different kinds of information. It is therefore unlikely that a single period of restriction will adequately fit all cases. However, we would still hold it to be desirable that the present periods of restriction should continue to apply which would probably serve to meet requirements in most cases.

Our principal concern is those cases in which the information obtained in office is such that it may not be time-sensitive and that the individual would find it almost impossible to separate knowledge obtained in office from decision-making for any future commercial organization and possibly for any not-for-profit organization. In this context, Lord MacLennan of Rogart, a member of the British advisory committee on post-public employment, has argued that there are some positions in the civil service which should preclude their holders from taking up any other kind of future employment for pecuniary gain because they know too much and have access to information which is not necessarily time-sensitive. We agree with him. We think, for example, that it would be highly undesirable for a former Commissioner of Police or a Commissioner for the ICAC to take up future employment given the sensitive nature of their positions. We suggest that such positions should form a separate category which would include all former Principal Officials and Deputy Heads of Bureaus. Such individuals should be barred from holding office in commercial organizations but would be permitted to hold office in other government or statutory bodies subject to the approval of the Advisory Committee.

Issue 4: Past Contract Dealings of Former Directorate Civil Servants

To meet the policy objective of avoidance of perception of 'deferred rewards', it is essential that the past contract dealings of directorate civil servants should be disclosed when they apply to take up post-public employment.

Issue 5: Current work restrictions

We believe that current restrictions are appropriate. However, we also feel that misunderstandings could be avoided if the present process included a more informal dimension in which the civil servant was encouraged to seek advice before submitting an application for future employment and that they were made more aware that the changing nature of their future employment might potentially involve them in conflict of interest situations. This seems to be particularly true in commercial employment. Civil servants in Hong Kong do apparently seek advice but they may also take the rules to be their sole source of guidance and the rules cannot cover everything. We were struck, in the course of our research on post-public employment in Britain, by the fact that differences could often be easily resolved by informal mediation and that positive advice to the civil servant on what need to be included in the application and what follow-up action was necessary usually resulted in outcomes that were positive for the civil servant.

Issue 6: Changes to the Composition of the Advisory Committee

We wrote about this at some length in our previous letter to the Secretariat. For ease of reference, we attach the relevant passage:

The Advisory Committee on Post-service Employment of Civil Servants, is presently composed largely of business people. This is inappropriate because the issues before the Committee relate to whether the civil servant is likely to be conflict with previous practice. The most qualified people to decide on that are likely to be other high profile retired civil

servants and retired politicians. Business people should only be included if they have long records of public service.

The Committee should be given a much higher profile than it currently has. The situation at present is that the Civil Service Bureau, which might have its own conflict of interest issues in relation to the person seeking post public employment, does most of the work which is then apparently rubber-stamped by the Committee. The Committee needs to act autonomously and, to some degree independently of, the Civil Service Bureau. It needs to do so because one of the important missing elements in the existing set-up is that there is limited public confidence in the process. An independent, autonomous Committee would help to improve that situation.

Issue 7: Changes to Pension Suspension Arrangements

We have some sympathy with the view of many civil servants that their pension entitlements are something for which they have worked and to which they are entitled regardless of their future post-public employment occupations. We regard the practice of paying a pension to a former civil servant employed by a private company but suspending the pension payable to a former civil servant working for a statutory body as inequitable. However, we understand the circumstances under which this practice has arisen. The government has always regarded statutory bodies as an extension of its own operations. It maintains control over the recruitment and selection process of senior personnel appointed to statutory bodies which has resulted in those bodies recruiting disproportionately from among the ranks of senior public servants. While there is no Commissioner of Public Standards or some equivalent office in Hong Kong to ensure equitable and fair recruitment procedures to senior positions in public bodies, it seems appropriate that former civil servants who benefit from the present unacceptable practices should have their pensions suspended when they take up employment in those organizations. We feel, however, that there is room for some leeway here and that a distinction should be drawn between part-time and full-time employment. We believe, for example, that civil servants who work in universities on a part-time basis should be fully remunerated for their services without having their pensions suspended.

Issue 8: Sanctions under the current control regime

The consultation document notes that there may be various forms of legal redress against a former public servant who flouts the rules. Together with possible sanctions relating to the payment of pensions, we regard these as adequate sanctions and see no need for further regulatory measures.

Issue 9: Disclosure

- (a) We see no reason why junior directorate level officers should not be covered by the rules. They have access to confidential information and are involved in contractual negotiations.
- (b) In our previous submission, we addressed what we see as a critical deficiency: the lack of transparency in the present system. There have been arguments expressed, which are mentioned in the consultation document, that a greater degree of transparency would infringe upon the individual's right to privacy. We do not accept that argument. Carried to an extreme, it would mean that every court or tribunal decision involving individuals would have to be held *in camera* and that the names of individuals could not be released. Moreover, in jurisdictions such as Britain where information relating to decisions on individuals has been released, there have, as far as we know, been no complaints that this violates an individual's right to privacy. All that is required to improve the present

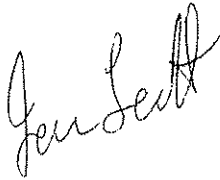
situation is that the name and position of the former officer, the position applied for, the decision of the Committee and the conditions, if any, attached by the Committee should be made public in the reports of the advisory committee. We believe that the greater provision of information by the Committee would enhance its standing and would help to increase the legitimacy of its decisions. We believe that these considerations far outweigh the spurious argument that disclosure violates privacy.

Other issues

We felt that the Consultation Document paid insufficient attention to the issue of inappropriate use of privileged information by former civil servants. We are referring here to what are sometimes called 'trade secrets' which a former public servant may take to the private sector or even to a statutory body and which may be used to obtain an advantage for the new organization. The claim is that most of this information is time-sensitive. That may be so but some information is not time-sensitive. It is difficult to patrol this area but we feel that the Committee needs to make a statement –perhaps as a policy objective under Issue 2 – that such practices are unethical.

We also felt that more attention could have been made to the issue of lobbying. The requirement listed on p.19 of the consultation is a step in the right direction. We believe, in addition, that, following the Canadian provisions, former public servants should be specifically prohibited from lobbying their former departments for a period of three years.

Yours sincerely,



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