
J.Y. Interpretation No. 3 (May 21, 1952)*

The Control Yuan's Power to Introduce Statutory Bills Case

Issue

Does the Control Yuan have the power to introduce statutory bills to the Legislative Yuan on matters within its authority?

Holding

[1] The Constitution does not provide explicitly whether the Control Yuan may introduce statutory bills to the Legislative Yuan on matters within its authority. Yet Article 87 of the Constitution authorizes the Examination Yuan to introduce statutory bills to the Legislative Yuan on matters within its authority. Some argue that the Control Yuan may not introduce bills to the Legislative Yuan, based upon such Latin maxims as “*casus omissus pro omisso habendus est*” (“a case omitted is to be held as intentionally omitted”) and “*expressio unius est exclusio alterius*” (“the expression of one thing is the exclusion of another”). However, these maxims do not apply to all circumstances. They are not applicable if there are apparent omissions or there is room for alternative interpretations of related statutory provisions. Such omissions can be found in our Constitution. For example, concerning those constitutional organs instituted through elections, such as the Delegates of the National Assembly and the Members of the Legislative Yuan, Article 34 and Article 64, Paragraph 2 of the Constitution expressly decree that the elections “shall be prescribed by statute.” Yet the Constitution does not contain similar provisions with regard to the election of the Members of the Control Yuan. It is apparent that such an

* Translation and Note by Jimmy Chia-Hsin HSU

omission shall not be construed to mean that the election of the Members of the Control Yuan is not to be prescribed by statute. Nor may it be considered to be omitted or excluded deliberately.

[2] Article 71 of the Constitution, as Article 73 in the Draft Constitution, initially provided, “At the meetings of the Legislative Yuan, the Premier of the Executive Yuan and the heads of all ministries and commissions may be present to give their views.” At the Constitutional Convention, the Delegates of the Constitutional Convention proposed replacing “the Premier of the Executive Yuan” with “the heads of various Yuans concerned.” The reason for such change was that “[on] statutory bills within the competences of the Examination Yuan, the Judicial Yuan and the Control Yuan, the heads of various Yuans concerned may be present at the Legislative Yuan meetings to give their views.” This proposed change was adopted by the Constitutional Convention and then became the current text. It is hence evident that “the heads of various Yuans concerned” include the heads of all the Yuans except the Legislative Yuan. Also, the Delegates of the Constitutional Convention proposed deletion of a provision from Article 87 of the Constitution, originally Article 92 in the Draft Constitution. The deleted provision provided, “Regarding statutory bills introduced by the Examination Yuan on matters within its authority, the Secretary-General of the Examination Yuan shall attend the Legislative Yuan to provide explanations of the bills.” The reason for deletion was:

[O]n matters within its authority, the Examination Yuan has the power to introduce statutory bills to the Legislative Yuan, and so do other Yuans. If it is necessary for someone to attend the Legislative Yuan to explain the bills, the head of the Yuan in charge for such bills or his/her authorized representative may attend the Legislative Yuan. It is not necessary to provide that the Secretary-General shall be present

in the Constitution.

It was apparently agreed among the Delegates of the Constitutional Convention that all the Yuans have the power to introduce bills. After examining the Records of the Constitutional Convention and all the propositions introduced by the Delegates of the Constitutional Convention, we found no objection or conflict of opinion on this issue. Nor was there any other particular reason suggesting that the Examination Yuan alone, to the exclusion of the Judicial Yuan and the Control Yuan, wield the power to introduce bills.

[3] The Preamble of the Constitution states that this Constitution is created based upon the teachings bequeathed by Dr. Sun Yat-sen, who founded the Republic of China. The Five Yuans were instituted according to Article 53 (Executive), Article 62 (Legislative), Article 77 (Judicial), Article 83 (Examination), and Article 98 (Control) of the Constitution. Each Yuan is the highest governmental branch of State discharging its duties independently. Each is equal to the other Yuans within the scope of its respective powers, as originally bestowed by the Constitution. On matters within their respective authorities, the Control Yuan and the Judicial Yuan may introduce bills to the Legislative Yuan, out of similar business necessity to that of the Examination Yuan. If the Examination Yuan may introduce statutory bills to the Legislative Yuan on matters within its authority, there is no reason to claim that the Judicial Yuan and Control Yuan's powers to introduce statutory bills to the Legislative Yuan on matters within their respective authorities were purposefully omitted or intentionally precluded in the Constitution. It is the Legislative Yuan alone that wields the power to deliberate on and approve the statutory bills. Yet it is neither unreasonable nor violative of any law for other Yuans, being more familiar with matters within their respective authorities, to introduce statutory bills to the Legislative Yuan and to provide their opinions on respective legislation.

[4] In conclusion, in accordance with Article 87 of the Constitution, the Examination Yuan may introduce statutory bills to the Legislative Yuan. In light of the principle of the Five Powers being separate and equal and of the constitution-making history of Article 87 and Article 71, it is hereby declared that it is consistent with the spirit of the Constitution that the Control Yuan may introduce statutory bills to the Legislative Yuan on matters within its authority.

Background Note by the Translator

The petitioner, the Control Yuan, drafted the Control Act and the Organization Act of the Control Yuan Committees. The Control Yuan then submitted the statutory bills at various times to the Legislative Yuan and requested both bills be deliberated and decided on by the latter Yuan. However, the Legislative Yuan returned the bills on the grounds that there was no textual basis in the Constitution for the Control Yuan to introduce statutory bills to the Legislative Yuan. Then the petitioner, according to Article 44 of the Constitution, requested the President of the Republic to summon the heads of the three Yuans concerned, namely the Legislative Yuan, the Judicial Yuan, and the Control Yuan. After negotiations, an agreement was reached that this case would be best resolved by the Constitutional Court. Based on this agreement, the Control Yuan filed a petition to the Constitutional Court in July 1948 for constitutional interpretation. In May 1952, the Constitutional Court issued this Interpretation.

There is no reasoning in this Interpretation, as J.Y. Interpretations Nos. 1 to 79 did not include any further reasoning other than holdings.