J. Y. Interpretation No.394（January 5, 1996）*

ISSUE: Is it constitutional for the Regulation on the Supervision of the Construction Business and the Ministry of the Interior directive to provide for punitive administrative action against construction companies?

RELEVANT LAWS:

Article 23 of the Constitution（憲法第二十三條）; Article 15, Paragraph 2 of the Construction Act（建築法第十五條第二項）; Article 31, Paragraph 1, Subparagraph 9 of the Regulation on the Supervision of the Construction Business（營造業管理規則第三十一條第一項第九款）; Ministry of the Interior Directive (74) Tai-Nei-Ying-Tze No. 357429 (December 17, 1985)（內政部七十四年十二月十七日（七四）台內營字第三五七四二九號函）; J. Y. Interpretation Nos. 313 & 367.（司法院釋字第三一三號、第三六七號解釋）.

KEYWORDS:

act in breach of duty under administrative law（違反行政法上義務之行為）, punitive administrative action（懲罰性行政處分）, restraint on the right of the people（人民權利限制）, principle of reservation of law（法律保留原則）, principle of clear and specific authorization（授權明確性原則）, general authorization（概括授權）, interpretation of the law as a

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whole（法律整體解釋）, relevant meaning of the law as a whole（法律整體之關聯意義）, details and technical matters（細節性及技術性事項）, construction industry（營造業）, constituent elements（構成要件）, legal consequence（法律效果）, cancellation of certificate of registration（撤銷登記證書）.**

HOLDING: The Construction Act, by providing in Article 15, Paragraph 2, that "regulations governing the construction industry shall be established by the Ministry of the Interior," enables in general terms the establishment of regulations to govern the construction industry. While no specific prescription is made in such enabling clause with respect to the matters authorized and the scope of authorization, it may be presumed from the interpretation of the law as a whole that it is the intention of the legislators to enable the competent authority to establish, as it deems appropriate from the view of administrative specialization, rules and ordinances to regulate such matters as the requisites for the registration of construction companies, code of conduct of con-

解釋文：建築法第十五條第二項規定：「營造業之管理規則，由內政部定之」，概括授權訂定營造業管理規則。此項授權條款雖未就授權之內容與範圍為明確之規定，惟依法律整體解釋，應可推知立法者有意授權主管機關，就營造業登記之要件、營造業及其從業人員之行為準則、主管機關之考核管理等事項，依其行政專業之考量，訂定法規命令，以資規範。至於對營造業者所為裁罰性之行政處分，固與上開事項有關，但究涉及人民權利之限制，其處罰之構成要件與法律效果，應由法律定之；法律若授權行政機關訂定法規命令予以規範，亦須為具體明確之規定，始符憲法第二十三條法律保留原則之意旨。營造業管理規則第三十一條第一項第九款，關於「連續三年內違反本規則或建築法規規定達三次以上者，由省

struction business operators and persons engaged in such business, and the performance appraisement and supervision to be carried out by the competent authority. Punitive administrative actions to be taken against construction companies, which, although related with the foregoing matters, do involve, nonetheless, restraints to be imposed on the right of the people, must therefore be made subject to prescription by law so far as the elements required for imposing such punishment and the legal consequences of the punishment are concerned. If the law authorizes administrative agencies to establish regulatory rules or ordinances for such purpose, the authorization must be clear and specific so as to be conformable with the essence of the principle of reservation of law (Gesetzesvorbehalt) embodied in Article 23 of the Constitution. It is prescribed by the Regulation on the Supervision of the Construction Business, Article 31, Paragraph 1, Subparagraph 9, that "a construction business which has acted in violation of the Regulation or any construction law three times within a period of three consecutive years may be pun-

（市）主管機關報請中央主管機關核准後撤銷其登記證書，並刊登公報」之規定部分，及內政部中華民國七十四年十二月十七日（七四）臺內營字第三五七四二九號關於「營造業依營造業管理規則所置之主（專）任技師，因出國或其他原因不能執行職務，超過一個月，其狀況已消失者，應予警告處分」之函釋，未經法律具體明確授權，而逕行訂定對營造業者裁罰性行政處分之構成要件及法律效果，與憲法保障人民權利之意旨不符，自本解釋公布之日起，應停止適用。

ished by cancellation of its certificate of registration subject to approval to be given by the central competent authority upon a report submitted by a provincial (or municipal) competent authority, and notice of such cancellation shall be published in the government gazette" and by the Ministry of the Interior Directive (74) Tai-Nei-Ying-Tze No. 357429 (December 17, 1985) that "where the chief (or full-time) technician employed by a construction company under the Regulation on the Supervision of the Construction Business is unable to perform his duties for a period of over one month due to being abroad or any other reason and the circumstance is no longer in existence, the company shall be subject to disciplinary admonition." Such provisions, in the absence of clear and specific authorization granted by law, dictating elements and legal consequences for punitive administrative action to be taken against construction companies, are against the Constitutional intention of protecting the right of the people, and must cease to be operative as of the date of issue of this Interpretation.

REASONING: A punitive administrative action taken against a person for an act in breach of his duty under administrative law involves a restraint on his right, and the constituent elements required for and the legal consequence of such punishment must be prescribed by law. Where the law authorizes the establishment of supplementary rules in the form of administrative ordinances with respect to such constituent elements, such authorization must be made in a clear and specific manner insofar as the substance and scope of such authorization is concerned, before an administrative ordinance may be issued on the basis of such authorization, so as to be conformable with the essence of Article 23 of the Constitution whereby the right of the people may be restrained by prescription of law. (See our Interpretation No. 313.) Thus, to conform to the principle of reservation of law (Gesetzesvorbehalt), all matters related to restraint to be imposed on the freedom or right of the people must be regulated either by law or by ordinances issued by authorization of law. It follows that where the law authorizes the issue of

解釋理由書：對於人民違反行政法上義務之行為科處裁罰性之行政處分，涉及人民權利之限制，其處罰之構成要件及法律效果，應由法律定之。若法律就其構成要件，授權以命令為補充規定者，授權之內容及範圍應具體明確，然後據以發布命令，始符憲法第二十三條以法律限制人民權利之意旨，本院釋字第三一三號解釋可資參照。準此，凡與限制人民自由權利有關之事項，應以法律或法律授權命令加以規範，方與法律保留原則相符。故法律授權訂定命令者，如涉及限制人民之自由權利時，其授權之目的、範圍及內容須符合具體明確之要件；若法律僅為概括授權時，固應就該項法律整體所表現之關聯意義為判斷，而非拘泥於特定法條之文字；惟依此種概括授權所訂定之命令祇能就執行母法有關之細節性及技術性事項加以規定，尚不得超越法律授權之外，逕行訂定制裁性之條款，此觀本院釋字第三六七號解釋甚為明顯。

ordinances involving restraint to be imposed on the freedom or right of the people, the purpose, scope and substance of such authorization must be clear and specific; and where the law grants general authorization, the ordinances issued by such general authorization of law may, aside from taking into consideration the relevant meaning expressed by the law as a whole rather than adhering rigidly to the language of any particular clause thereof, set forth therein only such details and technical matters as relating to the implementation of the enabling statute and shall not go beyond the scope of authority granted by the law by setting forth therein any punitive clause. This has been made distinctly clear in our Interpretation No. 367.

The Construction Act, by providing in Article 15, Paragraph 2, that "regulations governing the construction industry shall be established by the Ministry of the Interior," enables in general terms the establishment of regulations to govern the construction industry. While no specific prescription is made in such enabling

建築法第十五條第二項規定：「營造業之管理規則，由內政部定之」，概括授權內政部訂定營造業管理規則。此項授權條款並未就授權之內容與範圍為明確之規定，惟依法律整體解釋，應可推知立法者有意授權主管機關，就營造業登記之要件、營造業及其從業人員之行為準則、主管機關之考核

clause with respect to the matters authorized and the scope of authorization, it may be presumed from the interpretation of the law as a whole that it is the intention of the legislators to enable the competent authority to establish, as it deems appropriate from the view of administrative specialization, rules and ordinances to regulate such matters as the requisites for the registration of construction companies, code of conduct of construction business operators and persons engaged in such business, and the performance appraisement and supervision to be carried out by the competent authority. The provision of the Regulation on the Supervision of the Construction Business, Article 30, Paragraph 1, Subparagraph 11, as amended by the Ministry of the Interior on May 11, 1983 (changed to Article 31, Paragraph 1, Subparagraph 9, in the amended version of April 30, 1986, and unchanged to date) that "a construction business which has acted in violation of the Regulation or any construction law three times within a period of three consecutive years may be punished by cancellation of its certificate of registration sub-

管理等事項，依其行政專業之考量，訂定法規命令，以資規範。內政部於中華民國七十二年五月十一日修正發布之營造業管理規則第三十條第一項第十一款（七十五年四月三十日修正條次為第三十一條第一項第九款，迄至現行規則規定之條次相同），關於「連續三年內違反本規則或建築法規規定達三次以上者，由省（市）主管機關報請中央主管機關核准後撤銷其登記證書，並刊登公報」之規定，及內政部七十四年十二月十七日（七四）臺內營字第三五七四二九號關於「營造業依營造業管理規則所置之主（專）任技師，因出國或其他原因不能執行職務，超過一個月，其狀況已消失者，應予警告處分」之函釋，雖係基於公共利益之考量，屬行政主管機關行使監督權之範疇；但已涉及人民權利之限制，揆諸前開說明，仍有法律保留原則之適用。蓋「撤銷登記證書之處分」，係指對於違反管理規則所定義務之處罰，將其已享有之權益，予以不利之處分；而警告處分既發生撤銷登記證書之法律效果，亦屬行政處罰種類之一，均應以法律或法律具體明確授權之規定為依據，方符憲法保障人民權利之意旨。

ject to approval to be given by the central competent supervising authority upon a report submitted by a provincial (or municipal) competent authority, and notice of such cancellation shall be published in the government gazette" and the Ministry of the Interior directive (74) Tai-Nei-Ying-Tze No. 357429 (December 17, 1985) that "where the chief (or full-time) technician employed by a construction company under the Regulation on the Supervision of the Construction Business is unable to perform his duties for a period of over one month due to being abroad or any other reason and the circumstance is no longer in existence, the company shall be subject to disciplinary admonition." Such clauses, albeit designed for the public interest and are within the scope of the supervisory power of the competent administrative agency, do involve restraints on the right of the people, to which the principle of reservation of law is applicable as we have explained above. It must be pointed out that the "punishment of cancellation of the certificate of registration" is a punishment for breach of duty defined by said regulations in the form of a penalty detri-

mental to the right and interest already acquired by the violator, and the disciplinary admonition, which leads to the legal consequence of cancellation of the certificate of registration, is also a type of administrative penalty, and that both must be based either on law or on clear and specific authorization of law to be conformable with the intent of the Constitution in safeguarding the right of the people.

In conclusion, Article 15 of the Construction Act only enables the establishment of the Regulation on the Supervision of the Construction Business, without granting any authority to cancel the certificate of registration, and the elements required for and the method of punishment for other acts in breach of duty are explicitly prescribed by Article 85 and Article 95 of the Act. Therefore, the Regulation on the Supervision of the Construction Business, Article 31, Paragraph 1, Subparagraph 9, and the Ministry of the Interior directive (74) Tai-Nei-Ying-Tze No. 357429 (December 17, 1985), in the absence of clear and specific authorization

綜上所述，建築法第十五條僅概括授權訂定營造業管理規則，並未為撤銷登記證書之授權，而其他違反義務應予處罰之構成要件及制裁方式，該法第八十五條至第九十五條已分別定有明文，是上開營造業管理規則第三十一條第一項第九款及內政部七十四年十二月十七日（七四）臺內營字第三五七四二九號函，均欠缺法律明確授權之依據，逕行訂定對營造業裁罰性行政處分之構成要件及法律效果，與憲法保障人民權利之意旨不符，自本解釋公布之日起，應停止適用。

granted by law, dictating elements and legal consequences for punitive administrative action to be taken against construction companies, are in conflict with the Constitutional intention to protect the right of the people, and must cease to be operative as of the date of issue of this Interpretation.