

J. Y. Interpretation No.401 ( April 26, 1996 ) \*

**ISSUE:** Does the privilege of immunity conferred by Articles 32 and 73 of the Constitution upon the elected representatives for opinions expressed and votes cast whenever in session extend to criminal, civil and administrative liability possibly arising therefrom, but not including the recall taken by their constituencies?

**RELEVANT LAWS:**

Articles 25, 32, 62, 73 and 133 of the Constitution ( 憲法第二十五條、第三十二條、第六十二條、第七十三條、第一百三十三條 ) ; Article 69 of the Public Officials Election and Recall Act ( 公職人員選舉罷免法第六十九條 ) .

**KEYWORDS:**

delegates of the National Assembly ( 國民大會代表 ) , members of the Legislature ( 立法委員 ) , suffrage rights ( 參政權 ) , right of recall ( 罷免權 ) , privilege of immunity ( 免責權 ) .\*\*

**HOLDING:** The privilege of immunity, in respect of the speech and votes of delegates of the National Assembly (hereinafter referred to as “dele-

**解釋文：**憲法第三十二條及第七十三條規定國民大會代表及立法委員言論及表決之免責權，係指國民大會代表在會議時所為之言論及表決，立法委

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\*\* Contents within frame, not part of the original text, are added for reference purpose only.

gates”) and members of the Legislature (hereinafter referred to as “legislators”), provided in Articles 32 and 73 of the Constitution means that delegates and legislators shall not be subject to criminal charges or civil liabilities, nor bear any administrative responsibilities, for opinions expressed and/ or votes cast in their respective houses, unless they are disciplined for contraventions of the respective internal disciplinary rules. Further, rights to recall are a form of the people’s suffrage rights. Article 133 of the Constitution stipulates that elected representatives may be recalled, by the constituencies they represent, pursuant to the law. Delegates and legislators shall be responsible to electors in their constituencies for their speech and votes in the exercise of their offices. Thus, electors of a constituency may recall, pursuant to the law, delegates and legislators elected by the constituency, for reasons of improper speech and/or vote. The foregoing shall not be restricted by provisions in Articles 32 and 73 of the Constitution.

**REASONING:** Article 25 of the

員在立法院內所為之言論及表決，不受刑事訴追，亦不負民事賠償責任，除因違反其內部所訂自律之規則而受懲戒外，並不負行政責任之意。又罷免權乃人民參政權之一種，憲法第一百三十三條規定被選舉人得由原選舉區依法罷免之。則國民大會代表及立法委員因行使職權所為言論及表決，自應對其原選舉區之選舉人負政治上責任。從而國民大會代表及立法委員經國內選舉區選出者，其原選舉區選舉人得以國民大會代表及立法委員所為言論及表決不當為理由，依法罷免之，不受憲法第三十二條及第七十三條規定之限制。

**解釋理由書：**憲法第二十五條

Constitution stipulates that the National Assembly shall, in accordance with the provisions of the Constitution, exercise political powers on behalf of the whole body of citizens. Further, it is stipulated in Article 26 that the Legislature shall be the highest legislative organ of the State, and be constituted of legislators elected by the people, and shall exercise legislative power on behalf of the people. The National Assembly and the Legislature are both representative bodies constituted of popularly elected delegates or legislators. As a general rule of democratic states with constitutional order, the constitution grants delegates and legislators the privilege of immunity for their speech and votes, so that they may express the will of the people liberally and fully, properly perform their duty to oversee the government, and to make decisions for representative bodies on behalf of the people without hesitation. Article 32 of the Constitution stipulates that delegates shall not be held responsible outside the National Assembly for opinions expressed and/or votes cast at meetings of the Assembly; and Article 73 stipulates that legislators

規定國民大會依本憲法之規定，代表全國國民行使政權。又憲法第六十二條規定立法院為國家最高立法機關，由人民選舉之立法委員組織之，代表人民行使立法權。二者均屬由人民直接選舉之代表或委員所組成之民意機關。憲法依民主憲政國家之通例，乃賦予國民大會代表及立法委員言論及表決之免責權，俾其能暢所欲言，充分表達民意，善盡監督政府之職責，並代表人民形成各該民意機關之決策，而無所瞻顧。憲法第三十二條規定國民大會代表在會議時所為之言論及表決，對會外不負責任；第七十三條規定立法委員在院內所為之言論及表決，對院外不負責任。其目的係為保障國民大會代表及立法委員不因其行使職權所為言論及決議而負民事上之損害賠償責任或受刑事上之訴追，除其言行違反內部所訂自律之規則而受懲戒外，並不負行政責任，此乃憲法保障國民大會代表及立法委員之言論及表決對外不負法律上責任。而憲法第一百三十三條規定被選舉人得由原選舉區依法罷免之，則係憲法基於直接民權之理念所設之制度。依上述條文，國民大會代表及立法委員於就任一定期間後，選舉人得就其言行操守、議事態度、表決立場予以監督檢驗，用示對選舉人應負政治

shall not be held responsible outside the Legislature for opinions expressed and/or votes cast within the Legislature. The aim of the foregoing Articles is to protect delegates and legislators from civil compensatory liabilities or criminal charges for opinions expressed or votes cast in the exercise of their offices, and unless they are to be disciplined pursuant to internal disciplinary rules, they shall not bear any administrative responsibility. This is a privilege granted to delegates and legislators so they will not be held responsible outside of their respective offices. Article 133 of the Constitution provides that elected representatives may be recalled by the constituencies they represent pursuant to the law. This system of the Constitution is founded on the notion of the direct exercise of rights by the people. According to the foregoing Article, once delegates and legislators have been in office for a specified period, electors may monitor and analyze such representatives' demeanor, attitude and voting stance, so as to exercise the electors' political responsibility. As to the reasons for proposing a recall, there is no need for their restriction.

上責任。至提議罷免之理由，自無限制之必要。其由全國不分區及僑居國外國民產生之當選人，因無原選舉區可資歸屬，自無適用罷免規定之餘地。民國八十年八月二日修正公布之公職人員選舉罷免法第六十九條規定：「公職人員之罷免，得由原選舉區選舉人向選舉委員會提出罷免案。但就職未滿一年者，不得罷免。」「全國不分區、僑居國外國民選舉之當選人，不適用罷免之規定。」即係本上開意旨而制定。綜上所述，國民大會代表及立法委員經國內選舉區選出者，其原選舉區選舉人認為國民大會代表及立法委員所為言論及表決不當者，得依法罷免之，不受憲法第三十二條、第七十三條規定之限制。

The recall provisions do not apply to representatives elected through legislative selections or by citizens residing overseas because they belong to no constituency. The Public Officials Election and Recall Act promulgated on August 2, 1991, provides in Article 69 that: "Recall of public officials may only be initiated by electors of the relevant constituency through presentation of a recall application to the Elections Committee. However, those who have not been in office for at least one year may not be recalled. Recall provisions have no application to persons elected through legislative selection or by citizens residing overseas." The said Article is enacted pursuant to this Interpretation. In summary, electors of a constituency may recall, pursuant to the law, delegates and legislators elected by the constituency, for improper speech and/or vote, without being restricted by Articles 32 and 73 of the Constitution.