

J. Y. Interpretation No.402 (May 10, 1996) *

ISSUE: Does the Regulation Governing the Supervision of Insurance Agents, Brokers and Adjusters by imposing such punitive administrative sanction violate Article 23 of the Constitution?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution (憲法第十五條、第二十三條); Articles 8-1, 9, 163, 167-1 and 177 of the Insurance Act (保險法第八條之一、第九條、第一百六十三條、第一百六十七條之一、第一百七十七條); Articles 15, 48, Paragraph 1, Subparagraph 11, 49, 50 and 51 of the Regulation Governing the Supervision of Insurance Agents, Brokers and Adjusters (保險代理人經理人公證人管理規則第十五條、第四十八條第一項第十一款、第四十九條、第五十條、第五十一條) .

KEYWORDS:

insurance (保險), insurance agents (保險代理人), brokers and adjusters (經理人及公證人) .**

HOLDING: For any punitive administrative sanction on the person who violates the obligation imposed by the administrative law, which concerns the

解釋文：對人民違反行政法上義務之行為予以裁罰性之行政處分，涉及人民權利之限制，其處分之構成要件與法律效果，應由法律定之，法律雖得

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restriction of the people's rights, its component and legal effects shall be prescribed by statutory law. Although the statutory law may authorize power to the supplementary ordinances, in order to comply with the intent of Article 23 of the Constitution, the purpose, scope and content of that authorization should be concrete and definite and then the ordinances should be promulgated based on that authorization. Article 177 of the Insurance Act prescribes that the Regulation Governing the Supervision of Insurance Agents, Brokers and Adjusters should be enacted by the Ministry of Finance. Though the competent authority of the said Article may enact ordinances or regulations prescribing the conduct of those professionals, due to the lack of concrete and definite authorization of the Insurance Act on the components and legal effects of the punishment applicable to the abovementioned persons acting in violation of the obligation, the punitive administrative sanction on the insurance agents, brokers, adjusters and other respective professionals violated the obligation as prescribed in Article 48, Paragraph 1,

授權以命令為補充規定，惟授權之目的、範圍及內容必須具體明確，然後據以發布命令，方符憲法第二十三條之意旨。保險法第一百七十七條規定：「代理人、經紀人、公證人及保險業務員管理規則，由財政部另訂之」，主管機關固得依此訂定法規命令，對該等從業人員之行為為必要之規範，惟保險法並未就上述人員違反義務應予處罰之構成要件與法律效果為具體明確之授權，則其依據上開法條訂定發布之保險代理人經紀人公證人管理規則第四十八條第一項第十一款，對於保險代理人、經紀人及公證人等從業人員違反義務之行為，訂定得予裁罰性之行政處分，顯與首開憲法保障人民權利之意旨不符，應自本解釋公布日起，至遲於屆滿一年時，失其效力。

Subparagraph 11, of the Regulation Governing the Supervision of Insurance Agents, Brokers and Adjusters, and was apparently enacted against the abovementioned intent of protecting the people's rights under the Constitution; hence, from the date of this Interpretation, said provision shall become void within one years.

REASONING: In order to comply with the intent of Article 23 of the Constitution, for any punitive administrative sanction on persons, which violates the obligation imposed by the administrative law that concerns the restriction of the people's rights, its component and legal effects shall be prescribed by statutory law. Hence, for any enactments of ordinances authorized by the law concerning the restriction of the freedom and rights of the people, the components and legal effects of such authorization shall comply with the requirements of concretization and definitude. For the law which merely provides general authorization, its determination may be based on the related meaning in the entirety of the law and not be limited to the wording of any particular

解釋理由書：對於人民違反行政法上義務之行為予以裁罰性之行政處分，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，方符憲法第二十三條之意旨。故法律授權訂定命令，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；若法律僅為概括之授權者，固應就該項法律整體所表現之關連意義為判斷，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，逕行訂定裁罰性之行政處分條款，迭經本院解釋有案。

provisions. The ordinances, enacted in accordance with this kind of general authorization, may provide detailed or technical regulations related to its parent law but shall in no event straightforwardly enact any punitive administrative sanction beyond the scope of authorization of the law. This issue has been interpreted several times by this Yuan.

Article 177 of the Insurance Act prescribes that the Regulation Governing the Supervision of Insurance Agents, Brokers and Adjusters shall be enacted by the Ministry of Finance. The competent authority may enact ordinances or regulations prescribing the conduct of the insurance agents, brokers, adjusters and other related professionals. However, regarding the conduct of the abovementioned professionals who violated the obligation, except for the punishment expressed in Article 167, Paragraph 1, of the same Act, the said authorization article did not actually concretely and definitively provide the components and legal effects to be punished. Article 48, Paragraph 1, Subparagraph 11, of the Regulation Govern-

保險法第一百七十七條規定：「代理人、經紀人、公證人及保險業務員管理規則，由財政部另訂之」，主管機關固得依此訂定法規命令，對保險業代理人、經紀人及公證人等相關從業人員之行為為必要之規範，惟對上述人員違反義務之行為，除已於同法第一百六十七條之一明定罰則外，上開授權法條並未就其應予處罰之構成要件與法律效果為具體明確之規定。財政部於中華民國八十二年十一月四日依據上開授權法條修正發布之保險代理人經紀人公證人管理規則第四十八條第一項第十一款規定：代理人、經紀人或公證人違反財政部命令或核定之保險業務規章者，除法令另有規定外，財政部得按其情節輕重，予以警告、一個月以上三年以下之停止執行業務或撤銷其執業證書之處

ing the Supervision of Insurance Agents, Brokers and Adjusters, which was enacted and promulgated by the Ministry of Finance on November 4, 1993, in accordance with the abovementioned authorization, prescribes that for the insurance agents, brokers and adjusters acting in violation of the related insurance ordinances or regulations enacted or approved by the Ministry of Finance, except as provided otherwise by the laws, the Ministry of Finance may, subject to the degree of severity, impose a sanction of a warning, interdict their business for more than one month but not more than three years, or revoke their license to practice. Such punishment, interdiction of business or revocation of license, even though regulated by the Ministry of Finance on the basis of public welfare, is a kind of punitive administrative sanction and shall be prescribed by the statutory law or the ordinance with concrete and definite authorization by law in order to comply with the intent to protect the people's rights. The said Article 48, Paragraph 1, Subparagraph 11, of the Regulation Governing the Supervision of Insurance Agents, Brokers

分，雖係財政部基於公共利益之考量所為之規定，惟各該警告、停止執行業務或撤銷其執業證書之處分，均屬裁罰性行政處分之一種，已涉及人民權利之限制，本應以法律或法律具體明確授權之法規命令為依據，方符憲法保障人民權利之意旨。上開管理規則第四十八條第一項第十一款於超越法律授權之外，逕行訂定對上述從業人員裁罰性行政處分之構成要件及法律效果，顯與憲法保障人民權利之意旨不符。又審酌各該規定之必要性及修改法律所需時間，上開管理規則第四十八條第一項第十一款應自本解釋公布日起，至遲於屆滿一年時，失其效力。又該管理規則涉及限制人民權利之其他裁罰性行政處分，亦應從速一併檢討修正。

and Adjusters, which prescribes the components and legal effects of the punishment for the abovementioned professionals, overrode the authorization of the law and was also contrary to the abovementioned intent to protect the people's rights under the Constitution. In considering the necessity of such regulation and the time needed for the amendment of the regulations, the said Article 48, Paragraph 1, Subparagraph 11, of the Regulation Governing the Supervision of Insurance Agents, Brokers and Adjusters shall become void within one years from the date this Interpretation. Any other punitive administrative sanctions contained in the said Regulation of administration concerning the restriction of the people's rights shall be promptly examined and amended.