

J. Y. Interpretation No.411 ( July 19, 1996 ) \*

**ISSUE:** (1) Is the limitation on areas of practice of civil engineers based on executive ordinances issued jointly by seven administrative agencies in contravention to the constitutional guarantee of the right of work?

(2) Are those civil engineers who obtained their licenses after September 19, 1978 subject to the limitation of areas of practices?

**RELEVANT LAWS:**

Article 15 of the Constitution (憲法第十五條) ; Article12, Paragraph 2 of the Technician Act (技師法第十二條第二項) .

**KEYWORDS:**

civil engineer (土木工程科技師), structural engineer (結構工程科技師), areas of practice (執業範圍), central governing authority (中央主管機關), authority in charge of relevant matters (目的事業主管機關), right of work (工作權), in contravention to (牴觸), Examination Yuan (考試院), architect (建築技師), public welfare (公共福祉), public interests (公共利益), public safety (公共安全), abolish (廢止), temporary measure (暫時性措施) .\*\*

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\* Translated by Professor Chun-Jen Chen.

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

**HOLDING:** On April 19, 1991, together with the Ministry of the Interior, the Ministry of Transportation and Communication, the Council of Agriculture, the Council of Labor Affairs, the Department of Health, and the Environmental Protection Administration of the Executive Yuan, the Ministry of Economic Affairs (foregoing seven administrative agencies referred to hereinafter as the Ministries) issued the Ministry of Economic Affairs Ordinance No. 015522 (80 Jin-Kung-Tze No. 015522) prescribing the “Practicing Areas of Engineers”, which limited the areas of practice of civil engineers to “the plan, design, research, and analysis of the structures of buildings whose heights are under thirty-six meters”. Such limitations are prescribed by the Ministries which are either the central governing authorities or the authorities in charge of relevant matters under the authorization of Article 22, Paragraph 2 of the Technician Act to allocate the areas of practice between civil engineers and structural engineers and are not in contravention to the constitutional guarantee of the right of work. In addition, on Septem-

**解釋文：**經濟部會同內政部、交通部、行政院農業委員會、行政院勞工委員會、行政院衛生署、行政院環境保護署（下稱經濟部等七部會署）於中華民國八十年四月十九日以經（八十）工字第○一五五二二號等令訂定「各科技師執業範圍」，就中對於土木工程科技師之執業範圍，限制「建築物結構之規劃、設計、研究、分析業務限於高度三十六公尺以下」部分，係技師之中央主管機關及目的事業主管機關為劃分土木工程科技師與結構工程科技師之執業範圍，依技師法第十二條第二項規定所訂，與憲法對人民工作權之保障，尚無牴觸。又行政院於六十七年九月十九日以台六十七經字第八四九二號令與考試院於六十七年九月十八日以（六七）考台秘一字第二四一四號令會銜訂定「技師分科類別」及「技師分科類別執業範圍說明」，就結構工程科之技師執業範圍特別訂明「在尚無適當數量之結構工程科技師開業之前，建築物結構暫由開業之土木技師或建築技師負責辦理。」乃係因應當時社會需要所訂之暫時性措施。迨七十六年十月二日始由行政院及考試院會銜廢止。則經濟部等七部會署嗣後以首揭令訂定「各科技師執業範圍」，於土木工程科執業範圍「備註」

ber 19, 1978 the Executive Yuan joined the Examination Yuan Ordinance No. 2414 (78 Tai-Mi-Yi-Tze No. 2414) of September 18, 1978 and issued the Executive Yuan Ordinance No. 8492 (78 Tai-Jin-Tze No. 8492) of September 19, 1978 stipulating “Categories of Engineers” and “Illustrations of Areas of Practice of Categories of Engineers”, which under the category of the structural engineer specially specified that, “until the numbers of practicing structural engineers reach an adequate level, practicing civil engineers and architects are temporarily authorized to be in charge of the structures of buildings.” This temporary authorization was a temporary measure adopted to reflect the then existing needs of the society and was abolished by the Executive Yuan and the Examination Yuan jointly on October 2, 1987. Later, the Ministries prescribed the above-mentioned “Practicing Areas of Engineers” and noted in the footnotes of the category of the civil engineer stating that, “those civil engineers who obtained their licenses before September 19, 1978 and had experiences of designing the structures of buildings above thirty-six

欄下註明「於民國六十七年九月十八日以前取得土木技師資格，並於七十六年十月二日以前具有三十六公尺以上高度建築物結構設計經驗者，不受上列建築物結構高度之限制。」其於六十七年九月十九日以後取得土木工程科技師資格者，仍應受執業範圍規定之限制，要屬當然。

meters before October 2, 1987 are not subject to the said limitation of buildings' heights." Accordingly, as a matter of course, those civil engineers who obtained their licenses after September 19, 1978 are subject to the said limitation of areas of practice.

**REASONING:** Article 15 of the Constitution guarantees people's right of work, so people may freely choose jobs and occupations to make a living. However, people's jobs are closely related to public welfare. In J. Y. Interpretation No. 404, we stated that in order to enhance public interests the government may enact laws to prescribe necessary requirements and conditions on how people conduct their jobs, their qualifications, etc. Surely, laws cannot possibly prescribe every requirement and condition and may authorize pertinent administrative agencies to issue necessary ordinances to classify areas of practice of each profession. The Ministry of Economic Affairs together with other six administrative agencies jointly issued the Ministry of Economic Affairs Ordinance No. 015522 (80 Jin-

**解釋理由書：**憲法第十五條規定人民之工作權應予保障，故人民得自由選擇工作及職業，以維持生計。惟人民之工作與公共福祉有密切關係，為增進公共利益之必要，對於人民從事工作之方法及應具備之資格或其他要件，得以法律為適當之規範，此有本院釋字第四〇四號解釋可資參照。惟法律之規定不能鉅細靡遺，對於各種專門職業之執業範圍，自得授權有關機關以命令為必要之劃分。經濟部等七部會署於中華民國八十年四月十九日以經（八十）工字第〇一五五二二號等令訂定「各科技師執業範圍」，就中對於土木工程科技師之執業範圍，限制「建築物結構之規劃、設計、研究、分析業務，限於高度三十六公尺以下」係技師之中央主管機關及目的事業主管機關認為土木工程科技師之執業範圍雖包括建築物結構之規劃等業務，惟與結構工程科技師之執業

Kung-Tze No. 015522) providing the “Practicing Areas of Engineers”, which limited the areas of practice of civil engineers to “the plan, design, research, and analysis of the structure of buildings whose heights are under thirty-six meters”. Such limitations are properly prescribed by the Ministries which are either the central governing authorities or the authorities in charge of relevant matters under the authorization of Article 22, Paragraph 2 of the Technician Act to limit civil engineers’ areas of practice relating to the part of buildings’ structures, because the Ministries think distinctions between the areas of practice of civil engineers and those of structural engineers may be drawn upon the degrees of complexity and specialty, although civil engineers’ areas of practice include the plan, design, research, and analysis of the structure of buildings. Because the civil and structural constructions involve public safety, in order to enhance public welfare, law and regulation may prescribe necessary requirements and conditions to require that such constructions be undertaken by qualified persons with certain

範圍相較，仍有繁簡廣狹之別，依技師法第十二條第二項規定，對於土木工程科技師之執業範圍，關於建築物結構之部分，為適當之限制。由於土木與結構工程均涉及公共安全，限由學有專精者執行其專長業務，是為增進公共利益所必要，與憲法對人民工作權之保障，尚無牴觸。

levels of expertise and these requirements and conditions are not in contravention to the constitutional guarantee of the right of work.

On September 19, 1978 the Executive Yuan joined the Examination Yuan Ordinance No. 2414 (78 Tai-Mi-Yi-Tze No. 2414) of September 18, 1978 and issued the Executive Yuan Ordinance No. 8492 (78 Tai-Jin-Tze No. 8492) of September 19, 1978 prescribing “Categories of Engineers” and “Illustrations of Areas of Practice of Categories of Engineers”, which under the category of the structural engineer specially specified that, “until the numbers of practicing structural engineers reach an adequate level, practicing civil engineers and architects are temporarily authorized to be in charge of the structures of buildings.” This temporary authorization was a reflection to the then needs of the society specially specifying civil engineers’ areas of practice to include the research, design, analysis, appraisal, evaluation, construction, supervision, and examination of the structures of buildings which originally belong to

行政院於六十七年九月十九日以台六十七經字第八四九二號令及考試院於六十七年九月十八日以（六七）考台秘一字第二四一四號令會銜訂定「技師分科類別」及「技師分科類別執業範圍說明」，就結構工程科之技師執業範圍特別訂明「在尚無適當數量之結構工程科技師開業之前，建築物結構暫由開業之土木技師或建築技師負責辦理」，乃係因應當時社會需要，特別訂明開業之土木工程科技師之執業範圍，包括建築物結構之研究、設計、分析、鑑定、評價、施工、監造及檢驗等原屬結構工程科技師之業務，此為行政機關本於法律之授權就當時取得土木工程科技師資格劃定之執業範圍，屬於一種暫時性措施。迨七十六年十月二日始由行政院及考試院會銜廢止。則經濟部等七部會署嗣後以首揭令訂定「各科技師執業範圍」，於土木工程科執業範圍「備註」欄下註明「於民國六十七年九月十八日以前取得土木技師資格，並於七十六年十月二日以前具有三十六公尺以上高度

structural engineers' area of practice and is a temporary measure adopted by administrative agencies under the authorization of law to specify the areas of practice of then qualified civil engineers and was abolished by the Executive Yuan and the Examination Yuan jointly on October 2, 1987. Later, the Ministries prescribed the above-mentioned "Practicing Areas of Engineers" and noted in the footnotes of the category of the civil engineer stating that, "those civil engineers who obtained their licenses before September 19, 1978 and had experiences of designing the structures of buildings above thirty-six meters before October 2, 1987 are not subject to the said limitation of buildings' heights." Accordingly, as a matter of course, those civil engineers who obtained their licenses after September 19, 1978 are subject to the said limitation of areas of practice.

Justice Chi-Nan Chen filed concurring opinion.  
Justice Sen-Yen Sun filed dissenting opinion.

建築物結構設計經驗者，不受上列建築物結構高度之限制。」其於六十七年九月十九日以後取得土木工程科技師資格者，仍應受執業範圍規定之限制，要屬當然。

本號解釋陳大法官計男提出協同意見書；孫大法官森焱提出不同意見書。