

J. Y. Interpretation No.412 ( August 2, 1996 ) \*

**ISSUE:** Is Article 10 of the Enforcement Rules of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions promulgated by the Examination Yuan in contravention to its statutory authority, or to the constitutional mandate of equal protection of the right to work under Article 7 of the Constitution?

**RELEVANT LAWS:**

Article 7 of the Constitution ( 憲法第七條 ) ; Article 6 of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions ( 後備軍人轉任公職考試比敘條例第六條 ) ; Article 10 of the Enforcement Rules of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions ( 後備軍人轉任公職考試比敘條例施行細則第十條 ) ; Article 2 of the Act Governing the Appointment of Armed Forces Military Officers and Sergeants ( 陸海空軍軍官士官任官條例第二條 ) .

**KEYWORDS:**

military reserve personnel ( 後備軍人 ) , civil servant ( 公務員 ) , public functionary ( 公務人員 ) , appointment ( 任用 ) , remuneration ( 俸給 ) , right of work ( 工作權 ) , equal protection ( 平等保障 ) , military officer ( 軍官 ) , military noncommissioned officer ( 士官 ) , ranking ( 官階 ) .\*\*

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\* Translated by Professor Spenser Y. Hor.

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

**HOLDING:** Article 6 of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions authorizes the Examination Yuan to promulgate enforcement rules. Under this authorization and taking into account that the Public Functionaries Appointment Act and the Public Functionaries Remuneration Act were reestablished and enacted in 1986 and implemented on January 16, 1987, the Examination Yuan on January 11, 1988, promulgated Article 10, Paragraph 5, of the Enforcement Rules of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions limiting the applications of the Act Governing the Replacement Test of the Military Reserve Personnel for Civil Reappointment to those who seek reappointments after January 16, 1987. It represents the efforts of the Examination Yuan to coincide with the newly enacted Public Functionaries Appointment Act and the Public Functionaries Remuneration Act and a set of rules promulgated after considering the differences of various circumstances. Therefore, it is neither in contravention to the Act Governing the

**解釋文：**後備軍人轉任公職考試比敘條例第六條授權考試院訂定施行細則，考試院乃於中華民國七十七年一月十一日考量公務人員任用法及公務人員俸給法已於七十五年重新制定，並於七十六年一月十六日施行，於後備軍人轉任公職考試比敘條例施行細則第十條第五項明定將其適用範圍限於七十六年一月十六日以後之轉任人員，係為配合新制公務人員任用法及公務人員俸給法，並斟酌各種情況之差異所為之規定，尚未違反後備軍人轉任公職考試比敘條例授權之意旨，與憲法有關工作權之平等保障，亦無牴觸。

Replacement Test of the Reserve Military Personnel for Civil Positions, nor to the constitutional mandate of equal protection of the right to work.

**REASONING:** The principle of equal protection under Article 7 of the Constitution provides *de jure* equality, i.e., the legislature may, with different legislative intents, enact different laws to respond to various factual circumstances pursuant to the nature of matters. The legislature may also enact laws and authorize the administrative branch to promulgate reasonable and necessary rules applicable under different factual circumstances. Article 6 of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions authorizes the Examination Yuan to promulgate enforcement rules. According to this authorization, the Examination Yuan in 1980 amended and implemented Article 10, Paragraph 1, of the Enforcement Rules of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions regulating correspondent rankings between military personnel and

**解釋理由書：**憲法第七條所定之平等原則，係為保障人民在法律上地位之實質平等，亦即法律得依事物之性質，就事實情況之差異及立法之目的，而為不同之規範。法律就其所定事實上之差異，亦得授權行政機關發布施行細則為合理必要之規定。後備軍人轉任公職考試比敘條例第六條授權考試院訂定施行細則，考試院本此於中華民國六十九年修正發布之同條例施行細則第十條第一項規定軍官士官具有任用資格而轉任公務人員時得比敘之官等職等，與陸海空軍軍官士官任官條例第二條附表一「陸海空軍軍官士官官等官階與公務人員職等對照表」之規定意旨相符；同細則第十條第二項則係規定軍官及士官轉任公務人員時，依公務人員俸給法或分類職位公務人員俸給法規定比敘。以上均係就法律所定軍職年資之事實上差異為必要之規定。嗣考試院於七十七年一月十一日考量公務人員任用方法及公務人員俸給法已於七十五年重新制定，並於七十六年一月十六日施行，乃修正後備

public functionaries to enable qualified military personnel to be reappointed to proper rankings as public functionaries. The legislative intent of Article 10, Paragraph 1, of the above-mentioned Enforcement Rules is the same as that of Article 2 of the Act Governing the Appointment of Armed Forces Military Officers and Sergeants, which provides a chart of Correspondent Ranks between Officers and Noncommissioned Officers of the Armed Forces and Civil Servants. Article 10, Paragraph 2, of the same Enforcement Rules stipulates that the ranking bases of the reappointments are those provided in the Public Functionaries Remuneration Act or the Classified Rankings for Public Functionaries Remuneration Act. Both Paragraphs 1 and 2 of Article 10 of the Enforcement Rules at issue are practically necessary for the factual differences in superiority and seniority of those qualified military personnel. Thereafter on January 11, 1988, taking into account the fact that both the Public Functionaries Appointment Act and the Public Functionaries Remuneration Act were reestablished and enacted in 1986 and implemented on

軍人轉任公職考試比敘條例施行細則第十條，除於第二項作文字修正外，並增訂第五項，明定將其適用範圍限於七十六年一月十六日以後之轉任人員，係為配合新制公務人員任用法及公務人員俸給法，並斟酌各種事實情況之差異所為之規定，尚未違反後備軍人轉任公職考試比敘條例授權之意旨，與憲法有關工作權之平等保障，亦無牴觸。

January 16, 1987, the Examination Yuan promulgated Article 10 of the Enforcement Rules of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions on January 11, 1988. Besides the emendation to said Paragraph 2 thereof and the addition of Paragraph 5, the aforesaid Article 10 expressly limits the applications of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions to those who seek reappointments after January 16, 1987. It represents the efforts of the Examination Yuan to coincide with the newly enacted Public Functionaries Appointment Act and the Public Functionaries Remuneration Act and a set of rules promulgated after considering differences under various circumstances. Accordingly, it is neither in contravention to the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions, nor to the constitutional mandate of equal protection of the right to work.

Justice Geng Wu filed dissenting opinion in part, in which Justice Jyun-Hsiung Su and Justice Ho-Hsiung Wang joined.

本號解釋吳大法官庚、蘇大法官俊雄與王大法官和雄共同提出部分不同意見書。