J. Y. Interpretation No.423（March 21, 1997）*

ISSUE: Is it constitutional for the authority in charge of air pollution control to establish, without authorization by the enabling statute, criteria of fines to be imposed solely on the basis of the time the violator appears before the authority and to require payment of fine double the amount if he fails to appear within the time specified on the notification of violation?

RELEVANT LAWS:

Articles 23, Paragraph 1, and 43 Paragraphs 1 and 3 of the Air Pollution Control Act of the（空氣污染防制法第二十三條第一項、第四十三條第一項、第三項）; Article 5 of the Criteria of Fines for Emission of Air Pollutants by Transportation Means（交通工具排放空氣污染物罰鍰標準第五條）; Administrative Court Precedent P. T. 96 (1959)（行政法院四十八年判字第九十六號判例）.

KEYWORDS:

unilateral administrative action（單方行政行為）, administrative act（行政處分）, non-administrative act（非行政處分）, external legal consequence（對外法律效果）, standards of emission（排放標準）, air pollutants（空氣汙染物）, penalty for offense against the order of administration（行政秩序罰；秩序罰）, notification（通知書）, ad-

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dressee（相對人）, criteria of fines（裁罰標準）, appear before the authority（到案）, enabling statute（母法）, legislative purposes（立法目的）, generalized provisions（概括條款）, purpose-specific（合目的性）.**

HOLDING: An administrative act taken unilaterally by an administrative agency in the exercise of its public authority in respect of a specific matter in public law with external legal consequence is by nature an administrative act regardless of the term or form used and whether or not there is any subsequent action or any written statement to disallow the raising of any objection. Where an administrative agency, having issued a notification that directly affects the relation of rights and duties of the people and has actually produced effects externally, considers the issue of such notification a non-administrative act on the grounds that there is subsequent action to be taken or that it contains a statement to disallow the raising of any objection, it is certainly inconsistent with the purpose of the Constitution in guaranteeing the people the

解釋文：行政機關行使公權力，就特定具體之公法事件所為對外發生法律上效果之單方行政行為，皆屬行政處分，不因其用語、形式以及是否有後續行為或記載不得聲明不服之文字而有異。若行政機關以通知書名義製作，直接影響人民權利義務關係，且實際上已對外發生效力者，如以仍有後續處分行為，或載有不得提起訴願，而視其為非行政處分，自與憲法保障人民訴願及訴訟權利之意旨不符。行政法院四十八年判字第九六號判例僅係就訴願法及行政訴訟法相關規定，所為之詮釋，與憲法尚無牴觸。

right to bring administrative appeal and proceedings. The Administrative Court Precedent P. T. 96 (1959), which merely interprets the relevant provisions of the Administrative Appeal Act and the Administrative Proceedings Act, is thus not in conflict with the Constitution.

The Air Pollution Control Act provides in Article 23, Paragraph 1, that: "A transportation means shall not emit air pollutants in excess of the amount permissible by the standards of emission." The Act further specifies in Article 43, Paragraph 1, the types of penalty and the maximum amounts of fines to be imposed in case of violation of such provisions, and Paragraph 3 of the same article enables the central government agency to establish criteria of fines. Under Article 5 of the Criteria of Fines for Emission of Air Pollutants by Transportation Means, the minimum amount of fine to be imposed is determined solely on the basis of "the time the violator appears and whether he appears before the authority" after he receives the notification of violation rather than based on any reasonable standard

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laid down in light of the legislative purposes by taking into consideration the factual circumstances of the act. Even though the maximum amount of fine prescribed thereby does not exceed the limit permissible under law, raising the minimum fine on the basis of the time the violator appears before the authority is inconsistent with the purposes intended by the enabling statute and is detrimental to the exercise of the power of discretion authorized by law to the competent agency. A fortiori, imposition of a penalty in the manner of a punishment for offense against the order of administration by doubling the amount of fine, even if it may encourage the opposite party to pay the fine voluntarily so that the trouble of future enforcement may be avoided, is neither so prescribed nor authorized by the enabling statute. Furthermore, the criteria, by creating such a provision to require the opposite party to appear before the authority within ten days of receipt of the notification of violation or to pay a double fine upon lapse of such period, is contrary to the principle of legal reservation (Gesetzesvorbehaltprinzip). It is thus

十日內到案接受裁罰及逾期倍增之規定，與法律保留原則亦屬有違，其與本解釋意旨不符部分，應自本解釋公布之日起，至遲於屆滿六個月時失其效力。

ordered that the part of the provision inconsistent with the essence of this Interpretation be rendered null and void within six months from the date of this Interpretation.

REASONING: Our current system of administrative litigations is designed primarily to deal with actions for reversal [of unlawful administrative acts], and matters for which actions for reversal may be instituted are stated in the legislative form of generalized provisions. Where a person considers an administrative act unlawful or improper, thereby causing damage to his right or interest, he is entitled to bring administrative appeal or action. The so-called "administrative act" denotes an administrative act taken unilaterally by an administrative agency in the exercise of its public authority in respect of a specific matter in the area of public law with external legal effects, regardless of the term or form used and whether or not there is any subsequent action or any written statement to disallow the raising of any objection. Where an administrative agency, having issued a

解釋理由書：我國現行行政訴訟制度以撤銷訴訟為主，得提起撤銷訴訟之事項則採概括條款之立法形式，凡人民對於行政處分認為違法或不當致損害其權利或利益者，均得依法提起訴願或行政訴訟。所謂行政處分係指行政機關行使公權力，就特定具體之公法事件所為對外發生法律上效果之單方行為，不因其用語、形式以及是否有後續行為或記載不得聲明不服之文字而有異。若行政機關以通知書名義製作，直接影響人民權利義務關係，且實際上已對外發生效力者，諸如載明應繳違規罰款數額、繳納方式、逾期倍數增加之字樣，倘以仍有後續處分行為或載有不得提起訴願，而視其為非行政處分，自與憲法保障人民訴願及訴訟權利之意旨不符。遇有行政機關依據法律製發此類通知書，相對人亦無異議而接受處罰時，猶不認其為行政處分性質，於法理尤屬有悖。行政法院四十八年判字第九六號判例：「訴願法第一條所稱官署之處分，

notification that directly affects the relation of rights and duties of the people and has actually produced effects externally, such as one that sets out the amount of fine payable, the method of payment, or the requirement of payment double the amount upon lapse of a specified period, considers the issue of such notification a non-administrative act on the grounds that there is subsequent action to be taken or that it contains a statement to disallow the raising of any objection, it is certainly inconsistent with the purpose of the Constitution in guaranteeing the people the right to bring administrative appeal and proceedings. When considered from the viewpoint of the general principles of jurisprudence, the situation even appears absurd where such a notification is lawfully prepared and issued by an administrative agency and then accepted without objection by the opposite party, who does not even realize that it constitutes an administrative act. The Administrative Court Precedent P. T. 96 (1959) holds that "the expression in Article 1 of the Administrative Appeal Act 'an administrative act done by a government authority, resulting

損害人民之權利或利益者，限於現已存在之處分，有直接損害人民權利或利益之情形者，始足當之。如恐將來有損害其權利或利益之行政處分發生，遽提起訴願，預行請求行政救濟，則非法之所許。僅係就訴願法及行政訴訟法相關規定，所為之詮釋，與憲法尚無牴觸。

in injury to the right or interest of a person' refers only to the situation where an existing act causes direct damage to the right or interest of a person. The law does not permit the institution of an administrative appeal to seek administrative remedy in advance on the grounds of fear of a future administrative act with the possibility of causing damage to his right or interest," but merely interprets the relevant provisions of the Administrative Appeal Act and the Administrative Proceedings Act, and thus is not in conflict with the Constitution.

The Air Pollution Control Act provides in Article 23, Paragraph 1, that: "No transportation means shall emit air pollutants in excess of the amount permissible by the standards of emission." The Act further specifies in Article 43, Paragraph 1, the types of penalty and the maximum amounts of fines to be imposed in case of violation of such provisions, and Paragraph 3 of the same article enables the central government agency to establish criteria of fines. The purpose of the law in specifying the maximum amounts of fines

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and at the same time enabling the administrative agency to establish criteria of fines is of course more than simply vesting such agency with the function of applying the law. It is meant to recognize the professional competence of the administrative agency in making correct and reasonable judgment while formulating purpose-specific criteria of fines for excessive emission of air pollutants by transportation means by taking into consideration the factual circumstances of the act and based on its objective and reasonable findings, and also to avoid possible unfair conclusions as a result of arbitrary decisions in individual cases. Conversely, under Article 5 of the Criteria of Fines for Emission of Air Pollutants by Transportation Means, as amended and promulgated by the competent authority on February 15, 1993, the minimum amount of fine to be imposed is determined solely on the basis of "the time the violator appears and whether he appears before the authority" after he receives the notification of violation rather than based on any reasonable standard laid down in light of the legislative purposes by taking into consideration

案裁決時因恣意而產生不公平之結果。主管機關於中華民國八十二年二月十五日修正發布之交通工具排放空氣污染物罰鍰標準第五條，僅以當事人接到違規舉發通知書後之「到案時間及到案與否」，為設定裁決罰鍰數額下限之唯一準據，並非根據受處罰之違規事實情節，依立法目的所為之合理標準。縱其罰鍰之上限並未逾越法律明定得裁罰之額度，然以到案之時間為標準，提高罰鍰下限之額度，與母法授權之目的未盡相符，且損及法律授權主管機關裁量權之行使。又以秩序罰罰鍰數額倍增之形式而科罰，縱有促使相對人自動繳納罰鍰、避免將來強制執行困擾之考量，惟母法既無規定復未授權，上開標準創設相對人於接到違規通知書起十日內到案接受裁罰及逾期倍增之規定，與法律保留原則亦屬有違，其與本解釋意旨不符部分，應自本解釋公布之日起，至遲於屆滿六個月時失其效力。

the factual circumstances of the act. Even though the maximum amount of fine prescribed thereby does not exceed the limit permissible under law, raising the minimum fine on the basis of the time the violator appears before the authority is inconsistent with the purposes intended by the enabling statute and is detrimental to the exercise of the power of discretion authorized by law to the competent agency. A fortiori, imposition of a penalty in the manner of a punishment for an offense against the order of administration by doubling the amount of fine, even if it may encourage the opposite party to voluntarily pay the fine so that the trouble of future enforcement may be avoided, is neither so prescribed nor authorized by the enabling statute. Furthermore, the criteria, by creating such a provision to require the opposite party to appear before the authority within ten days of receipt of the notification of violation or to pay a double fine upon lapse of such period, is contrary to the principle of legal reservation (Gesetzesvorbehaltprinzip). It is thus ordered that the part of the provision inconsistent with the essence of this Inter-

pretation be rendered null and void within six months from the date of this Interpretation.

Justice Sen-Yen Sun filed concurring opinion and dissenting opinion in part.

Justice Chi-Nan Chen filed dissenting opinion in part.

本號解釋孫大法官森焱提出協同意見書及部分不同意見書；陳大法官計男提出部分不同意見書。