

J. Y. Interpretation No.431 ( June 6, 1997 ) \*

**ISSUE:** Does the Enforcement rules of the Act Governing the Handling of Land Grant Certificates to Soldiers regarding the verification of the status of armed forces non-duty officers contradict the Constitution?

**RELEVANT LAWS:**

Article 10 of the Act Governing the Handling of Land Grant Certificates to Soldiers ( 戰士授田憑據處理條例第十條 ) ; Article 3, Subparagraph 16 of the Enforcement Rules of the Act Governing the Handling of Land Grant Certificates to Soldiers ( 戰士授田憑據處理條例施行細則第三條第十六款 ) .

**KEYWORDS:**

Land Grant Certificates to Soldiers ( 戰士授田憑據 ) , Armed Forces Non-Duty Officers ( 無職軍官 ) .\*\*

**HOLDING:** The Act Governing the Handling of Land Grant Certificates to Soldiers does not define and set out the scope for the “Armed Forces Non-Duty Officers” as referred to in Article 10 of said Act. Under Paragraph 16 of Article 3 of the Enforcement Rules of said Act:

**解釋文：**戰士授田憑據處理條例對同條例第十條之「無職軍官」未規定其定義及範圍，該條例施行細則第三條第十六款：「無職軍官指依行政院四十八年七月十四日台四十八防字第三八八二號令訂定之陸海空軍無軍職軍官處理辦法，於四十八年十月十八日以前在

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

“The Armed Forces Non-Duty Officers refers to those who, per the Regulation Governing the Handling of Armed Forces Non-Duty Officers, promulgated per the Decree issued by the Executive Yuan Ref. No. Tai-(48)-Fang-3882 dated July 14, 1959, registered on record with the Ministry of National Defense prior to October 18, 1959, with a Discharge Order issued, and have been verified by the Office of Deputy Chief-Personnel of the General Staff of the Ministry of National Defense as having met the criteria for Armed Forces Non-Duty Officers”. The foregoing is a supplemental provision for the determination of the status of Armed Forces Non-Duty Officers and does not violate the legislative purpose of said Act; nor does it contradict the Constitution.

**REASONING:** The purpose of the Act Governing the Handling of Land Grant Certificates to Soldiers, as enacted on April 23, 1990, and which took effect on January 1, 1991, is to take back the Land Certificates that Soldiers received per the Land Grants to the Anti-Communist/Anti- Soviet Soldiers Act and

國防部登記處理有案，發給退除役令，並經國防部人事參謀次長室認定符合無職軍官身分者」，係就無職軍官身分之認定所為之補充規定，並未違背該條例之立法意旨，與憲法亦無牴觸。

**解釋理由書：**中華民國七十九年四月二十三日制定，八十年一月一日施行之戰士授田憑據處理條例，係為收回已依反共抗俄戰士授田條例領取之戰士授田憑據，分別情形給與不同基數之補償金而制定。其核發對象原以領有戰士授田憑據之人員為範圍，依反共抗俄戰士授田條例第十一條規定：「現在陸

to pay compensation in accordance with the basis points based on individual situations. The recipients covered by said Act are those that originally received the Land Grant Certificates to Soldiers. Under Article 11 of the Land Grants to the Anti-Communist/Anti-Soviet Soldiers Act, "Soldiers who have served in the Armed Forces for more than two years" are the intended recipients of the Land Grant Certificates to Soldiers. For those who formerly were military officers in mainland China but, after coming to Taiwan on personal initiative or with the army, did not duly go through the formal discharge procedures or left the military employer when the registration of non-duty officers was still being processed, their absence from the military camp makes receiving a Land Grant Certificate to Soldiers practically difficult. Hence the provision in Article 10 of said Act: "Those people who, before the Land Grants to the Anti-Communist/Anti-Soviet Soldiers Act was promulgated and implemented, participated in the conflicts against communists and the Soviet Union, excluding those who have been sentenced for treason or

海空軍部隊服務二年以上之戰士」始為發給授田憑據之對象；在大陸時期曾任軍官，自行來臺或隨軍隊來臺後，未辦理正式退伍或在辦理無職軍官登記清理中脫離軍職等人員，因未在營，其領取戰士授田憑據，有事實上之困難，乃於該處理條例第十條規定：「反共抗俄戰士授田條例公布施行前，曾參加反共抗俄作戰，除因有叛國行為或逃亡而被判有期徒刑以上之刑者外，其餘在臺離營之退除役無職軍官，領有退伍除役證明書，且現居住臺灣地區者，視同已發給授田憑據，依本條例之規定處理」，以保障其權益。所謂「無職軍官」之定義及範圍，戰士授田憑據處理條例雖未另為規定，惟觀其立法意旨，係指行政院四十八年七月十四日台四十八防字第三八八二號令發布之陸海空軍無軍職軍官處理辦法所規定者而言，該辦法第二條第一項規定：「本辦法所稱無職軍官，包括左列人員：一、外職停役者、二、編餘者、三、辭職資遣者、四、作戰失散或被俘來歸者、五、免職停職者、六、撤職者、七、免官停役者、八、刑事停役者、九、其他因故離職而未辦退除役或假退除役者」，同條第二項規定：「前項人員以中華民國四十七年六月三十日以前居住政府控制地區為

desertion, have been discharged, are Armed Forces Non-Duty Officers, have received the Discharge Certificate, and are now living in Taiwan, are deemed as having been issued the Land Grant Certificates to Soldiers and should be handled per the provisions of this Act”, so as to protect the rights and interests of those people. Said Act does not separately define and prescribe the scope for the so-called “Armed Forces Non-Duty Officer”. Judging from the legislative purpose of said Act, however, “Armed Forces Non-Duty Officer” refers to those who are subject to the Measures Governing the Handling of Armed Forces Non-Duty Officers, promulgated per the Decree issued by the Executive Yuan Ref. No. Tai-(48)-Fang-3882 dated July 14, 1959. Paragraph 1 of Article 2 of said Measures provides: “The Armed Forces Non-Duty Officers as referred to in the Measures include those who are: 1) dismissed and suspended from service, 2) redundant, 3) resigned or terminated, 4) missing in battle or returned prisoners of war, 5) dismissed and put on leave of absence, 6) removed from office, 7) dismissed from an officer posi-

限」。同辦法第二十一條復規定：「無職軍官，在規定調查期間，不參加調查者，爾後概不處理，並作為退除役論」。國防部四十八年五月二十八日（四八）雷露字第二六四四號公告無職軍官辦理調查登記之期間為四十八年六月八日至同年十月十八日。該辦法因登記期間屆滿，經行政院五十三年五月十五日台五三人字第三四一二號令廢止，則戰士授田憑據處理條例施行細則第三條第十六款規定：「無職軍官指依行政院四十八年七月十四日台四十八防字第三八八二號令訂定之陸海空軍無軍職軍官處理辦法，於四十八年十月十八日以前在國防部登記處理有案，發給退除役令，並經國防部人事參謀次長室認定符合無職軍官身分者」，係就無職軍官身分之認定所為之補充規定，為執行上開條例所必要，且未違背該條例之立法意旨，與憲法亦無牴觸。

tion and suspended from service, 8) suspended from service due to criminal proceedings, and 9) otherwise resigned but did not complete the discharge procedures or provisional discharge procedures". Paragraph 2 of said Article provides: "The preceding Paragraph shall apply only to those who have lived in the areas controlled by the Government before June 30, 1948". Article 21 of said Measures further provides: "Those Armed Forces Non-Duty Officers who, during the prescribed investigation period, failed to participate in said investigation, shall not be processed later and shall be deemed as having been discharged". The period set for the investigation and registration of Armed Forces Non-Duty Officers was between June 8, 1949 and October 18, 1949, per the Pronouncement issued by the Ministry of National Defense Ref. No. (48)-Lay-Lu-2644 dated May 28, 1959. The aforesaid Measures, upon expiration of the registration period, were repealed per the Decree issued by the Executive Yuan Ref. No. Tai-(53)-Ren-3412 dated May 15, 1964. Accordingly, the provision of Subparagraph 16 of Article 3 of the Enforce-

ment Rules of said Act regarding “An Armed Forces Non-Duty Officer refers to those who, per the Measures Governing the Handling of Armed Forces Non-Duty Officers, promulgated per the Decree issued by the Executive Yuan Ref. No. Tai-(48)-Fang-3882 dated July 14, 1959, registered on record with the Ministry of National Defense prior to October 18, 1959, with a Discharge Order issued, and have been verified by the Office of Deputy Chief-Personnel of the General Staff of the Ministry of National Defense as having met the criteria for Armed Forces Non-Duty Officer” is a supplemental provision for the determination of the status of Armed Forces Non-Duty Officer. The foregoing meets the need to enforce the aforesaid Act, and does not violate the legislative purpose of said Act; nor does it contradict the Constitution.