

J. Y. Interpretation No.434 (July 25, 1997) *

ISSUE: Does the absence of any provision in the Public Functionaries Insurance Act for the return of insurance premiums or retirement benefits for employees leaving for reasons other than retirement, violate Article 15 of the Constitution for the protection of the people's property right?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Articles 2, 3, 6, 8, Paragraph 1, and 9, 16, Paragraph 1 of the Public Functionaries Insurance Act (公務人員保險法第二條、第三條、第六條、第八條第一項、第九條、第十六條第一項) .

KEYWORDS:

property right (財產權) , government employee insurance (公務人員保險) , insurance premium old age benefit (養老給付保險金) , separating employee (離職人員) .**

HOLDING: Public Functionaries Insurance is a social welfare system based on the theory that the country should provide benefits to government employees for childbirth, retirement, sickness, death and other reasons. All enrolled, remuner-

解釋文：公務人員保險係國家為照顧公務人員生老病死及安養，運用保險原理而設之社會福利制度，凡法定機關編制內之有給人員及公職人員均為被保險人。被保險人應按公務人員保險法第八條第一項及第九條規定繳付保險

* Translated by Professor S. M. Yu.

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

ated personnel and public service personnel of legally established government institutions are considered as the insured. The insured should pay premiums pursuant to Article 8, Paragraph 1, and Article 9 of the Public Functionaries Insurance Act. The insuring institution, in accordance with Article 3 of the same Act, provides childbirth, sickness, personal injury, disability, retirement, death, dependent death and burial service benefits, with the last three items transferred to the National Health Insurance Program after the enactment of the National Health Insurance Act. The premium to be paid under the Public Functionaries Insurance Act is shared between the government and the insured according to a certain ratio, to provide the funding of the insurance benefits paid out by the insuring institution. Such premium not only provides the funding sources of benefit payout of the individual insured, but also shares, collectively, the liability for payout of the other individuals insured. The fact that there is no provision for the return of premiums already paid does not violate the Constitution. However, with regard to that portion

費，承保機關按同法第三條規定提供生育、疾病、傷害、殘廢、養老、死亡及眷屬喪葬七項給付，前三項給付於全民健康保險法施行後，已列入全民健康保險。公務人員保險法規定之保險費，係由被保險人與政府按一定之比例負擔，以為承保機關保險給付之財務基礎。該項保險費，除為被保險人個人提供保險給付之資金來源外，並用以分擔保險團體中其他成員之危險責任。是保險費經繳付後，該法未規定得予返還，與憲法並無牴觸。惟被保險人所繳付之保險費中，關於養老保險部分，承保機關依財政部核定提存準備辦法規定，應提撥一定比率為養老給付準備，此項準備之本利類似全體被保險人存款之累積。公務人員保險法於第十六條第一項關於養老給付僅規定依法退休人員有請領之權，對於其他離職人員則未規定，與憲法第十五條保障人民財產權之意旨不符，應即檢討修正。

of the premium paid by the insured relating to retirement insurance, the insuring institution, according to the provision of the reserve rules mandated by the Ministry of Finance, should allocate a certain ratio as retirement benefit reserve, the principal and interest of which resemble the cumulative deposits of all the insured. Article 16, Paragraph 1, of the Public Functionaries Insurance Act provides for retirement benefits only to regular retirees, but not to other departing employees. Such neglect contravenes the purpose of Article 15 of the Constitution for the protection of the people's property right and should be reviewed and amended forthwith.

REASONING: Public Functionaries Insurance is a social welfare system based on the theory that the country should provide benefits to government employees for childbirth, retirement, sickness, death and other reasons. According to Articles 2 and 6 of Public Functionaries Insurance Act, all enrolled, remunerated personnel and public service personnel are considered as the insured. The insured,

解釋理由書：公務人員保險係國家為照顧公務人員生老病死及安養，運用保險原理而設之社會福利制度，依公務人員保險法第二條及第六條規定，凡法定機關編制內之有給人員及公職人員，應一律參加保險為被保險人。被保險人應按同法第八條第一項及第九條規定繳付應自付之保險費，並另由政府補助一定比例之保險費。承保機關則按同法第三條規定提供生育、疾病、傷害、

according to Article 8, Paragraph 1, and Article 9 of the same Act, shall contribute his/her portion of the insurance premium, with the balance contributed by the government as a subsidy. The insuring institution, shall, according to Article 3 of the same Act, provide childbirth, sickness, personal injury, disability, retirement, death and dependent death and burial service benefits. When the National Health Insurance Act was implemented on August 9, 1994, the last three items were transferred to the National Health Insurance Program. The insurance premium provided under the Public Functionaries Insurance Act is shared between the insured and the government under a certain ratio to provide for the funding basis of benefits payout by the insuring institution. Once paid, the premium joins the flow of funds in the insurance operation of the insurer and serves as the source of funds for benefits payout once an insurance peril occurs. Except as otherwise provided, the insured has no right to ask for a refund. Thus the fact that the Act does not provide for the refund of paid-in premium is not unconstitutional. However, among the

殘廢、養老、死亡及眷屬喪葬七項給付。全民健康保險法於中華民國八十三年八月九日施行後，已將前三項給付列入全民健康保險。公務人員保險法規定之保險費，係由被保險人與政府按一定之比例負擔，以為承保機關保險給付之財務基礎。而保險費經繳付後，即由承保機關運用於該保險事務之中，並於保險事故發生時，作為保險給付之基金，除別有規定外，被保險人自不得請求返還。是保險費經繳付後，該法未規定得予返還，與憲法並無牴觸。惟上述保險給付中，關於養老、死亡兩項保險部分，類似終身保障型之定額給付保險。故被保險人所繳付之保險費中，關於養老保險部分，依財政部四十九年二月十九日（四九）台財錢發字第○一四六三號令核定提存準備辦法規定，承保機關應提撥一定比率（四十九年二月為百分之十四點九、五十一年一月為百分之十、五十七年一月回復為百分之十四點九，參照財政部金融局八十六年七月十九日台融局牒第八六二一九四九五號函）為養老給付準備。此項準備之本利，類似全體被保險人存款之累積，非承保機關之資產。從而被保險人繳足一定年限之保險費後離職時，自有請求給付之權。公務人員保險法於第十六條第

abovementioned insurance benefits, those of retirement and death resemble the fixed amount benefit of the whole-life protection type. Thus, the portion of premium paid by the insured relating to retirement insurance, according to the provision of the reserve rules mandated via the Ministry of Finance Executive Order No. (49) Tai-Fin-Mon-Fa 01463 dated February 19, 1960, the insuring institution shall allocate a certain ratio (14.9% in February 1960, 10% in January 1962, and back to 14.9% in January 1968; See the Ministry of Finance, Bureau of Monetary Affairs, letter Tai-Yun-Bureau (2) No. 86219495 dated July 19, 1997) as retirement benefits reserve. The principal and interest of such reserve resemble the cumulative deposits of all the insured and are not items of assets of the insuring institution. Thus the departing insured, after payment of a certain number of years of premium, earns his/her right to benefits accrual. Article 16, Paragraph 1, of the Public Functionaries Insurance Act provides only retirement benefits to regular retirees and not to other departing employees. Such neglect contravenes the purpose of Article 15 of the

一項關於養老給付僅規定依法退休人員有請領之權，對於其他離職人員則未規定，與憲法第十五條保障人民財產權之意旨不符，應即檢討修正。至其請領之要件及金額如何，則屬立法問題。

Constitution for the protection of the people's property right and should be reviewed and amended forthwith. The condition and amount of such benefits should be left to the legislature to decide.

Justice Chi-Nan Chen filed dissenting opinion in part.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋陳大法官計男提出部分不同意見書；劉大法官鐵錚提出不同意見書。