

J. Y. Interpretation No.447 (February 27, 1998) *

ISSUE: Does the “monthly salary” referred to in Article 4, Paragraph 2, of the Act Governing the Pension of the Special Political Officials include “other cash payment”?

RELEVANT LAWS:

Article 4, Paragraph 2 of the Act Governing the Pension of the Special Political Officials (政務官退職酬勞金給與條例第四條第二項) ; Provisional Act Governing the Salary and Allowance for the President, Vice-President and Special Political Appointees (總統副總統及特任人員月俸公費支給暫行條例) ; Article 6, Paragraph 2, and Article 8, Paragraph 1 of the Public Functionaries Retirement Act (before January 20, 1993 Amendment) (八十二年一月二十日修正前公務人員退休法第六條第二項、第八條第一項) ; Article 17 of the Act Governing the Payment of Compensation to Surviving Dependents of Public Functionaries (before the implementation of the new retirement regulations on July 1, 1995) (八十四年七月一日公務人員退撫新制實施前之公務人員撫卹法第十七條) .

KEYWORDS:

Political Appointees (政務官) , monthly salary (月俸) , other cash payment (其他現金給與) .**

* Translated by Professor S. M. Yu.

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

HOLDING: According to Article 4, Paragraph 2, of the Act Governing the Pension of the Special Political Officials, the calculation of pensions for political officials is based on a monthly salary, whereas the monthly payment received by political officials according to the Provisional Act Governing the Salary and Allowance for the President, Vice-President and Special Political Appointees, includes a monthly salary and allowance. Article 8, Paragraph 1, of the Public Functionaries Retirement Act, provided, before the January 20, 1993 amendment, that monthly salary includes basic pay and other cash payment. It may be seen from the abovementioned retirement laws for public functionaries that monthly salary differs from basic pay. Monthly salary includes not only basic pay or monthly pay, but also other cash payment. It follows that the “monthly salary” used in calculating the pension of political officials should include not only monthly pay, but also “other cash payment.”

REASONING: Those political officials who participate in the govern-

解釋文：現行法上政務官退職酬勞金之計算，依政務官退職酬勞金給與條例第四條第二項規定，以月俸額為計算基準，而政務官每月所支領之俸額，依總統副總統及特任人員月俸公費支給暫行條例規定，包括月俸及公費。參照中華民國八十二年一月二十日修正前之公務人員退休法第八條第一項：「本法所稱月俸額，包括實領本俸及其他現金給與」，可知公務人員退休法規上所稱之月俸額與本俸有別，月俸額除本俸或月俸外，尚包括其他現金給與在內。是以計算政務官退職酬勞金基準之「月俸額」，除月俸外亦應包括「其他現金給與」部分。

解釋理由書：政務官為參與政策之決定，應隨政黨更替或政策變更而

ment policy decision-making process and change with political parties or policies and those with defined terms of office under the Constitution or law to maintain independence in the exercise of their function are distinguishable. The fact that our prevailing law does not distinguish these two types of officials, though not uncontroversial in a constitutional sense, is not within the scope of this interpretation. Insofar as the relevant laws are not amended, they should be construed accordingly.

The calculation of pensions for political officials under prevailing law is provided under Article 4, Paragraph 2, of the Act Governing the Pension of the Special Political Officials, as amended and promulgated on December 11, 1985, “Lump sum pension for political officials is based on their last monthly salary and their own “cash payment in lieu of basic necessities” as one unit; every half-year service earns one unit; service lasting less than three years earns one extra unit; service less than one-half year counts as a half year; and the maximum credit is

進退之人員，與依憲法或法律之規定有任期保障，俾能超然獨立行使職權而無所瞻顧之人員，本有不同。我國現行法所謂政務官未就上述兩種人員加以區別，有無牴觸憲法雖非無爭議，但不在本解釋範圍，是在相關法律未修正以前，仍應依現行法律予以解釋，合先說明。

現行法上政務官退職酬勞金之計算，依七十四年十二月十一日修正公布之政務官退職酬勞金給與條例第四條第二項規定：「一次退職酬勞金以政務官最後在職之月俸額及本人實物代金為基數，每服務滿半年給與一個基數；未滿三年給與一個基數；未滿半年以半年計，最高以六十一個基數為限。」係以月俸額為計算基準，而政務官每月所支領之俸額，依三十八年一月十七日制定公布之總統副總統及特任人員月俸公費支給暫行條例規定，包括月俸及公費。至政務官退職金之月俸額給與是否即以月俸及公費為計算標準，現行法雖無明

sixty-one units.” Thus the base is the monthly salary, and the salary received by political officials each month according to the Provisional Act Governing the Salary and Allowance for the President, Vice President and Special Political Appointees enacted and promulgated January 17, 1949, includes a monthly salary and allowance, although the prevailing law is not clear about whether the monthly salary, for the purpose of calculating pensions of political officials, includes a monthly salary and allowance. We took into account the legislative purpose of the relevant laws on the retirement and payment of recompense to surviving dependents of public functionaries when the abovementioned Act Governing Pensions of the Special Political Officials was enacted and promulgated and arrived at an overall construction. Insofar as the retirement of ordinary public functionaries is concerned, according to Article 6, Paragraph 2, of the Public Functionaries Retirement Act before its January 20, 1993 amendment, lump sum retirement payment is based on their last monthly salary and their own “cash payment in lieu of

確規定，惟應參酌上開政務官退職酬勞金給與條例修正公布時公務人員退休、撫卹相關法令之立法目的而為整體之解釋。按一般公務人員之退休，依八十二年一月二十日修正前之公務人員退休法第六條第二項規定，一次退休金，係以退休人員最後在職之月俸額及本人實物代金為基數；又八十四年七月一日公務人員退撫新制實施前之公務人員撫卹法第十七條規定，政務官之撫卹亦係準用公務人員撫卹法之規定。顯見政務官退職酬勞金及撫卹金計算之標準，與舊制之公務人員退休法、公務人員撫卹法規定之退休金、撫卹金計算標準自應相稱。參照前開公務人員退休法第八條第一項規定：「本法所稱月俸額，包括實領本俸及其他現金給與」，可知公務人員退休法規上所稱之月俸額與本俸有別，月俸額除本俸或月俸外，尚包括其他現金給與在內。是以計算政務官退職酬勞金基準之「月俸額」，除月俸外亦應包括「其他現金給與」部分。惟其他現金給與之退職酬勞金應發給數額，應依退職時法律所訂計算標準為之，併此敘明。

basic necessities”; according to Article 17 of the Act Governing the Payment of Compensation to Surviving Dependents of Public Functionaries, before the implementation of the new retirement regulations on July 1, 1995, the same rules governing ordinary public functionaries also apply *mutatis mutandis* to the recompense for surviving dependents of political officials. It is apparent from the above that the criteria for the calculation of pension and recompense for surviving dependents of political officials run parallel to those of ordinary public functionaries under the old regulations. Taking into account the abovementioned Article 8, Paragraph 1, of the Public Functionaries Retirement Act, which provides, “monthly salary as provided in this Act includes basic pay and other cash payment,” it follows that, under the Public Functionaries Retirement Act, monthly salary is different from basic pay. Monthly salary includes basic or monthly pay, as well as other cash payment. Thus, for the purpose of calculating pensions of political officials, “monthly salary” includes monthly pay and “other cash pay-

ment.” However, the amount of pension relating to “other cash payment” should be governed by criteria under relevant law at the time of such political official’s retirement.