

J. Y. Interpretation No.463 (September 11, 1998) *

ISSUE: Does “total budget” enunciated in Article 164 of the Constitution include extra or special budgets?

RELEVANT LAWS:

Article 164 of the Constitution (憲法第一百六十四條); Article 10, Paragraph 8, of the Constitutional Amendment (憲法增修條文第十條第八項); Articles 75 and 76 of the Budget Act (預算法第七十五條、第七十六條); Article 3 of the Regulation Governing the Management and Use of Provincial and City Government Budget Balancing Funds Held by the Central Government for General Distribution (中央統籌分配稅款平衡省市預算基金收支保管及運用辦法第三條).

KEYWORDS:

budget (預算), education (教育), science and culture (科學與文化), total budget (預算總額), extra budget (追加預算), special budget (特別預算).**

HOLDING: Article 164 of the Constitution clearly requires that the budgets for educational programs, scientific studies, and cultural services in the central and local governments shall reach

解釋文：憲法第一百六十四條明確規範中央及地方之教育科學文化之預算，須達預算總額之一定比例，以確保國家及各地方自治團體對於人民之教育、科學與文化生活得有穩定而必要的

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a certain percentage of the total national budget to ensure stable and sufficient public expenditure for education, science and culture in the state and municipalities. This Article reflects the emphasis on educational, scientific and cultural development in the Constitution. The “total budget” in the Article does not include extra or special budgets. This principle has been previously confirmed by Interpretations Nos. 77 and 231 of this Yuan. A government drafts its budget plan based on expected income and expenditure for the coming year. With the budget plan, government agencies will be able to perform their functions and the government’s finances will be set. Accordingly, there should be one single budget plan. In case of special circumstances or any emergency listed in the various subparagraphs of Article 75 of the Budget Act, the Executive Yuan may propose a special budget in addition to the annual total budget. Article 76 of the Budget Act sets forth the review procedure of special budgets. With respect to the issue of how to calculate the expenditures for educational programs, scientific studies, and

公共支出，此係憲法重視教育科學文化發展所設之規定。本條所謂「預算總額」，並不包括追加預算及特別預算在內，業經本院釋字第七十七號及第二三一號解釋在案。政府就未來一年間之計畫所預期之收入及支出編列預算，以使國家機關正常運作，並規範國家之財政，原則上應制定單一之預算。惟為因應特殊緊急情況，有預算法第七十五條各款規定之情形時，行政院得於年度總預算外另提出特別預算，其審議依預算法第七十六條為之。至憲法第一百六十四條所稱教育科學文化經費之具體內容如何、平衡省市預算基金等項目，是否應計入預算總額發生之爭論，中華民國八十六年七月二十一日修正公布之憲法增修條文第十條第八項既規定：「教育、科學、文化之經費，尤其國民教育之經費應優先編列，不受憲法第一百六十四條規定之限制。」有關該等預算之數額、所佔比例、編列方式、歸屬範圍等問題，自應由立法者本其政治責任而為決定。是以與憲法第一百六十四條之所謂「預算總額」及教育、科學、文化等經費所佔中央、地方預算之比例等相關問題，已無再行解釋之必要。

culture in Article 164 of the Constitution and the issue of whether provincial and city budget balancing funds should be included in the “total budget,” a provision in the Constitutional Amendment shall be noted. Article 10, Paragraph 8, of the Constitutional Amendment, promulgated on July 21, 1997, reads: “Priority shall be given to funding education, science, and culture, and in particular funding for compulsory education, the restrictions in Article 164 of the Constitution notwithstanding.” Because of this Paragraph, issues regarding what amount, what percentage, how to propose, and how to allocate such budgets are left for the legislators to decide, in accordance with their political accountability. Therefore, we do not need to decide pending questions such as the extent of “total budget” in Article 164 of the Constitution and the percentage of expenditure for education, science, and culture in the central and local governments.

REASONING: Article 164 of the Constitution reads: “Expenditures for educational programs, scientific studies,

解釋理由書：憲法第一百六十四條：「教育、科學、文化之經費，在中央不得少於其預算總額百分之十五，

and cultural services shall not be, in respect of the central government, less than 15 percent of the total national budget; in respect of each province, less than 25 percent of the total provincial budget; and in respect of each municipality or hsien, less than 35 percent of the total municipal or hsien budget. Educational and cultural foundations established in accordance with law shall, together with their property, be protected.” This Article clearly requires that the budgets for educational programs, scientific studies, and cultural services in the central and local governments reach a certain percentage of the total national budget to ensure stable and sufficient public expenditure for education, science and culture in the state and municipalities. This Article reflects the emphasis on education, science and cultural development in the Constitution. “Percentage” in the article means the ratio of the annual total expenditure in the budget plan. It does not include extra budgets that were added thereafter. “Total budget” means the total annual expenditure in the total annual budget planned by governments. It does not in-

在省不得少於其預算總額百分之二十五，在市、縣不得少於其預算總額百分之三十五，其依法設置之教育文化基金及產業，應予以保障。」明確規範中央及地方之教育科學文化之預算，須達預算總額之一定比例，以確保國家及各地方自治團體對於人民之教育、科學與文化生活得有穩定而必要的公共支出，此係憲法重視教育科學文化發展所設之規定。本條所謂「百分比」係指編製預算時，在歲出總額所佔之比例數而言，追加預算並不包括在該項預算總額之內；而所謂「預算總額」，係指政府編製年度總預算時所列之歲出總額而言，並不包括特別預算在內，業經本院釋字第七十七號、第二三一號分別解釋在案。政府就未來一年間之計畫所預期之收入及支出編列預算，以使國家機關正常運作，並規範國家之財政，原則上應制定單一之預算。惟為因應特殊緊急情況，有預算法第七十五條各款規定之情形時，行政院得於年度總預算外另提出特別預算，其審議依預算法第七十六條為之。如多數立法委員審議特別預算時認有不符法定條件者，自得決議刪除，或要求行政院重新編製。與本條相關之其他問題，諸如：(一)行政院及省市政府八十一年度至八十三年度等所編列之特

clude special budgets. This principle has been previously confirmed by Interpretations Nos. 77 and 231 of the Judicial Yuan. A government drafts its budget plan based on expected income and expenditure for the coming year. With the budget plan, government agencies will be able to perform their functions and the government's finances will be set. Accordingly, there should be one single budget plan. In case of special circumstances or any emergency listed in the various subparagraphs of Article 75 of the Budget Act, the Executive Yuan may propose a special budget in addition to the total annual budget. Article 76 of the Budget Act sets forth the review procedure of special budgets. In reviewing a special budget, a majority in the Legislative Yuan may reach a resolution to delete the special budget or to request the Executive Yuan to modify the budget, if it finds the budget does not meet the requirements in law. Other issues related to this article, inter alia, are: (I) Do special budgets proposed by the Executive Yuan and by provincial and city governments for the years 1992 to 1994 meet the re-

別預算案，與預算法第七十五條規定是否相符，有無規避憲法第一百六十四條之疑問，(二)關於行政機關編製之八十五年度總預算所涉及之下列疑問：1.關於中央政府總預算歲出政事別科目中「教育、科學、文化支出」歸屬範圍問題，2.關於預算法第七十五條編列特別預算有關法定要件之適用及教科文經費提列比例問題，3.關於以「補助地方國民教育經費」方式於省及縣市政府計算教科文支出百分比問題，4.關於鄉鎮預算不宜併入縣市總預算中計列教科文支出問題，(三)憲法第一百六十四條中所稱「預算總額」，是否包含「平衡省市預算基金」？中央統籌分配稅款平衡省市預算基金收支保管及運用辦法第三條，將其全部包含列入總預算中致變相縮減中央政府應支出之教科文經費，是否違憲所發生之爭論，八十六年七月二十一日修正公布之憲法增修條文第十條第八項既規定：「教育、科學、文化之經費，尤其國民教育之經費應優先編列，不受憲法第一百六十四條規定之限制。」有關該等預算之數額、所佔比例、編列方式、歸屬範圍等問題，自應由立法者本其政治責任而為決定。是以與憲法第一百六十四條之所謂「預算總額」及教育、科學、文化等經費所佔中

quirements in Article 75 of the Budget Act? Are those budgets consistent with Article 164 of the Constitution? ; (II) There are several questions with respect to the annual total budget for the year 1996 proposed by the executive branch: (1) The question of how to allocate “educational, scientific and cultural expenditure ”under the title of government affairs in the total budget of the Central Government. (2) The question of how to apply the requirements for special budgets in Article 75 of the Budget Act and the proportions to allocate with respect to expenses for education, science and culture. (3) The question of how to calculate the percentage of expenditure for education, science and culture when [the central government] provides “subsidies for compulsory education” to provincial, hsien and municipal governments. (4) The question of whether expenditures for education, science and culture of the hsien and municipal governments should include those of the hsiang and town; and (III) The question of whether the “total budget” in Article 164 of the Constitution should include “provincial and city

央、地方預算之比例等相關問題，已無再行解釋之必要。

budget balancing funds.” The question of whether Article 3 of the Regulation Governing the Management and Use of Provincial and City Government Budget Balancing Funds Held by the Central Government for General Distribution violates the Constitution because Article 3 includes all [balancing funds] in the “total budget” and leads to reduction of expenditure for education, science and culture by the central government. Article 10, Paragraph 8, of the Constitutional Amendment, promulgated on July 21, 1997, reads: “Priority shall be given to funding education, science, and culture, and in particular funding for compulsory education, the restrictions in Article 164 of the Constitution notwithstanding. ”Because of this Paragraph, issues regarding what amount, what percentage, how to propose, and how to allocate such budgets are left for the legislators to decide, in accordance with their political accountability. Therefore, we do not need to decide pending questions such as the extent of the “total budget” in Article 164 of the Constitution and the percentage of expenditure on education, science,

and culture in the central and local governments.