

J. Y. Interpretation No.464 (September 11, 1998) *

ISSUE: Does the categorization of “public service” under “The Precautionary Matters on Payment of Compensation to Those Who after Receipt of Pension or Living Subsidy Voluntarily Resume Public Service” promulgated by the Executive Yuan contradict the legislative purpose or constitutional guarantee of the people’s rights of existence and property?

RELEVANT LAWS:

Articles 15, 85, 86 and 172 of the Constitution (憲法第十五條、第八十五條、第八十六條、第一百七十二條) ; Article 27, Schedule Note 4(2)-5, of the Armed Forces Officers Service Act (陸海空軍軍官服役條例第二十七條附表「附註」四之(二)之五) ; Article 12, Subparagraph 2, of the Public Functionaries Retirement Act (公務人員退休法第十二條第二款) ; Article 13, Subparagraph 2, of the Act Governing the Retirement of School Teachers and Staff (學校教職員退休條例第十三條第二款) ; Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第五條第一項第二款) ; Precautionary Matters on the Payment of Compensation to Those Who after Receipt of Pension or Living Subsidy Voluntarily Resume Public Service (退休俸及生活補助費人員自行就任公職支領待遇

* Translated by Professor S. M. Yu.

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

注意事項) ; Regulation for the Suspension of Pension Payment on Military Officers and Sergeants Who Assume Public Service (支領退休俸軍官士官就任公職停發退休俸辦法)。

KEYWORDS:

public functionaries (公務員), public service (公職), right to existence (生存權), property right (財產權).**

HOLDING: The stipulation under Article 27, Schedule Note 4(2)-5, of the Armed Forces Officers Service Act relating to the payment of pension has the purpose of avoiding double payment when retired officers who receive a pension (including other subsidies) also perform public services with pay, adding to the burden of the Treasury. The term “public functionaries” in the Schedule Note refers to those “performing public services with pay” without regard to the name of the title or size of the pay. The categorization of public service under “The Precautionary Matters on the Payment of Compensation to Those Who after Receipt of Pension or Living Subsidy Voluntarily Resume Public Service” promulgated and amended under letter

解釋文：陸海空軍軍官服役條例第二十七條附表「附註」四之(二)之5，關於退休俸支領之規定，旨在避免受領退休俸（包含其他補助）之退役軍官，於就任由公庫支薪之公職時，重複領取待遇，致違一人不得兩俸之原則，加重國家財政之負擔。該附表所稱之擔任「公務員」，係指擔任「有給之公職」之意，不問其職稱之如何，亦不問其待遇之多寡，均屬之。行政院於中華民國六十八年一月十九日以（六八）台人政肆字第〇一三七九號函修訂發布之「退休俸及生活補助費人員自行就任公職支領待遇注意事項」關於所定就任公職之職務類別，既係主管機關為執行上開條例未盡明確之附表所為必要之補充規定，與立法意旨無所違背，其於憲法保障生存權、財產權亦無牴觸。

(68) Tai-Jen-Cheng-Four No. 01379 dated January 19, 1979, of the Executive Yuan is a necessary supplementary provision to implement the rather ambiguous schedule of the abovementioned Act which does not contradict the legislative purpose or the constitutional guarantee of the people's rights of existence and property.

REASONING: Ordinances, regulations or rules promulgated by the executive branch under delegation of the law or to implement the law should be consistent with the relevant provisions in the Constitution or law, as is stipulated under Article 172 of the Constitution and Article 27, Schedule Note 4(2)-5, of the Armed Forces Officers Service Act relating to the payment of pension in the event that the retired officer becomes a public functionary, to the effect that if the pay (including dependent allowances) is higher or equal in amount to the pension, the pension payment is suspended; if lower than the pension, only the differential is paid. The purpose of pensions is to provide for retired officers after their long service to the country, not to reward or subsidize them when they resume public

解釋理由書：行政機關基於法律授權或為執行法律而依其職權所訂定之命令，依憲法第一百七十二條之意旨，固不得牴觸憲法或法律，然陸海空軍軍官服役條例第二十七條附表「附註」四之(二)之 5，關於軍官支領退休俸者，如擔任公務員，其所任職務，每月待遇（含眷補）高於或等於退休俸者，其退休俸停發；其每月待遇低於退休俸者，發給差額之此一規定，本係國家對軍官執干戈捍衛社稷之長年奉獻所予之照顧，俾其退役後之生活有所保障，非在酬報、補貼退役人員再任公職時之薪津所得，更非准許退役人員於給與退休俸外，猶得於另行就任公職時重複領取公庫支付之薪津，致違一人不得兩俸之原則，而加重國家財政之負擔。因是該附表所稱擔任「公務員」云者，參諸公務員退休制度之相關法律，例如

service. It certainly does not permit duplication of pay from the public treasury. As to the meaning of “public functionaries” in the Schedule Note, reference to legislation relevant to the public functionaries retirement system reveals that, for example, in Article 12, Subparagraph 2, of the Public Functionaries Retirement Act and Article 13, Subparagraph 2, of the Act Governing the Retirement of School Teachers and Staff, it means “performing public service with pay, irrespective of the title or amount.” The Executive Yuan in letter (68) Tai-Jen-Chen-Four No. 01379 dated January 19, 1979, promulgated “The Precautionary Matters on the Payment of Compensation to Those Who after Receipt of Pension on Living Subsidy Voluntarily Resume Public Service” (then amended via letter [78] Tai-Jen-Four No. 09445 dated May 23, 1989, of the Executive Yuan, until repealed and replaced in letter [85] Tai-Jen-Cheng-Gai No. 45806 dated December 31, 1996, of the Executive Yuan, by “The Regulation for the Suspension of Pension Payment on Military Officers and Sergeants Who Assume Public Service”) which provides for six categories of pub-

公務人員退休法第十二條第二款、學校教職員退休條例第十三條第二款等關於停止領受退休金之規定，當係指擔任「有給之公職」之意，固不問其職稱之如何，亦不問其待遇之多寡，要均包括在內。行政院於六十八年一月十九日以（六八）台人政肆字第○一三七九號函修訂發布之「退休俸及生活補助費人員自行就任公職支領待遇注意事項」（嗣於七十八年五月二十三日經行政院以（七八）台人政肆字第○九四四五號函核定修正，迨八十五年十二月三十一日行政院復以（八五）台人政給字第四五八○六號函發布本注意事項自八十六年一月一日起停止適用，代之以施行之「支領退休俸軍官士官就任公職停發退休俸辦法」）所定關於就任公職之職務分類即：(一)民意代表(二)政務官(三)各機關學校或公營事業機構編制內教職員(四)各機關學校臨時編制職員(五)各機關學校或公營事業機構約聘約僱人員(六)軍事單位一般及評價聘僱聘任各等人員。此既係主管機關為執行上開條例未盡明確之附表所為必要補充之規定，與立法意旨無違，亦於憲法保障之生存權、財產權無所牴觸。至於憲法第八十五條、第八十六條第一款係關於公務人員選拔、考銓之規定，並非就何者為公

lic service: (1) representatives of the people; (2) political appointees; (3) regularly appointed teachers and other staff of government organizations, schools and colleges or state-owned enterprises; (4) temporarily appointed staff of government organizations, schools or colleges; (5) contractually appointed personnel of government organizations, schools, colleges or state-owned enterprises; and (6) general and evaluated, contractually appointed personnel of military units. This is a necessary supplementary provision by the competent authority to implement the rather ambiguous schedule for the above-mentioned Act which does not contradict the legislative purpose or the constitutional guarantee of the people's rights of existence and property. The provisions of Article 85 and Article 86, Subparagraph 1, of the Constitution are related to the selection, examination and qualification of public functionaries, not their definition. Furthermore, under Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act, this Yuan can only review the constitutionality of the relevant laws or regulations applied by

務人員加以界定；且依司法院大法官審理案件法第五條第一項第二款規定，本院僅得就確定終局裁判所適用之法令是否牴觸憲法予以審查，至若該裁判適用法令之當否，則非在本院所得審查之列，是本件聲請人等應否屬於前開注意事項所定自行就任公職之人員，乃法院事實認定之問題，不在解釋之範疇，併此敘明。

the finally adjudicated judgment, not the appropriateness of the laws or regulations applied by the court. Whether the petitioners are those who voluntarily resume public service is a question of fact for the court, and is not within the scope of Interpretation of this Yuan.