

J. Y. Interpretation No.467 (October 22, 1998) *

ISSUE: What is the status of the provincial level of government now that the 1997 Amendments to the Constitution are in effect?

RELEVANT LAWS:

Article 9 of the Amendments to the Constitution (憲法增修條文第九條) .

KEYWORDS:

self-government (自治) , public legal person (公法人) .**

HOLDING: Despite the fact that Article 9 of the 1997 Amendments to the Constitution is in effect, the provincial government is still a local government. In view of the fact that it no longer has jurisdiction over matters regarding local self-government and has been deprived of the autonomous right to internal organization, it shall not be recognized as a public legal person of local self-government. However, if legislation, in accordance with the spirit and purpose of the abovementioned Amendments to the Constitution, empow-

解釋文：中華民國八十六年七月二十一日公布之憲法增修條文第九條施行後，省為地方制度層級之地位仍未喪失，惟不再有憲法規定之自治事項，亦不具備自主組織權，自非地方自治團體性質之公法人。符合上開憲法增修條文意旨制定之各項法律，若未劃歸國家或縣市等地方自治團體之事項，而屬省之權限且得為權利義務之主體者，於此限度內，省自得具有公法人資格。

* Translated by Professor Jyh-Pin Fa.

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

ers the provincial government to exercise exclusive power of local self-government and to have certain legal rights and responsibilities, it certainly may thus acquire the status of a public legal person.

REASONING: The division of powers between the central and local governments is regulated by the Constitution and statutes with constitutional delegation. A local governments meeting the following criteria will be considered as a public legal person of local self-government: (1) it may enact and enforce regulations regarding local self-government; and (2) it has the organic power of self-government. Article 9 of the 1997 Amendments to the Constitution provides that members of the governing body of the province, including the chairman, will be nominated by the Premier and appointed by the President; members of the advisory council will also be nominated by the Premier and appointed by the President; the provincial government shall execute orders of the Executive Yuan and supervise counties on matters of local self-government; the

解釋理由書：本件係聲請人於行使職權時，就依憲法增修條文第九條之規定省是否仍具有公法人之地位，發生適用憲法之疑義而聲請解釋，非關法規違憲審查之問題，合先說明。

中央與地方權限劃分係基於憲法或憲法特別授權之法律加以規範，凡憲法上之各級地域團體符合下列條件者：一、享有就自治事項制定規章並執行之權限，二、具有自主組織權，方得為地方自治團體性質之公法人。八十六年七月二十一日公布施行之憲法增修條文第九條第一項分別規定：「省、縣地方制度，應包括左列各款，以法律定之，不受憲法第一百零八條第一項第一款、第一百零九條、第一百十二條至第一百十五條及第一百二十二條之限制：一、省設省政府，置委員九人，其中一人為主席，均由行政院院長提請總統任命之。二、省設省諮議會，置省諮議會議員若干人，由行政院院長提請總統任命

elections for members of the Taiwan Provincial Assembly and the Government of the Taiwan Provinces shall be suspended following the conclusion of the current terms of offices of these two official bodies; and future modification of the functions, operations, and organization of the Taiwan Provincial Government may be specified by law. Accordingly, the provincial government is still a local government. Moreover, as the Taiwan Province no longer has jurisdiction over matters of local self-government and has been deprived of the autonomous right to internal organization, it shall not be recognized as a public legal person of local self-government.

In addition to those organizations which share national sovereignty, other organizations may also be considered as public legal persons if their memberships are mandatory, if they are entitled to exercise public authorities and if they have the capacity to carry out legal rights and responsibilities. Therefore, in addition to national and local-level governments with the right of self-government, there are

之。」「六、中央與省、縣之關係。七、省承行政院之命，監督縣自治事項。」同條第二項規定：「第十屆台灣省議會議員及第一屆台灣省省長之任期至中華民國八十七年十二月二十日止，台灣省議會議員及台灣省省長之選舉自第十屆台灣省議會議員及第一屆台灣省省長任期之屆滿日起停止辦理。」同條第三項規定：「台灣省議會議員及台灣省省長之選舉停止辦理後，台灣省政府之功能、業務與組織之調整，得以法律為特別之規定。」依上開規定，省為地方制度層級之地位仍未喪失，惟台灣省自八十七年十二月二十一日起既不再有憲法規定之自治事項，亦不具備自主組織權，自非地方自治團體性質之公法人。

查因憲法規定分享國家統治權行使，並符合前述條件而具有公法人地位之地方自治團體外，其他依公法設立之團體，其構成員資格之取得具有強制性，而有行使公權力之權能，且得為權利義務主體者，亦有公法人之地位。是故在國家、地方自治團體之外，尚有其他公法人存在，早為我國法制所承認（參照國家賠償法第十四條、農田水利會組織通則第一條第二項、八十七年十

other public legal persons which have long been recognized by law. The Legislative Yuan has full discretion to decide whether to authorize the provincial government with the necessary competency to become a public legal person.

Of course, the special law on the reorganization of the Taiwan Provincial Government provided in Article 9, Paragraph 3, of the Amendments to the Constitution shall not conflict with other prescriptions provided in the same Article of the Constitution.

月二日立法院三讀通過之訴願法第一條第二項)。上開憲法增修條文第九條就省級政府之組織形態、權限範圍、與中央及縣之關係暨台灣省政府功能、業務與組織之調整等項，均授權以法律為特別之規定。立法機關自得本於此項授權，在省仍為地方制度之層級前提下，依循組織再造、提昇效能之修憲目標，妥為規劃，制定相關法律。符合上述憲法增修意旨制定之法律，其未劃歸國家或縣市等地方自治團體之事項，而屬省之權限且得為權利義務主體者，揆諸前開說明，省雖非地方自治團體，於此限度內，自得具有其他公法人之資格。

憲法增修條文第九條第三項規定，鑑於臺灣省原職掌之功能業務龐大，而相關職權法令之全盤修正曠日廢時，為期其制度及功能、業務為適當之規劃與調整，乃授權立法機關得制定特別法以迅為因應，非謂立法機關得不受憲法增修條文第九條第一項第一款及第二款對省級政府之組織形態決定之限制而為不同之規定，同條第一項其他各款亦然，並此敘明。

Justice Chi-Nan Chen filed concurring opinion in part.

Justice Young-Mou Lin filed concurring opinion in part.

Justice Sen-Yen Sun filed concurring opinion.

Justice Hsiang-Fei Tung filed dissenting opinion, in which Justice Vincent Sze joined.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋陳大法官計男、林大法官永謀分別提出部分協同意見書；孫大法官森焱提出協同意見書；董大法官翔飛、施大法官文森共同提出不同意見書；劉大法官鐵錚提出不同意見書。