

J. Y. Interpretation No.481 (April 16, 1999) *

ISSUE: Shall Fukien Province hold gubernatorial and representative body elections as Taiwan province does?

RELEVANT LAWS:

Articles 7 and 121 of the Constitution (憲法第七條、第一百二十一條) ; Article 17 of the 1992 Amendments to the Constitution (八十一年憲法增修條文第十七條) ; Article 64 of the Self-Governance Act for Provinces and Counties (省縣自治法第六十四條) .

KEYWORDS:

local self-government (地方自治) , governor (省長) , Fukien Province (福建省) .**

HOLDING: Article 17 of the 1992 Amendments to the Constitution authorized the Legislative Yuan to enact a unified law on local self-government. A province shall have a council and the governor shall be elected by the people of said province. This is designed for those provinces that were, in fact, able to exercise self-government. Article 64 of the

解釋文：中華民國八十一年五月二十八日修正公布之中華民國憲法增修條文第十七條，授權以法律訂定省縣地方制度，同條第一款、第三款規定，省設省議會及省政府，省置省長一人，省議員與省長分別由省民選舉之，係指事實上能實施自治之省，應受上述法律規範，不受憲法相關條文之限制。省縣自治法遂經憲法授權而制定，該法第

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

Self-Governance Act for Provinces and Counties provided that the organization of the local council and government where territorial jurisdiction was incomplete should be directly regulated by the Executive Yuan. Elections of members of the council and the governor were denied according to the Regulation of Organization of the Fukien Provincial Government issued by the Executive Yuan. It is warranted by the existing facts and was in accordance with the spirit and purpose of the statutory delegation. It was also in harmony with the equal protection of law provided in Article 7 of the Constitution.

REASONING: Article 17 of the 1992 Amendments to the Constitution authorized the Legislative Yuan to enact a unified law on local self-government. Members of the provincial council and the governor of a province shall thus be elected by the people of the province. However, this may be applied only to those provinces that are, in fact, able to exercise self-government. In other words, without enacting the General Principles of Provincial and County Self-Government

六十四條規定，轄區不完整之省，其議會與政府之組織，由行政院另定之。行政院據此所訂定之福建省政府組織規程，未規定由人民選舉省長及省議會議員，乃斟酌福建省之特殊情況所為之規定，為事實上所必需，符合母法授權之意旨，與憲法第七條人民在法律上平等之原則亦無違背。

解釋理由書：八十一年五月二十八日修正公布之中華民國憲法增修條文第十七條（八十三年八月一日修正公布之中華民國憲法增修條文第八條），授權以法律訂定省縣地方制度，同條第一款、第三款規定，省設省議會及省政府，省置省長一人，省議員與省長分別由省民選舉之，係指事實上能實施自治之省，應依上述法律規範，不受憲法相關條文之限制。亦即無須制定適用於全國之省縣自治通則，而得以特別法針對各地方之實際情況，實施地方自治。省

(which were originally required by the Constitution), an alternative statute was proposed to deal with the special case of Taiwan. Accordingly, a unified law based on a constitutional delegation on local self-government was enacted. Article 64 of this law further provided that the Executive Yuan should be authorized to issue a regulation on these provinces whose territory is incomplete. The Regulation of Organization of the Fukien Provincial Government issued by the Executive Yuan thus provided for a provincial government composed of seven to eleven members, one of whom shall be the chairman. All members shall be nominated by the Premier and appointed by the President. The council of the province was totally abolished. These laws and regulations had taken into account the special case of Fukien Province and are thus in harmony with the spirit and purpose of the authorizing statute.

Local self-government at the county level is explicitly provided for in the Constitution. As for local self-government at the provincial level, however, the Consti-

縣自治法遂經憲法授權而制定，該法第六十四條規定，轄區不完整之省，其議會與政府之組織，由行政院另定之。將轄區特殊之省組織授權行政院以行政命令方式訂定之，係因考量其轄區之事實情況，尚無依憲法實施省自治之必要。行政院據此所訂定之福建省政府組織規程，規定福建省政府設置委員七至十一人，其中一人為主席，由行政院院長提請總統任命之，而不設省議會，乃斟酌福建省之事實特殊情況，符合母法授權之意旨。

依憲法第一百二十一條規定，縣實行縣自治，至省之自治，憲法則授權以法律定之。而憲法上之平等原則，係為保障人民在法律上地位之實質平等，

tution has adopted a different approach by authorizing the Legislative Yuan to enact legislation. In terms of the constitutional principle of equality, it is well-established that substantial equality under the law is of the essence. It requires reasonably different treatments of factual differences based on the nature of the subject. The current territory and population actually under control of Fukien Province are totally different from those of the original. In view of the degree of complexity of public affairs, the case of Fukien is also obviously different from the Taiwan case. Therefore, the organization of Fukien Province shall be simplified for the furtherance of administrative efficiency. Based on these factual differences, the preclusion of popular election of members of the council and the governor is reasonable and does not conflict with the Constitution.

Although the 1997 Amendments to the Constitution made significant changes in provincial organization, the unified law was also later amended; hence, the different organization and arrangement provided in this Interpretation for the province with special territory are still valid.

並不禁止法律依事物之性質，就事實狀況之差異而為合理之不同規範。福建省目前管轄之範圍及人口數目，與其原有者，已相去甚遠，且其公共事務之繁簡程度，與台灣省之狀況，亦難相提並論。處此情況，更宜精簡組織，以增進行政效率。現行福建省政府組織規程，不由人民選舉省長及省議會議員，乃考量事實上差異所為之合理規定，對福建省人民而言，與憲法上開原則亦無違背。

八十六年七月二十一日修正公布之中華民國憲法增修條文，有關省級機關組織雖有重大變革，且省縣自治法已因地方制度法之實施而廢止，然轄區特殊之省，其省級組織之調整，依照本解釋意旨，仍得為不同之規定，併此指明。

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Justice Tieh-Cheng Liu filed dissenting
opinion.

本號解釋劉大法官鐵錚提出不同
意見書。