

## J. Y. Interpretation No.235 ( March 17, 1989 ) \*

**ISSUE:** Are the auditing divisions in provinces (cities) that conduct audits of the finances of the respective provincial (municipal) government in said provinces (cities) under Article 5 of the Audit Act in conflict with the Constitution?

**RELEVANT LAWS:**

Article 90 and Article 107, Subparagraph 13, of the Constitution (憲法第九十條及第一百零七條第十三款) ; Article 5 of the Audit Act (審計法第五條) ; Article 4, Paragraph 1, of the Organic Act of the Control Yuan (監察院組織法第四條第一項) ; Article 14 of the Organic Act of National Audit Office (審計部組織法第十四條) ; Article 31 of the Financial Statement Act (決算法第三十一條) .

**KEYWORDS:**

separation of five-power system (五權分立制度) , control power (監察權) , auditing power (審計權) .\*\*

**HOLDING:** The Constitution of the Republic of China upholds the separation of five-power system. The auditing power is within the sphere of the control power. In view of Article 90 and Article

**解釋文：**中華民國憲法採五權分立制度，審計權乃屬監察權之範圍，應由中央立法並執行之，此觀憲法第九十條及第一百零七條第十三款規定自明。隸屬於監察院之審計部於省（市）

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\* Translated by Ching P. Shih.

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

107, Subparagraph 13, of the Constitution, it is clear that the power shall be enacted and implemented by the Central Government. The National Auditing Office, supervised by the Control Yuan, establishes auditing divisions in provinces (cities) and conducts audits of the finances of the provincial (municipal) government in said provinces (cities) under Article 5 of the Audit Act. This does not contradict the Constitution.

**REASONING:** The Constitution of the Republic of China upholds the separation of five-power system. The Control Yuan is the supreme controlling authority of the nation and exercises consent, impeachment, discipline, and auditing powers. In view of Article 90 and Article 107, Subparagraph 13, of the Constitution, it is clear that the powers shall be enacted and implemented by the Central Government. To exercise the auditing power, the Control Yuan established the National Auditing Office to govern auditing matters as provided in Subparagraphs of Article 4, Paragraph 1, of the Organic Act of the Control Yuan. Since the audit-

設審計處，並依審計法第五條辦理各該省（市）政府及其所屬機關財務之審計，與憲法並無抵觸。

**解釋理由書：**中華民國憲法採五權分立制度，監察院為國家最高監察機關，行使同意、彈劾、糾舉及審計權；而依憲法所定關於中央之事項，由中央立法並執行之，此觀憲法第九十條及第一百零七條第十三款規定自明。監察院為行使審計權設審計部，掌理監察院組織法第四條第一項各款所定之審計事項，審計權既屬於中央權限，審計部組織法第十四條規定：審計部於各省（市）設審計處，掌理各該政府及其所屬機關之審計事項。審計法第五條並規定：各省（市）政府及其所屬機關財務之審計，由各該省（市）審計處辦理之，均為建立隸屬於中央之統一審計體系，以監督各省（市）預算之執行所必

ing power is within the scope of the Central Government, Article 14 of the Organic Act of National Audit Office states: "The National Auditing Office shall establish an auditing division in every province (city) which governs auditing matters of the provincial (municipal) government where it is located." Article 5 of the Audit Act also states: "The auditing of the finances of every provincial (municipal) government shall be carried out by the auditing division located in said province (city)." These provisions are for establishing a uniform auditing system belonging to the central government and the necessity of supervising the execution of the budget of each province (city). They do not contradict the Constitution. Article 111 of the Constitution is concerned with the matters not enumerated in the provisions of Articles 107-110 of the Constitution. The auditing power has been clearly prescribed within the sphere of the central powers; it is impossible to apply that provision. Furthermore, when exercising the power of review of the examination statement of the annual report, the relationship between the auditing authori-

要，與憲法並無牴觸。至憲法第一百十一條係指憲法第一百零七條至第一百十條未列舉之事項而言，審計權憲法已明定屬於中央之權限，自無適用該條之餘地。又中央在地方設置之審計機關，與地方民意機關行使審議決算之審核報告職權時之關係，依決算法第三十一條規定，本應另以法律定之，僅在法律未制定前，準用現行決算法之規定而已，主管機關應在適當時期訂定地方決算法律，乃屬當然，併此指明。

ties established in localities by the central government and local representative institutions shall be governed by another law under Article 31 of the Financial Statement Act. Until the law is enacted, it is only applicable *mutatis mutandis* to the provisions of the current Financial Statement Act. It is certain that the competent authority shall enact a local annual reporting law in an appropriate period of time.