

J. Y. Interpretation No.239 (May 12, 1989) \*

**ISSUE:** Is the Provisional Act Governing the Monopolistic Sale on Cigarettes and Wines in Taiwan Province applicable to the re-structured Kaohsiung City?

**RELEVANT LAWS:**

Article 172 of the Constitution (憲法第一百七十二條); Article 15 of the Standard Act for the Laws and Rules (中央法規標準法第十五條); Article 1 of the Provisional Act Governing the Monopolistic Sale on Cigarettes and Wines in Taiwan Province (臺灣省內菸酒專賣暫行條例第一條).

**KEYWORDS:**

Executive Yuan (行政院), Kaohsiung City (高雄市), Taiwan Province (台灣省).\*\*

**HOLDING:** The Provisional Act Governing the Monopolistic Sale on Cigarettes and Wines in Taiwan Province became applicable to all the cities and counties within the jurisdiction of the Taiwan Province when the statute was promulgated on July 7, 1953. Even with the upgrading of Kaohsiung City to a municipal-

**解釋文：**中華民國四十二年七月七日公布施行之台灣省內菸酒專賣暫行條例，係以當時包括高雄市在內之台灣省所屬各縣市為施行區域，此項法律施行區域未依法定程序變更前，仍應繼續適用於改制後之高雄市。

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

ity under the direct jurisdiction of the Central Government, the areas to which this law applies shall remain the same until an amendment is promulgated.

**REASONING:** The Provisional Act Governing the Monopolistic Sale on Cigarettes and Wines in Taiwan Provinces (hereinafter “the Act”) became applicable to all the cities and counties within the jurisdiction of the Taiwan Province when this law was promulgated on July 7, 1953. Kaohsiung City became a municipality under the direct jurisdiction of the Central Government on July 1, 1979. Nonetheless, the areas to which the Act applies shall remain the same. Until an amendment is promulgated, Kaohsiung City shall remain subject to the Act. According to Article 1, Paragraph 2, of the “Principles of the Application and Reformation of Central and Local Laws and Regulations after the Upgrading of Kaohsiung City to a Municipality” announced by the Executive Yuan in its Letter (Tai 68 Nei No. 6008), any central government laws or regulations whose titles contain the term “Taiwan Province Area,” “in the

**解釋理由書：**中華民國四十二年七月七日公布施行之台灣省內菸酒專賣暫行條例係以當時包括高雄市在內之台灣省所屬各縣市為施行區域，高雄市於六十八年七月一日改制為直轄市後，此項法律施行區域並未改變，在未依法定程序變更前，上開條例仍適用於改制後之高雄市。行政院台六十八內字第六〇〇八號函發布之「高雄市改制後中央及地方法令規章適用及整理原則」，其第一項第二款所稱：中央法令冠有「台灣省區」、「台灣省內」、「台灣省」名稱者，於改制後之高雄市繼續適用，就台灣省內菸酒專賣暫行條例而言，符合該條例之立法原意，於中央法規標準法第十五條亦無違背，惟因行政區域變更，致法規名稱與施行區域不符者，宜由有關機關從速依法檢討修正，俾名實相符，併此指明。

Taiwan Province,” or “Taiwan Province” shall remain applicable to Kaohsiung City after its upgrade. This announcement is in line with the legislative purpose of the Act and does not violate Article 15 of the Standard Act for the Laws and Rules. However, given the fact that the administrative area has been changed, the actual areas that are subject to this law are different from those indicated by the title of the Act. Therefore, the relevant authorities should amend the Act as soon as possible to avoid further confusion.

Justice Chien-Tsai Cheng filed dissenting opinion.

本號解釋鄭大法官健才提出不同意見書。