

J. Y. Interpretation No.246 (September 29, 1989) *

ISSUE: The interpretative letter issued by the Ministry of Civil Service states that the monthly salary used as a basis for calculating retirement pension or old-age benefits under the Public Functionaries Insurance Act does not include work allowance, full attendance allowance for military staffers and supervisors' allowance. Is said letter repugnant to the meaning and purpose of Articles 22, 155 and 172 of the Constitution?

RELEVANT LAWS:

Article 8, Paragraph I of Public Functionaries Retirement Act (公務人員退休法第八條第一項); Article 24 of the Public Functionaries Insurance Act (公務人員保險法第二十四條); Article 15, Paragraph I of the Enforcement Rules of the Public Functionaries Insurance Act (公務人員保險法施行細則第十五條第一項); Article 7 of the Public Functionaries Remuneration Act (公務人員俸給法第七條) .

KEYWORDS:

scope of discretion (裁量範圍), retirement (退休), pension (退職金) . **

HOLDING: While public functionaries have legal rights to claim pension and seniors' insurance, the payment

解釋文：公務人員之退休及養老，依法固有請領退休金及保險養老給付之權利，惟其給付標準如何，乃屬立

* Translated by Pijan Wu.

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standards are a matter of legislative policy to be stipulated by laws or regulations delegated by laws. Regarding the payable amount of pension under the item of “Other Cash Pay” as provided in Article 8, Paragraph 1, of the Public Functionaries Retirement Act, paragraph 2 of the same Article stipulates that the Examination Yuan shall set the standards in collaboration with the Executive Yuan. Accordingly, Article 24 of the Public Functionaries Insurance Act delegates its Enforcement Rules to provide (in Article 15, Paragraph 1) that “the monthly pay or the current-month pay for the insured, as referred to in Articles 8 and 14 of the Act [the Public Functionaries Insurance Act] is temporarily set according to the monthly pay standard for government employees and teachers.” Article 7 of the Regulation Governing the Payment of Remuneration to Military, Public and Teaching Personnel, promulgated by the Executive Yuan on June 12, 1981, provides that work allowance, full attendance allowance for military staff and supervisors’ allowance shall not be included when calculating the civil (military) re-

法政策事項，仍應由法律或由法律授權之命令定之。公務人員退休法第八條第二項就同條第一項所稱「其他現金給與」之退休金應發給數額，授權考試院會同行政院定之。公務人員保險法第二十四條授權訂定之同法施行細則第十五條第一項規定「本法第八條及第十四條所稱被保險人每月俸給或當月俸給，暫以全國公教人員待遇標準支給月俸額為準」，而中華民國七十年六月十二日行政院訂頒之全國軍公教人員待遇支給辦法第七條則對工作津貼及軍職幹部服勤加給、主官獎助金，不列入退休（役）保險俸額內計算，以及對於不服勤人員不予支給加以規定，乃係斟酌國家財力、人員服勤與否或保險費繳納情形等而為者，尚未逾越立法或立法授權之裁量範圍，與憲法並無牴觸。至行政院台五十九人政肆字第一七八九七號函載「因案停職人員在停職期間，既未正式服勤，關於停職半薪及復職補薪，均不包括工作補助費計支」，則係兼顧有服勤工作始應支給補助費之特性所為之說明，與憲法亦無牴觸。

tiement insurance and that allowances shall not be paid to those who do not actually discharge the duties. The above rules do not exceed the scope of discretion embodied in the laws or the delegated regulations and thus do not violate the Constitution since they are based on the financial status of the country, on the actual conditions of services, and on the payment of insurance premiums. Likewise, the ordinance made in the Executive Yuan letter (Letter No.Tai- (59)Ren-Jung-Sze-Tze 17897) stating that “the half pay for a public functionary during his/her suspension period and the reimbursement pay upon his/her reinstatement shall not include work allowance since he/she did not actually discharge the duties” is consistent with the Constitution because it is merely an explanation of the concept that work allowance is only for those who actually discharge their duties.

REASONING: The State enacts laws establishing the retirement and pension programs for public functionaries under the mandate of Article 83 of the Constitution. Therefore, public function-

解釋理由書：國家基於憲法第八十三條規定之意旨，制定法律，建立公務人員退休及養老制度。公務人員依法固有請領退休金及保險養老給付之權利，惟其給付標準如何，乃屬立法政策

aries have legal rights to claim pension and seniors' insurance. However, the payment standards are a matter of legislative policy to be stipulated by laws or regulations delegated by laws. Regarding the payable amount of pension under the item of "Other Cash Pay" as provided in Article 8, Paragraph 1, of the Public Functionaries Retirement Act, paragraph 2 of the same article stipulates that the Examination Yuan shall set the standards in collaboration with the Executive Yuan. Accordingly, Article 24 of the Public Functionaries Insurance Act delegates its Enforcement Rules to provide (in Article 15, Paragraph I) that "the monthly pay or the current-month pay for the insured, as referred to in Articles 8 and 14 of the Act [the Government Employee Insurance Act] is temporarily set according to the monthly pay standard for government employees and teachers." The Public Functionaries Remuneration Act, before or after its amendment on July 16, 1986, also mandated that the competent authority shall set the standards of various allowances and the criteria for converting credits into remuneration. In order to im-

事項，仍應由法律或由法律授權之命令定之。公務人員退休法第八條第二項就同條第一項所稱「其他現金給與」之退休金應發給數額，授權考試院會同行政院定之。公務人員保險法第二十四條授權訂定之同法施行細則第十五條第一項規定：「本法第八條及第十四條所稱被保險人每月俸給或當月俸給，暫以全國公教人員待遇標準支給月俸額為準」；公務人員俸給法於中華民國七十五年七月十六日修正前後，關於公務員之各種加給及俸點折算俸額標準，亦均有授權主管機關訂定之規定，行政院為實施此項法律，於中華民國七十年六月十二日修正發布全國軍公教人員待遇支給辦法，其第七條則對工作津貼及軍職幹部服勤加給、主官獎助金，不列入退休（役）保險俸額內計算，以及對於不服勤人員不予支給」加以規定；銓敘部並曾先後作相關函示（銓敘部(67)台楷特二字第○五七九號函、(68)台楷特三字第二三四八三號函）；均係斟酌國家財力、人員服勤與否或為計算養老給付基礎之保險費繳納情形等而為者，得視國民經濟狀況而調整，並非一成不變，尚未逾越立法或立法授權之裁量範圍，與憲法並無牴觸。至行政院台五十九人政肆字第一七八九七號函載「因案停職人

plement this law, the Executive Yuan amended the Regulation Governing the Payment of Remuneration to Military, Public and Teaching Personnel on June 12, 1981, Article 7 of which provides that work allowance, full attendance allowance for military staff and supervisors' allowance shall not be included when calculating the civil (military) retirement insurance and that allowances shall not be paid to those who do not actually discharge the duties. On these points, the Ministry of Civil Service has also given directives (Letter No. (67)Tai-Kai-Te-Er-Tze 0579 and (68) Tai-Kai-Te-Sen-Tze 2348). The above rules and directives do not exceed the scope of discretion embodied in the laws or the delegated regulations and thus do not violate the Constitution since they are based on the financial status of the country, on the actual conditions of services, and on the payment of insurance premiums relating to the seniors' program. In other words, the above rules and directives are flexible for they are set and adjusted based on the economic situations of the citizens. Likewise, the ordinance made in the Executive Yuan

員在停職期間，既未正式服勤，關於停職半薪及復職補薪，均不包括工作補助費計支」，則係兼顧因工作而支給補助費之特性所為之說明，與憲法亦無牴觸。

letter (Letter No. Tai- (59) Ren-Jung-Sze-Tze 17897) stating that “the half pay for a public functionary during his/her suspension period and the reimbursement pay upon his/her reinstatement shall not include work allowance since he/she did not actually discharge the duties is consistent with the Constitution because it is merely an explanation of the concept that work allowance is only for those who actually discharge their duties.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。