

J. Y. Interpretation No.260 (April 19, 1990) *

ISSUE: Do the established provincial representative bodies have legislative power and shall the existing legislations of the provincial assembly and provincial governmental organizations remain operative?

RELEVANT LAWS:

Articles 108, 112 and 113 of the Constitution (憲法第一百零八條、第一百十二條及第一百十三條) ; J. Y. Interpretation No.259 (司法院釋字第二五九號解釋) .

KEYWORDS:

provincial assembly (省議會) , provincial government (省政府) , local self-governance (地方自治) , representative body (民意機關) .**

HOLDING: According to the system of local government provisions in the Constitution, the Central Government has no authority to enact individual laws for specified provincial assemblies and the organization of the provincial government. The established provincial representative bodies have no legislative power

解釋文：依中華民國憲法有關地方制度之規定，中央尚無得逕就特定之省議會及省政府之組織單獨制定法律之依據，現時設置之省級民意機關亦無逕行立法之權限。

* Translated by THY Taiwan International Law Offices.

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

either.

REASONING: The petitioning institute in this case applied for an interpretation with respect to questions of delegation of local government's legislative power under the Constitution. It is clear that this is not a question concerning the constitutionality of the laws.

With regard to the delegation of the provincial and counties' legislative power, the Constitution has prescribed special provisions in Articles 108, 112 and 113. According to these provisions, the Central Government has no authority to enact individual laws for specified provincial assemblies and the organization of the provincial government. The established provincial representative bodies have no legislative power either. When applying the Constitution, if matters that have not been contemplated at the time of drafting arise, the central government shall respond by balancing the needs of the nation, taking into consideration the special circumstances of the regions, and promptly resolve the matters pursuant to the constitu-

解釋理由書：本件聲請機關係就適用憲法關於地方自治立法權限劃分之規定，發生疑義，聲請解釋；非關法規違憲審查問題，合先說明。

關於省縣地方自治事項立法權限之劃分，中華民國憲法第一百零八條、第一百十二條及一百十三條設有特別規定，依此規定，中央尚無得逕就特定之省議會及省政府之組織，單獨制定法律之依據，現時設置之省級民意機關亦無逕行立法之權限。至行憲後有制憲當時所未料及之情事發生，如何因應，自應由中央盱衡全國之整體需要，兼顧地方之特殊情況，妥速為現階段符合憲法程序之解決。在未依憲法程序解決前，省縣自治及行政事務，不能中斷，依本院釋字第二五九號解釋之同一理由，現行有關台灣省實施地方自治及省議會、省政府組織之法規，仍繼續有效，併予敘明。

tional procedures. Prior to resolution under the constitutional procedures, the self-governance and administration of provincial and county governments cannot be suspended. For the same reason given in this Yuan's Interpretation No.259, the local self-governance system and the existing legislations of the provincial assembly and provincial governmental organizations shall remain operative.