

J. Y. Interpretation No.270 (December 7, 1990) *

ISSUE: Are the relevant provisions of the Regulation Governing the Pension and Severance Payment of Ministry-of-Economics-Operated Enterprise Employees, setting forth criteria for retirement based on grade and age, unconstitutional?

RELEVANT LAWS:

Article 144 of the Constitution (憲法第一百四十四條); Article 84 of the Labor Standards Act (勞動基準法第八十四條); Article 33 of the Public Functionaries Appointment Act (公務人員任用法第三十三條); Article 2 of the Public Functionaries Retirement Act (公務人員退休法第二條).

KEYWORDS:

public enterprises (公營事業), monopolistic enterprises (獨佔性企業), retirement age (退休年齡), public functionaries (公務人員), Ministry of Personnel (銓敘部), rewards (獎懲), survivor relief (撫卹). **

HOLDING: According to Article 33 of the Public Functionaries Appointment Act, appointments of public enterprise employees are governed by other laws. Prior to the enactment of the

解釋文：公營事業人員之任用，依公務人員任用法第三十三條，應另以法律定之。在此項法律制定前，依公務人員退休法第二條及該法施行細則第二條規定，公營事業人員無從依公務

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aforementioned Act, Article 2 of the Enforcement Rules of the Act stipulated that employees of public enterprises are not subject to the retirement regulations applicable to public functionaries. The Executive Yuan's proclamation of the Regulation Governing the Pension and Severance Payment of Ministry-of-Economics-Operated Enterprise Employees on January 23, 1981, specified in Paragraph 2 of Article 17 the regulations governing classification and retirement age standards for the aforementioned public enterprise employees. Until a law exclusively governing appointment and retirement matters of these employees is enacted, the Executive Yuan's rules shall apply. These rules are consistent with the Constitution insofar as they encourage the turnover and rationalization of public enterprises overseen by the Ministry of Economic Affairs. However, the appointment and retirement of public enterprise employees, as well as their related rights and duties, shall be governed by other laws.

REASONING: Article 144 of the Constitution describes public utilities

人員退休法辦理退休。行政院於中華民國七十年一月二十三日核定修正發布之「經濟部所屬事業人員退休、撫卹及資遣辦法」第十七條第二項有關訂定分等限齡退休標準之規定，在公營事業人員任用及退休法律制定前，乃為促進經濟部所屬國營事業人事新陳代謝及企業化經營而設，不生牴觸憲法問題，惟公營事業人員之任用及退休，關係此等人員之權利義務，仍應從速以法律定之。

解釋理由書：公用事業及其他有獨佔性之企業，以公營為原則，其經

and other monopolistic enterprises as largely state-owned entities, which may also be privately owned if legally permitted. However, the Constitution does not specify whether the appointment and retirement rules applicable to public functionaries also apply to employees of public enterprises. Thus, the legislature may promulgate laws in this domain, provided that the spirit of the Constitution is not violated.

Article 2 of the Public Functionaries Retirement Act stipulates that: “The term ‘public functionaries’ mentioned in this Law refers to currently employed persons legally appointed in accordance with the public functionaries appointment laws.” Additionally, Article 2 of the Enforcement Rules of the Public Functionaries Retirement Act stipulates the following: “The term ‘public functionaries appointment laws’ mentioned in Article 2 of the Act refers to the rules set by the Ministry of Personnel for purposes of qualifications, review and registration.” Lastly, Article 33 of the Public Functionaries Appointment Act clearly stipulates that appoint-

法律許可者，得由國民經營之，憲法第一百四十四條定有明文，但公營事業人員之任用及退休，是否適用以文官為規範對象之公務人員有關法律，憲法並未明文規定，立法機關自得在不牴觸憲法精神範圍內，以法律定之。

公務人員退休法第二條規定：「本法所稱退休之公務人員，係指依公務人員任用法律任用之現職人員」。公務人員退休法施行細則第二條又規定：「本法第二條所稱公務人員任用法律，指銓敘部所據以審定資格或登記者皆屬之」。而公務人員任用法第三十三條則規定，公營事業人員之任用，另以法律定之，由此可知，在上述任用法律制定施行前，公營事業人員無從依公務人員退休法辦理退休。勞動基準法第八十四條規定：「公務員兼具勞工身分者，其有關任（派）免、薪資、獎懲、退休、撫卹及保險（含職業災害）等事項，應適用公務員法令之規定。但其他所定勞動條件優於本法規定者，從其規定」。

ments of public enterprise employees are governed by other laws. From the aforementioned laws, it is clear that before a suitable appointment law is enacted, the procedures for retirement for public functionaries may not be applied to employees of public enterprises. Article 84 of the Labor Standards Act specifies that “for public functionaries who concurrently are also classified as being workers, issues pertaining to appointments, wages, rewards, retirement, survivor relief, and insurance (including workplace accident coverage) shall be governed by the public functionaries regulations”. However, all other classes of laborers not subject to the above law shall refer to relevant regulations. Until the enactment of any relevant laws regulating matters of appointment and retirement for employees of public enterprises, the wording “shall be governed by public functionaries regulations” shall refer solely to those regulations applicable explicitly to public functionaries. Paragraph 2, Article 17, of the Regulation Governing the Pension and Severance Payment of Ministry-of-Economics-Operated Enterprise Employees stipulates

其所謂「應適用公務員法令之規定」，亦非使公營事業人員之任用或退休，在上述相關法律未制定前，逕行適用公務人員任用法或公務人員退休法，而排除現行有關法令之適用。行政院於中華民國七十年一月二十三日核定修正發布之「經濟部所屬事業人員退休、撫卹及資遣辦法」第十七條第二項規定，各事業得按職位工作性質及職責情形，訂定分等限齡退休標準報請本部核准酌予提前，但職員不得少於五十五歲，工人不得少於五十歲。此項規定，在公營事業人員任用及退休法律制定施行前，乃為促進經濟部所屬國營事業人事新陳代謝及企業化經營而設，不生牴觸憲法問題。惟公營事業人員之任用及退休，關係此等人員之權利義務，仍應從速以法律定之。

that regulations on standards of classification and retirement age shall be based upon the working and job-related conditions for all enterprises, provided that employees and workers may not retire if under the age of 55 and 50, respectively. These rules are consistent with the Constitution insofar as they encourage the turnover and rationalization of public enterprises overseen by the Ministry of Economic Affairs. However, the appointment and retirement of public enterprise employees, as well as their related rights and duties, shall be governed by other laws.