

J. Y. Interpretation No.274 (February 22, 1991) \*

**ISSUE:** Is the provision, limiting retention of the insured years to a period of five years, under the Enforcement Rules of the Public Functionaries Insurance Act unconstitutional?

**RELEVANT LAWS:**

Article 21, Paragraph 2 and Article 24 of the Public Functionaries Insurance Act (公務人員保險法第二十一條第二項及第二十四條); Article 68 of the Enforcement Rules of the Public Functionaries Insurance Act (公務人員保險法施行細則第六十八條) .

**KEYWORDS:**

public functionaries Insurance (公務人員保險), insured (被保險人), insured years (保險年資) .\*\*

**HOLDING:** Article 68 of the Enforcement Rules of the Public Functionaries Insurance Act amended and promulgated by the Examination Yuan on July 25, 1962, states that “(T)he retention of the insured years on the record requested by the insured shall be limited to a period of five years. Those who renew their

**解釋文：**考試院於中華民國五十一年七月二十五日修正發布之公務人員保險法施行細則第六十八條規定：「被保險人請准保留保險年資者，其時效以五年為限，逾期再行參加保險者，以新加入保險論」，與當時有效之公務人員保險法第二十一條第二項：「合於前項退費規定，不為申請退費而申請保

\* Translated by David H. J. Yang.

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

insurance policy after the expiration of the five-year period shall be considered as newly insured.” This Article is in conflict with Article 21, Paragraph 2, of the then effective Public Functionaries Insurance Act which provides that “(A)ll the original insured years on the record shall remain effective in full when the insurance policy is renewed if the insured applies for a retention of the insured years on the record instead of the refund in accordance with the preceding paragraph regarding the refund.” Therefore, Article 68 of the said Enforcement Rules shall not be enforced as it imposes a limitation of period that is not mentioned in the Act in violation of the constitutional right of the people.

**REASONING:** Article 21, Paragraphs 1 and 2, of the Public Functionaries Insurance Act of January 29, 1958, provides that “(T)hose who quit their office without obtaining any insurance payment may apply for a refund of the part of the self-paid premium from the insurer. Those who resume their office and renew their insurance policy shall be deemed as newly insured. However, for

留保險年資者，續保時，其原有年資全部有效」之規定不符，增加法律所無之期間限制，有違憲法保障人民權利之意旨，應不予適用。

**解釋理由書：**中華民國四十七年一月二十九日公布之公務人員保險法第二十一條第一項、第二項規定：「被保險人離職，迄未領取任何保險給付者，得向承保機關申請退還其自付部分之保險費，其復行任職，再投保者，以新加入保險論。合於前項退費規定，不為申請退費而申請保留保險年資者，續保時，其原有年資全部有效」。同法第二十四條固授權有關機關訂定該法之施

those who were qualified for the refund of the insurance premium in accordance with the preceding paragraph and did not apply for the refund of the premium but applied for the retention of the insured years instead, all the original insured years on the record shall remain effective in full when the insurance policy is renewed.” Though Article 24 of the same Act authorizes the relevant government institutions to establish the enforcement rules of the Act, it does not authorize the making of any restriction on the substantive right of the insured to retain his/her insured years on the record. Article 68 of the Enforcement Rules of the Public Functionaries Insurance Act amended and promulgated by the Examination Yuan on July 25, 1962, states that “(T)he retention of the insured years on the record requested by the insured shall be limited to a period of five years. Those who renew their insurance policy after the expiration of the five-year period shall be considered as newly insured.” This Article shall not be enforced as it unduly imposes a limitation of period that is not mentioned in the Act in violation of the constitutional right of the people.

行細則，但未授權限制被保險人保留保險年資之實體上權利。考試院於中華民國五十一年七月二十五日修正公布之公務人員保險法施行細則第六十八條則規定：「被保險人請准保留保險年資者，其時效以五年為限，逾期再行參加保險者，以新加入保險論」，增加法律所無之期間限制，有違憲法保障人民權利之意旨，應不予適用。