

J. Y. Interpretation No.275 (March 8, 1991) *

ISSUE: Does the Administrative Court's Precedent which states that neither intent nor negligence is essential to establish liability for the imposition of administrative penalty contradict the Constitution?

RELEVANT LAWS:

Article 23 of the Constitution (憲法第二十三條) ; Precedent P.T. Nos. 30 and 350 (Ad. Ct. 1973) (行政法院六十二年判字第三〇號及三五〇號判例) .

KEYWORDS:

statutory duty (法律上義務) , administrative penalty (行政罰) , prohibitive regulation (禁止規定) , a legal duty to act (作為義務) , negligence (過失) , the administrative court (行政法院) , presume (推定) .**

HOLDING: Where an act violates a statutory duty and is thus subject to administrative penalty, and where the law does not specify otherwise, then although intent may not necessarily be an essential condition for establishing the offender's liability, negligence would be one such

解釋文：人民違反法律上之義務而應受行政罰之行為，法律無特別規定時，雖不以出於故意為必要，仍須以過失為其責任條件。但應受行政罰之行為，僅須違反禁止規定或作為義務，而不以發生損害或危險為其要件者，推定為有過失，於行為人不能舉證證明自己

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condition. An act subject to administrative penalties however, need not cause damage or danger, but need merely violate a prohibitive regulation or a legal duty to act. Such an act must be presumed negligent, and the offender shall be penalized if he/she cannot produce evidence proving a lack of negligence. The Administrative Court's Precedent P.T. No. 30 (Ad. Ct., 1973) states, "Neither intent nor negligence is essential to conditions for establishing liability for the imposition of administrative penalties." Precedent P.T. No. 350 of the same Court in the same year states, "The establishment of acts constituting an administrative offence does not rely on intent as a condition for liability. The cause of the false declarations regarding the degrees of quality and the value of the goods therefore, is not a matter of concern." Those parts of the above precedents that fail to conform to the meaning of the above are contrary to the spirit of the constitutional purpose of protecting people's rights, and shall subsequently cease to apply.

無過失時，即應受處罰。行政法院六十二年度判字第三〇號判例謂：「行政罰不以故意或過失為責任條件」，及同年度判字第三五〇號判例謂：「行政犯行為之成立，不以故意為要件，其所以導致偽報貨物品質價值之等級原因為何，應可不問」，其與上開意旨不符部分，與憲法保障人民權利之本旨牴觸，應不再援用。

REASONING: Administrative

解釋理由書：人民因違反法律

penalties imposed on those who violate statutory duties are a type of sanction against the people. The general principle is that an offender should have a cause of liability attributable to him. In the event that the law fails to specify, however, then even if intent may not be a condition for liability, negligence would be one such condition. For the purpose of ensuring the realization of administrative goals while safeguarding people's rights, an act need only violate prohibitive regulations or a legal duty to act in order to be subject to administrative penalties. Such an act must be presumed to be negligent, and the offender shall be punished unless he can produce evidence proving the lack of such negligence. The Administrative Court's Precedent P.T. No. 30 (Ad. Ct., 1973) states, "Neither intent nor negligence is essential to conditions for establishing liability for the imposition of administrative penalties." Precedent P.T. No. 350 of the same Court in the same year states, "The establishment of acts constituting administrative offences does not rely on intent as a condition of liability. The cause of the false declarations regarding the de-

上義務而應受之行政罰，係屬對人民之制裁，原則上行為人應有可歸責之原因，故於法律無特別規定時，雖不以出於故意為必要，仍須以過失為其責任條件。但為維護行政目的之實現，兼顧人民權利之保障，應受行政罰之行為，僅須違反禁止規定或作為義務，而不以發生損害或危險為其要件者，推定為有過失，於行為人不能舉證證明自己無過失時，即應受處罰。行政法院六十二年度判字第三〇號判例謂：「行政罰不以故意或過失為責任條件」，及同年度判字第三五〇號判例謂：「行政犯行為之成立，不以故意為要件，其所以導致偽報貨物品質價值之等級原因為何，應可不問」失之寬泛。其與上開意旨不符部分，與憲法保障人民權利之本旨牴觸，應不再援用。

grees of quality and the value of the goods therefore, is not a matter of concern.” The opinions in the above Precedents are too broad and vague. Therefore, those parts of the above Precedents that fail to conform to the meaning of the above are contrary to the constitutional essence of protecting people’s rights, and should subsequently cease to apply.

Justice Chien-Hua Yang filed dissenting opinion in part.

本號解釋楊大法官建華提出一部不同意見書。