

J. Y. Interpretation No.280 ( June 14, 1991 ) \*

**ISSUE:** Is the directive issued by the Ministry of Civil Services, providing to the effect that a government employee or teacher who, after receiving a lump-sum retirement payment, keeps receiving remuneration from the National Treasury as an irregular employee may not continue to enjoy preferential rates as to his or her bank deposits, unconstitutional ?

**RELEVANT LAWS:**

Article 83 of the Constitution ( 憲法第八十三條 ) ; Article 31 of the Enforcement Rules of the Government Employee Retirement Act ( 公務人員退休法施行細則第三十一條 ) .

**KEYWORDS:**

government employee retirement ( 公務人員退休 ) , maintenance of livelihood ( 基本生活之維持 ) , preferred savings for retirement pensions ( 退休金優惠存款 ) .\*\*

**HOLDING:** For [former] government employees and teachers, who receive pensions and who are later contractually hired as non-organic members with compensation offered from the public treasury, if the interest accrued from

**解釋文：**領取一次退休金之公教人員，再任依契約僱用而由公庫支給報酬之編制外員工，其退休金及保險養老給付之優惠存款每月所生利息，如不能維持退休人員之基本生活（例如低於編制內委任一職等一級公務人員月俸

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\* Translated by Professor Fuldien Li.

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

their respective and preferred savings for pensions or endowment insurance recovery shall not be sufficient for their livelihood (for example, the accrued interest is lower than the monthly compensation of the consigned government employee with initial grade and class), then such preferred savings for pensions shall not be terminated. Any part of the Letter (74) Tai-Hwa-Ter-Shan-Tzu No. 22854 issued on June 12, 1985, by the Ministry of Civil Services that is in conflict with the explanation above shall no longer be applicable.

**REASONING:** Government employees shall be faithful to their duties and serve the people. Similarly, the nation shall take care of and ensure such employees' livelihood with proper retirement pensions or annuities upon their retirement to comply with the purposes of establishing institutions for the retirement of government employees as required in Article 83 of the Constitution. The regulations in connection with the Preferred Savings for Pensions of Retired Government Employees were established accord-

額)，其優惠存款自不應一律停止。銓敘部中華民國七十四年六月十二日(74)臺華特三字第二二八五四號函，與上述意旨不符部分，應停止適用。

**解釋理由書：**公務人員應盡忠職守，為民服務，國家對於公務人員亦應照顧其生活，於其年老退休時，給予適當之退休年金，以保障其退休後之生活，方符憲法第八十三條設置國家機關掌理公務人員退休、養老等事項之意旨。退休公務人員退休金優惠存款辦法，係依考試院發布之公務人員退休法施行細則第三十一條規定所訂定，為政府在公務人員待遇未能普遍提高或年金制度未建立前之過渡措施，甚目的在鼓勵領取一次退休金之公務人員儲存其退休金，藉適當之利息收入，以維持其生

ing to Article 31 of the Enforcement Rules of the Government Employee Retirement Act, as promulgated by the Examination Yuan. These regulations are a temporary measure adopted before the increase in the amount of government employee remuneration and the establishment of an annuity system. The purpose of these regulations is to encourage government employees to save their pensions. The livelihood of such retired government employees can thus be ensured by the interest accrued from such preferred savings. The Letter (74) Tai-Hwa-Ter-Shan-Tzu No. 22854 issued on June 12, 1985, by the Ministry of Civil Services states that retired government employees shall not receive such preferred savings upon their occupation of public office, such as employment in any public institution, school or academy, or employment as technicians and fellow workers or temporary workers who are paid from the public treasury. The purposes of such requirement are to prevent overlapping expenditures of the public treasury as well as maintenance of the retirement system, and we consider such requirement

活。銓敘部於中華民國七十四年六月十二日以(74)臺華特三字第二二八五四號函示，退休人員如再任各機關學校約僱人員、技工、工友、臨時僱工等由公庫支給待遇之公職，不得續存優惠存款，係為維護退休制度及避免公庫重複負擔，就通常情形而言，固屬適當。惟領取一次退休金之公教人員，再任依契約僱用而由公庫支給報酬之編制外員工者，多係基層人員，其原領退休金及養老給付為數較少，早期退休者尤然。若其全部退休金及保險養老給付之優惠存款每月所生利息，不能維持退休公教人員生活，例如低於委任一職等一級公務人員月俸額者，尚難認為已足以保障其退休後之基本生活，其再任上述約僱員工，所得不多，僅係彌補性質，自不應一律停止其優惠存款，此與非基層人員退休，或再任由公庫支給報酬之非約僱人員不同，不能相提並論。銓敘部前開函釋，與上述意旨不符部分，應停止適用。

proper, in general. However, most such government employees and teachers who receive lump-sum pensions and who are contractually hired as non-organic members with compensation offered from the public treasury were fundamental members. Their pensions or retirement allowances are limited, especially for those who retired before such pension laws were enacted. If the interest accrued from their respective and preferred savings for pensions or endowment insurance recovery shall not be sufficient for their livelihood (for example, the accrued interest is lower than the monthly compensation of the consigned government official with initial grade and class), we consider that the livelihood of such government employees and teachers cannot be ensured [without such preferred savings]. Compensation received by such government employees and teachers is limited as well, and we think it is insufficient. Therefore, such preferred savings shall not be terminated for other non-fundamental retired government employees and teachers as well as [organic] members compensated from the public treasury. Any part of the above

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letter issued by the Ministry of Civil Services that is in conflict with the explanation above shall no longer be applicable.