

J. Y. Interpretation No.282 (July 12, 1991) *

ISSUE: Are the positions of the Delegates to the National Assembly without pay?

RELEVANT LAWS:

Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion (動員戡亂時期臨時條款) ; J.Y. Interpretation No.76 (司法院釋字第七十六號解釋) .

KEYWORDS:

National Assembly (國民大會) , Legislative Yuan (立法院) , Control Yuan (監察院) , remuneration (報酬) , compensation (報酬) .**

HOLDING: By the nature of their constitutional duty, Delegates to the National Assembly do not meet regularly, and the performance of their duty does not require the payment of periodic compensation of an annual retainer or honorarium for their public service. Accordingly, such positions are without pay. Interpretation No. 76 of the Judicial Yuan states that,

解釋文：國民大會代表，依憲法所定職務之性質，不經常集會，並非應由國庫定期支給歲費、公費等待遇之職務，故屬無給職。本院釋字第七十六號解釋所稱：「就憲法上之地位及職權之性質而言，應認國民大會、立法院、監察院共同相當於民主國家之國會」，非謂各該機關在我國憲法上之性質、職權或其人員之待遇相同。本院上開解

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

insofar as the constitutional status and powers of their positions are concerned, the National Assembly, Legislative Yuan and Control Yuan collectively are equivalent to the parliamentary body of democratic nations. This interpretation does not mean that these agencies are the same in terms of their nature, powers or the remuneration of their members under the Constitution. This interpretation is hereby amended accordingly. Where Delegates to the National Assembly receive compensation under specific circumstances, such as meeting in session to exercise their power, such compensation shall be treated in the same manner as in the case of compensation to other elected parliamentary members of the central government, and shall require legislation specifying the categories and standards of such compensation before payment from the budget may be made.

Delegates to the National Assembly shall receive the same amount of remuneration during the same period of time. To be sure, Delegates to the National Assembly elected from additional quotas

釋，應予補充。至國民大會代表在特定情形下，例如集會行使職權時，所得受領之報酬，亦應與其他中央民意代表之待遇，分別以法律明定其項目及標準，始得據以編列預算支付之。

國民大會代表，在同一時期所得受領之報酬，應歸一律。依動員戡亂時期臨時條款增加名額選出之國民大會代表，其所得受領之報酬，應與第二屆國民大會代表相同，乃屬當然。

arising under the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion shall receive the same remuneration as Delegates of the second term of the National Assembly.

This interpretation shall take effect from January 1, 1992.

REASONING: By the nature of their constitutional duty under Articles 27 through 30 of the Constitution, Delegates to the National Assembly do not meet regularly, and they are not prohibited from holding other public offices or engaging in other business or professions. In addition, the performance of their duty does not require the payment of periodic compensation of an annual retainer or honorarium for their public service. Accordingly, such positions are without pay. Interpretation No. 76 of the Judicial Yuan states that, insofar as the constitutional status and powers of their positions are concerned, the National Assembly, Legislative Yuan and Control Yuan collectively are equivalent to the parliamentary body

本解釋自中華民國八十一年一月一日起生效。

解釋理由書：國民大會代表依憲法第二十七條至第三十條所定職務之性質，不經常集會，亦未禁其兼任公職或執行業務，並非應由國庫定期支給歲費、公費等待遇之職務，故屬無給職。本院釋字第七十六號解釋所稱：「就憲法上之地位及職權之性質而言，應認國民大會、立法院、監察院共同相當於民主國家之國會」，非謂各該機關在我國憲法上之性質、職權或其人員之待遇相同。本院上開解釋，應予補充。至國民大會代表在特定情形下，例如集會行使職權時，所得受領之報酬、以及其他中央民意代表所得受領之待遇，均涉及人民之納稅負擔，自應分別以法律明定其適當之項目及標準，始得據以編列預算支付之。

of democratic nations. This interpretation does not mean that these agencies are the same in terms of their nature, powers or the remuneration of their members under the Constitution. This interpretation is hereby amended accordingly. Where Delegates to the National Assembly receive compensation under specific circumstances, such as meeting in session to exercise their power, or where other parliamentary members of the central government receive remuneration, the people will bear such cost through taxation. The payment of such compensation shall require legislation specifying the categories and standards of such compensation before payment from the budget may be made.

In accordance with the principle of equality, Delegates to the National Assembly shall receive the same amount of remuneration during the same period of time. To be sure, Delegates to the National Assembly elected from additional quotas arising under the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the

國民大會代表，在同一時期，所得受領之報酬，依平等原則，應歸一律。依動員戡亂時期臨時條款增加名額選出之國民大會代表，其所得受領之報酬，應與第二屆國民大會代表相同，乃屬當然。

Communist Rebellion shall receive the same remuneration as Delegates of the second term of the National Assembly.

This interpretation will require considerable time for the enactment and amendment of relevant legislation. Accordingly, it shall take effect from January 1, 1992.

本解釋有關法律之制定或修正，尚需相當之時間，爰定本解釋自中華民國八十一年一月一日起生效。