

J. Y. Interpretation No.285 (September 27, 1991) *

ISSUE: Is the directive issued by the Executive Yuan, providing that a retirement pension does not include “the subsidy for the funeral and burial of family dependents” and that a retiree may not apply for such subsidy, in violation of the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Article 8 of the Act Governing the Retirement of School Teachers and Staff (學校教職員退休條例第八條) ; the Central Government and Public School Employee Welfare Subsidies Payments Guidelines (中央公教人員生活津貼支給要點) .

KEYWORDS:

pension (退休金) , family funeral allowance (眷屬喪葬補助津貼) , government and public school employees (公教人員) .**

HOLDING: The “monthly pension payment”, stipulated in the Act Governing the Retirement of School Teachers and Staff (hereinafter, “the Act”), does not include the “family funeral allowance” by its nature. The wording “family funeral

解釋文：學校教職員退休條例所稱月薪額，性質上本無從包括「公教人員之眷屬喪葬補助費」，行政院中華民國六十九年四月十六日臺六十九人政肆字第七四九八號函未將此項補助費列入退休金之範圍，與該條例之立法意旨

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allowance not included in the pension payment” was interpreted in the Tai (69) Ren Cheng Si Tze No. 7498 Letter, issued by the Executive Yuan on April 16, 1980. This interpretation does not violate the legislative purpose of the Act. Moreover, the “Central Government and Public School Employee Welfare Subsidies Payments Guidelines” (hereinafter, “the Guidelines”), issued by the Executive Yuan, are mandated to ensure the livelihood of the current government and public school employees. The Guidelines are discretionary measures made by the authorized administrative agency, and do not apply to non-government employees. Retired government employees, of course, are not entitled to the “family funeral allowance” payment. Therefore, the relevant administrative order and guidelines issued by the Executive Yuan do not violate the Constitution.

REASONING: The “monthly pension payment”, regulated in Article 8 of the Act Governing the Retirement of School Teachers and Staff (hereinafter, “the Act”), includes basic remuneration

無違。又中央公教人員生活津貼支給要點，係行政院為安定現職公教人員生活而訂定，乃主管機關依職權所為之裁量措施，原不適用於非現職人員，退休人員自不得據以請領眷屬喪葬補助費，上述行政院函及要點與憲法均無牴觸。

解釋理由書：學校教職員退休條例所稱月薪額，同條例第八條明定包括實領本薪及其他現金給與，性質上本無從包括並非按月給付而於特定事故發生時始得支領之眷屬喪葬補助費。行政

and other cash allowances. By its nature, it does not include the “family funeral allowance”, which is not paid monthly and is not available until certain events occur. The wording “family funeral allowance not included in the pension payment” was interpreted in the Tai (69) Ren Cheng Si Tze No. 7498 Letter, issued by the Executive Yuan on April 16, 1980. This interpretation does not violate the legislative purpose of the Act. Moreover, the “Central Government and Public School Employee Welfare Subsidies Payments Guidelines”(hereinafter, “the Guidelines”), issued by the Executive Yuan in the Tai (77) Ren Cheng Si Tze No. 23391 Letter on June 30, 1988, are mandated to ensure the livelihood of the current government and public school employees. The Guidelines are discretionary measures made by the authorized administrative agency. Article 4 of the Guidelines provides that the Guidelines are only applicable to current government employees under the limited budgets of government agencies and public schools. Retired government employees are not entitled to apply for the “family funeral

院中華民國六十九年四月十六日臺六十九人政肆字第七四九八號函未將此項補助費列入退休金之範圍，與上開條例之立法意旨無違。又同院七十七年六月三十日臺七十七人政肆字第二三三九一號函發布之中央公教人員生活津貼支給要點，係為安定公教人員生活而訂定，乃主管機關依職權所為之裁量措施，該要點第四點明定，以各機關學校預算員額內之現職人員為適用對象，其所定「公教人員之眷屬喪葬補助費」，退休人員自不得請領。上述行政院函及要點與憲法均無牴觸。至主管機關為照顧退休人員之生活，衡量國家財力及各項津貼之性質，於法定退休給與以外酌予補助，亦屬行政權之裁量範圍，非所有津貼均應比照現職人員辦理，併此說明。

allowance”. Therefore, the relevant administrative order and guidelines issued by the Executive Yuan do not violate the Constitution. The extra benefits, besides the pension payment, paid by the government to provide for the livelihood of retired employees are remunerated under administrative discretion after calculating the nation’s capital and the nature of all kinds of benefits. However, retired government employees are not entitled to all of the benefits available to current government employees.