

## J. Y. Interpretation No.295 ( March 27, 1992 ) \*

**ISSUE:** Should the disciplined subject be allowed to bring administrative litigation to appeal for review resolution of the Review Committee on the Discipline of Accountants of the Ministry of Finance?

**RELEVANT LAWS:**

Article 16 of the Constitution ( 憲法第十六條 ) ; Article 1 of the Administrative Appeal Act ( 訴願法第一條 ) ; Certified Public Accountant Act ( 會計師法 ) .

**KEYWORDS:**

right to bring lawsuits ( 訴訟權 ) , accountants' discipline ( 會計師懲戒 ) .\*\*

**HOLDING:** The review resolution of the disciplinary action taken against a specific accountant, made by the Review Committee on the Discipline of Accountants of the Ministry of Finance, is equivalent to the final decision of administrative appeal in essence which cannot be appealed through administrative appeal and re-appeal. The disciplined subject

**解釋文：**財政部會計師懲戒覆審委員會對會計師所為懲戒處分之覆審決議，實質上相當於最終之訴願決定，不得再對之提起訴願、再訴願。被懲戒人如因該項決議違法，認為損害其權利者，應許其逕行提起行政訴訟，以符憲法保障人民訴訟權之意旨。

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\* Translated by Su-Po Kao.

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

should be allowed to bring administrative litigation directly in order to accord with the principle of the people's right of instituting legal proceedings guaranteed by the Constitution, if he deems the said resolution illegal and damaging to his right.

**REASONING:** The people's right to administrative appeal, guaranteed by the Constitution, aims to make the government authority, which make an administrative act, or its superior, self-monitor its own illegal or inappropriate act to protect the people's right and interest. If other venues of administrative relief, prescribed by the law, are sufficient for such purpose, then they are equivalent to the procedure of administrative appeal in essence and it will be redundant to initiate the said procedure. Article 1 of the Administrative Appeal Act prescribes: "A person, who deems the administrative act of the central or local government authority illegal or inappropriate and whose right or interest suffers in consequence, shall initiate the procedures of administrative appeal and re-appeal in accordance with this Act. But if the rules of other

**解釋理由書：**憲法保障人民之訴願權，其目的在使為行政處分之機關或其上級機關自行矯正其違法或不當處分，以維護人民之權益，若法律規定之其他行政救濟途徑，已足達此目的者，則在實質上即與訴願程序相當，自無須再踐行訴願程序。訴願法第一條：「人民對於中央或地方機關之行政處分，認為違法或不當，致損害其權利或利益者，得依本法提起訴願、再訴願。但法律另有規定者，從其規定。」其但書規定即係包括上述情形在內，惟並非謂未經提起訴願或再訴願，縱已用盡其他相當於訴願、再訴願之行政救濟程序，亦不得續行行政訴訟。財政部依會計師法規定，設置會計師懲戒委員會及懲戒覆審委員會。會計師懲戒委員會因財政部交付懲戒而對會計師所為懲戒決議，係行政處分，被懲戒之會計師有所不服，對之聲請覆審，實質上與訴願相當。會計師懲戒覆審委員會所為覆審決議，相

laws provide otherwise, then they should have precedence.” The “otherwise” situations should include the one above. However, it should not be interpreted to mean that if the procedure of administrative appeal or re-appeal is not initiated in the first place, then the direct proceeding of administrative litigation is also barred, even though all the other procedures of administrative relief equivalent to administrative appeal and re-appeal have been exhausted already. The Ministry of Finance, pursuant to the Certified Public Accountant Act, sets up the Committee on the Discipline of Accountants and the Review Committee on the Discipline of Accountants. The review resolution of the disciplinary action taken against a specific accountant by the Review Committee on the Discipline of Accountants, prosecuted by the Ministry of Finance, is an administrative act. The appeal for review from the disciplined accountant is equivalent to the procedure of administrative appeal in essence. The review resolution of the Review Committee on the Discipline of Accountants is equivalent to the final decision of administrative appeal and it will

當於最終之訴願決定，無須再對之提起訴願、再訴願。依上開說明，被懲戒人如因該項決議違法，認為損害其權利者，應許其逕行提起行政訴訟，以符憲法第十六條保障人民訴訟權之意旨。

be redundant to initiate the normal procedures of administrative appeal and re-appeal against it. According to the above illustration, the disciplined subject should be allowed to bring administrative litigation directly in order to accord with the principle of the people's right of instituting legal proceedings guaranteed by Article 16 of the Constitution, if he deems the said resolution illegal and damaging to his right.