J. Y. Interpretation No.305（October 2, 1992）*

ISSUE: Is the precedent holding that a publicly owned enterprise established pursuant to the Company Act does not have the capacity to be sued in an administrative litigation constitutional?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Articles 249 and 469 of the Code of Civil Procedure（民事訴訟法第二百四十九條、第四百六十九條）; Article 1 of the Administrative Proceedings Act（行政訴訟法第一條）; Article 1 of the Administrative Appeal Act（訴願法第一條）; Article 27 of the Company Act（公司法第二十七條）; J. Y. Interpretation No. 269（司法院釋字第二六九號解釋）.

KEYWORDS:

administrative court（行政法院）, civil court（民事法院）, public legal person（公法人）, jurisdiction（審判權）, reject（駁回）, right to institute legal proceedings（訴訟權）, infringe（侵害）, final and binding judgment（確定終局裁判）, precedent（判例）, in contravention to（牴觸）, different opinion（岐異見解）, state-owned enterprise（公營事業）, state-owned company（公營公司）, private corporate body（私法人）, contractual relationship（契約關係）, dispute（爭執）, capacity to be a party（當事人能力）, assign

* Translated by Professor Chun-Jen Chen.

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

autonomy（企業自主）, separation of ownership and control（指派）, appoint（任用）, official rank（官等）, corporate（企業所有與企業經營分離）, mandate（委任）, remove（解任）, public authority（公權力）, expression of intent（意思表示）, appointment and removal（任免）, evaluation（考核）,supervisory relationship（監督關係）.**

HOLDING: People who bring suits to the administrative court and the civil court, respectively, based on the same incident and whose suits are rejected by both courts for lack of jurisdiction may file petitions to this Court for our interpretations if there is a question of whether the final and binding judgment handed down by one of the courts applied a precedent which was in contravention to the Constitution and hence caused the infringement of the constitutional guarantee of the right to institute legal proceedings. After we grant certiorari, we may make a unified interpretation to resolve different opinions among courts relating to the precedent at issue. The different opinions of jurisdiction between the precedent relied upon by the administrative court and the final and

解釋文：人民就同一事件向行政法院及民事法院提起訴訟，均被以無審判之權限為由而予駁回，致其憲法上所保障之訴訟權受侵害，而對其中一法院之確定終局裁判所適用之判例，發生有牴觸憲法之疑義，請求本院解釋，本院依法受理後，並得對與該判例有牽連關係之歧異見解，為統一解釋。本件行政法院判決所適用之判例與民事法院確定終局裁判，對於審判權限之見解歧異，應依上開說明解釋之。

binding judgment handed down by the civil court shall be resolved according to the foregoing.

Those state-owned enterprises that are formed according to the Company Act are private corporate bodies, and their relationships with their employees are contractual ones under private law. When there is a dispute over the termination of the contractual relationship between such state-owned enterprise and its employee, it shall be resolved in accordance with civil proceedings. The Supreme Administrative Court's Precedent T.T. 232 (Supreme Administrative Court, 1971) stating that the abovementioned state-owned enterprise has no capacity to be a party shall be interpreted as meaning that the administrative courts have no jurisdiction over issues rising from such state-owned enterprises; therefore, it is not in contravention to the Constitution. Nevertheless, with respect to those who are assigned by state or other public legal persons to serve the companies on their behalf according to Article 27 of the Company Act and those who are directly appointed and awarded

公營事業依公司法規定設立者，為私法人，與其人員間，為私法上之契約關係，雙方如就契約關係已否消滅有爭執，應循民事訴訟途徑解決。行政法院六十年度裁字第二三二號判例，認為此種公司無被告當事人能力，其實質意義為此種事件不屬行政法院之權限，與憲法尚無牴觸。至於依公司法第二十七條經國家或其他公法人指派在公司代表其執行職務或依其他法律逕由主管機關任用、定有官等、在公司服務之人員，與其指派或任用機關之關係，仍為公法關係，合併指明。

official ranks by the agencies-in-charge to serve the companies, their relationships with government agencies who assign or appoint them are still relationships of public law.

REASONING: People who bring suits to the administrative court and the civil court, respectively, based on the same incident and whose suits are rejected by both courts for lack of jurisdiction may file petitions to this Court for our interpretations if there is a question of whether the final and binding judgment handed down by one of the courts applied a precedent which was in contravention to the Constitution and hence caused the infringement of the constitutional guarantee of the right to institute legal proceedings. After we grant certiorari, we may make a unified interpretation to resolve different opinions among courts relating to the precedent at issue. The different opinions of jurisdiction between the precedent relied upon by the administrative court and the final and binding judgment handed down by the civil court shall be resolved according to the foregoing.

解釋理由書：人民就同一事件向行政法院及民事法院提起訴訟，均被法院以無審判之權限為由而予駁回，致其憲法上所保障之訴訟權受侵害，而對其中一法院之確定終局裁判所適用之判例，發生有牴觸憲法之疑義，請求本院解釋，本院依法受理後，並得對與該判例有牽連關係之歧異見解，為統一解釋。本件行政法院判決所適用之判例與民事法院確定終局裁判，對於審判權限之見解有所歧異，應依上開說明解釋之。

State-owned enterprises may be created in various forms. If the agencies-in-charge deem it appropriate to have the business decision-making process applicable to a given state-owned enterprise, they may decide to incorporate it based on the spirit of corporate autonomy and the principle of the separation of ownership and control. Though those state-owned enterprises formed according to the Company Act may be shorthanded as state-owned companies, legally they are private corporate bodies with independent legal personalities, capable of enjoying legal rights and of assuming legal obligations. Thus, state-owned companies as private corporate bodies may follow their own recruitment processes to mandate (appoint, retain or hire) their employees and enter into private law contractual relationships with them. Their acts of removing their employees from office are not the results of exercising public authority but the expressions of intent to terminate the employment contracts under private law, and their contractual relationships are therefore terminated accordingly. In spite of the fact that there are laws and regula-

公營事業之組織形態不一。如決策上認某種公營事業應採公司組織之形態，則係基於該種公營事業，適於以企業理念經營之判斷，自應本於企業自主之精神及企業所有與企業經營分離之原則為之。而在法律上，公營事業依公司法規定設立公司者，雖可簡稱為公營公司，但其性質仍為私法人，具有獨立之人格，自為權利義務之主體，享受權利，負擔義務。因之，公營公司與其人員間，係以私法人地位依其人事規章，經由委任（選任、聘任或僱用）之途徑，雙方成立私法上之契約關係，其對於人員之解任行為，並非行使公權力之結果，而係私法上終止契約之意思表示，契約關係因而消滅。縱令公營公司人員之任免考核事項，法令定為應由政府機關參與決定，此種內部行為亦係政府機關與公營公司間之另一監督關係，並不影響公營公司與其人員間契約關係之存在。倘雙方就此契約關係已否消滅有爭執，自應循民事訴訟途徑解決，而不屬行政法院之權限範圍。行政法院六十年度裁字第二三二號判例，認此種公營公司，無行政訴訟之被告當事人能力，係本於以往僅中央或地方機關，始有行政訴訟被告當事人能力之見解，此種見解，與本院釋字第二六九號解釋意

tions stipulating that government agencies shall take part in appointments, removals and evaluations of employees of state-owned companies, such participations reflect the supervisory relationships between government agencies and state-owned companies and will not affect the existence of the contractual relationships between state-owned companies and their employees. When there is a dispute over the termination of the contractual relationship between a state-owned enterprise and its employee, it shall be resolved in accordance with the civil proceedings, not administrative ones. The Supreme Administrative Court's Precedent T.T. 232 (Supreme Administrative Court, 1971) stipulates that the state-owned company has no capacity to be a party because the court at that time viewed only central or local agencies as having the capacities to be parties in administrative proceedings. Such a view has been overruled by us in J.Y. Interpretation No. 269 and the part of the Supreme Administrative Court's Precedent T.T. 232 in contravention to J.Y. Interpretation No. 269 shall no longer be applicable. Accordingly, the Supreme

旨不符部分，已不再援用，其實質意義，為此種事件不屬行政法院之權限範圍，既未限制人民民事訴訟之救濟途徑，與憲法尚無牴觸。至於依公司法第二十七條經國家或其他公法人指派在公司代表其執行職務或依其他法律逕由主管機關任用、定有官等、在公司服務之人員，與其指派或任用機關之關係，仍為公法關係，合併指明。

Administrative Court's Precedent T.T. 232 shall be interpreted as deeming that the administrative courts have no jurisdiction over issues arising from state-owned companies; therefore, it is not in contravention to the Constitution because it does not prevent people from instituting civil proceedings to redress their grievances. Nevertheless, with respect to those who are assigned by state or other public legal persons to serve the companies on their behalf according to Article 27 of the Company Act and those who are directly appointed and awarded official ranks by the agencies-in-charge to serve the companies, their relationships with government agencies who assign or appoint them are still relationships of public law.

Justice Chien-Hua Yang filed dissenting opinion in part.

Justice Rui-Tang Chen filed dissenting opinion in part.

本號解釋楊大法官建華、陳大法官瑞堂分別提出一部不同意見書。