

J. Y. Interpretation No.307 (October 30, 1992) \*

**ISSUE:** May the provincial or *hsien* governments set expenditure budgets for matters of the police administration, over which the central government shall exercise the power of legislation and administration, or may the power of administration be delegated to the provincial and *hsien* governments, according to the Constitution?

**RELEVANT LAWS:**

Article 108, Paragraph 1, Subparagraph 17; Article 109, Paragraph 1, Subparagraph 10; and Article 110, Paragraph 1, Subparagraph 9 of the Constitution (憲法第一百零八條第一項第十七款、第一百零九條第一項第十款、第一百十條第一項第九款); Article 16, Paragraphs 1 and 2, of the Police Act (警察法第十六條第一項、第二項).

**KEYWORDS:**

police system (警察制度), jurisdiction of the central government (中央權限), jurisdictional dispute (權限爭議), budget (預算).\*\*

**HOLDING:** With respect to the police system, the central government shall exercise the power of legislation and administration, or may delegate the power

**解釋文：**警察制度，依憲法第一百零八條第一項第十七款規定，由中央立法並執行之或交由省縣執行之，中央就其交由省縣執行之事項，自得依法

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\* Translated by Pijan Wu.

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

of administration to the provincial and hsien governments, pursuant to Article 108, Paragraph 1, Subparagraph 17, of the Constitution. For the matters over which the central government delegates the power of administration to the provincial or hsien governments, the central government shall cover such matters in its own budget according to the legal procedures. Therefore, the provincial or hsien governments shall not repeatedly set budgets for the same matters. However, pursuant to Article 109, Paragraph 1, Subparagraph 10, and Article 110, Paragraph 1, Subparagraph 9, of the Constitution, the provincial government has jurisdiction over the administration of provincial police, while hsien governments have jurisdiction over hsien police and security. Therefore, the provincial or hsien governments shall cover such matters in the budget according to the legal procedures. In the event of any shortfall, the provincial government may apply with the central government, and the hsien government may apply with the provincial government, for subsidy according to Article 16, Paragraph 2, of the Police Act.

定程序編列預算，省縣無須重複編列。但省警政及縣警衛之實施，依憲法第一百零九條第一項第十款、第一百十條第一項第九款規定，則屬省縣之權限，省縣得就其業務所需經費依法定程序編列預算，如確屬不足時，得依警察法第十六條第二項規定呈請補助，省（直轄市）由中央補助，縣（市）由省補助。

**REASONING:** This issue is related to the interpretation of the jurisdictional dispute arising from the matters provided in Articles 108 to 110 of the Constitution. No judicial review for constitutionality is involved herein.

With respect to the police system, the central government shall exercise the power of legislation and administration, or may delegate the power of administration to the provincial and hsien governments, pursuant to Article 108, Paragraph 1, Subparagraph 17, of the Constitution. For the matters over which the central government delegates the power of administration to the provincial or hsien governments, the central government shall cover such matters in its own budget according to the legal procedures. Therefore, the provincial or hsien governments shall not set budgets for the same matters.

With respect to the provincial police matters, the provincial government shall exercise the power of legislation and administration, or may delegate the power of administration to the hsien governments,

**解釋理由書：**本件係屬憲法第一百零八條至第一百十條列舉事項權限爭議之解釋，非關違憲審查問題，合先說明。

警察制度，依憲法第一百零八條第一項第十七款規定，由中央立法並執行之或交由省縣執行之，中央就其交由省縣執行之事項，自得依法定程序編列預算支付之，省縣無須重複編列。

憲法第一百零九條第一項第十款規定「省警政之實施」，由省立法並執行之或交由縣執行之；第一百十條第一項第九款規定「縣警衛之實施」，由縣立法並執行之。省警政及縣警衛之實施

pursuant to Article 109, Paragraph 1, Subparagraph 10, of the Constitution. Furthermore, the hsien governments shall exercise the power of legislation and administration over the hsien police and security, pursuant to Article 110, Paragraph 1, Subparagraph 9, of the Constitution. Since the provincial and hsien governments have jurisdiction over the administration of their police security, respectively, the provincial and hsien governments shall cover such matters in the budget according to legal procedures. Nevertheless, the administration of certain provincial or hsien police matters requires nationwide consistency and involves the jurisdiction of the central government. Therefore, Article 16, Paragraph 1, of the Police Act, which was enacted by the central government under Article 108, Paragraph 1, Subparagraph 17, of the Constitution, provides that “the central government shall stipulate the budget standard for local police agencies according to the conditions of the respective areas.” This is the standard by which the provincial and hsien governments set the expenditure budget for the police administration.

事項，既屬省縣之權限，省縣自得就其業務所需經費，依法定程序編列預算。惟省警政及縣警衛之實施，其中有須全國一致或涉及中央權限者，因此，中央依憲法第一百零八條第一項第十七款制定之警察法第十六條第一項規定：「地方警察機關預算標準，由中央按各該地區情形分別規劃之。」省警政及縣警衛之實施，其所需經費之預算，須依上述標準編列，如確屬不足時，得依同條第二項規定呈請補助，省（直轄市）由中央補助，縣（市）由省補助。地方對於此項補助，雖不得變更其用途，省（直轄市）縣（市）議會仍得依法監督其執行。

In the event of any shortfall, the provincial government may apply with the central government, and the hsien government may apply with the provincial government, for subsidy according to Article 16, Paragraph 2, of the Police Act. While the local governments may not use the subsidies other than for the designated purpose, the provincial and hsien councils may monitor the allocation of such subsidies according to the law.

Justice Chien-Hua Yang filed dissenting opinion.

本號解釋楊大法官建華提出不同意見書。