

J. Y. Interpretation No.308 (November 13, 1992) *

ISSUE: Are public schools teachers in the category of public functionaries as referred to the Public Functionary Service Act?

RELEVANT LAWS:

Article 24 of the Public Functionary Service Act (公務員服務法第二十四條); J. Y. Interpretation Yuan-je Tze No. 2986 (司法院院解字第二九八六號解釋); Article 34 of the Educators Appointment Act (教育人員任用條例第三十四條).

KEYWORDS:

public functionaries (公務員), public schools teachers (公立學校聘任之教師), teachers serving concurrently as administrators of school affairs (兼任學校行政職務之教師).**

HOLDING: Public schools teachers are not in the category of public functionaries as referred to in Article 24 of the Public Functionary Service Act. However, the Public Functionary Service Act shall apply to teachers who serve concurrently as administrators of school affairs in their administrative offices. The

解釋文：公立學校聘任之教師不屬於公務員服務法第二十四條所稱之公務員。惟兼任學校行政職務之教師，就其兼任之行政職務，則有公務員服務法之適用。本院院解字第二九八六號解釋，應予補充。至專任教師依教育人員任用條例第三十四條規定，除法令另有規定外，仍不得在外兼職。

* Translated by John C. Chen, Attorney at Law.

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

Interpretation Yuan-je Tze No. 2986 is hereby supplemented. Under Article 34 of the Educators Appointment Act, full-time teachers are not permitted to undertake other employment while employed in that capacity unless otherwise provided for by laws.

REASONING: Unlike public functionaries who serve in accordance with applicable laws and obey their supervisors, teachers in public schools are engaged under a contract of appointment to perform educational and research work and therefore do not belong to the category of public functionaries as referred to in Article 24 of the Public Functionaries Service Act. However, if teachers also serve concurrently as administrators of school affairs, the Public Functionaries Service Act shall apply to these teachers in respect of their administrative offices. The Interpretation Yuan-je Tze No. 2986 states that teachers of public primary and secondary schools and salaried municipal librarians are public functionaries as referred to in Article 24 of the Public Functionary Service Act, but public schools

解釋理由書：公立學校聘任之教師係基於聘約關係，擔任教學研究工作，與文武職公務員執行法令所定職務，服從長官監督之情形有所不同，故聘任之教師應不屬於公務員服務法第二十四條所稱之公務員。惟此類教師如兼任學校行政職務，就其兼任之行政職務，仍有公務員服務法之適用。本院院解字第二九八六號解釋：「委任之公立中小學校教職員及縣立圖書館長受有俸給者，均為公務員服務法上之公務員，其聘任之教職員則否。」其中關於聘任之教師部分，應予補充。至教師之行為仍受國家其他有關法令及聘約之拘束，並應有其倫理規範。專任教師依教育人員任用條例第三十四條規定，除法令另有規定外，不得在外兼課或兼職。

teachers are not, requires further supplementation to clarify the position of appointed teachers. Teachers' behavior shall be governed by applicable laws and the appointment contracts and regulated by the rules of ethics. Unless otherwise provided by laws, full-time teachers are not permitted to hold other employment concurrently under Article 34 of the Educators Appointment Act.

Justice Chien-Hua Yang filed dissenting opinion.

本號解釋楊大法官建華提出不同意見書。