

J. Y. Interpretation No.319 (June 4, 1993) *

ISSUE: Are the regulations denying the request for re-grading examination answers, for reasons other than obvious errors (which may be found by formal check), by the participants of examinations held by the relevant authority consistent with the Constitution?

RELEVANT LAWS:

Article 23 of the Act Governing the Administration of Examination (典試法第二十三條) ; Act for Examination Supervision (監試法) ; Articles 7 and 8 of the Regulation Governing the Review of the Grades upon the Application of Civil Service Test Participants (應考人申請複查考試成績處理辦法第七條、第八條) .

KEYWORDS:

examination (考試) , review of grades (複查成績) .**

HOLDING: For the examinations held by the relevant authority, the grading members give the grades while the names on the answer sheets are covered to ensure the examinees' privacy. Once the seal is removed, the answer

解釋文：考試機關依法舉行之考試，其閱卷委員係於試卷彌封時評定成績，在彌封開拆後，除依形式觀察，即可發見該項成績有顯然錯誤者外，不應循應考人之要求任意再行評閱，以維持考試之客觀與公平。考試院於中華民

* Translated by Pijan Wu.

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sheet should not be re-graded upon the request of the examinee unless there is any obvious error regarding the grades, which can be found by formal check. The purpose is to maintain the impartiality and fairness of examinations. Article 8 of the Regulation Governing the Review of the Grades upon the Application of Civil Service Test Participants, as revised by the Examination Yuan on November 12, 1986, provides that “for the review of the examination grade, the applicant may not request re-grading, model answers, or the viewing/copying of the answer sheets; also, the applicant may not request the identity of any grader or other relevant information.” Such rule is to uphold the abovementioned principle and is consistent with Article 23 of the Act Governing the Administration of Examination regarding the “confidentiality requirement for the persons administering examinations,” and is not in contravention with the Constitution. However, the review of examination grades is relevant to the interest of the participants, and, therefore, should be made clear by law.

國七十五年十一月十二日修正發布之「應考人申請複查考試成績處理辦法」，其第八條規定「申請複查考試成績，不得要求重新評閱、提供參考答案、閱覽或複印試卷。亦不得要求告知閱卷委員之姓名或其他有關資料」，係為貫徹首開意旨所必要，亦與典試法第二十三條關於「辦理考試人員應嚴守秘密」之規定相符，與憲法尚無牴觸。惟考試成績之複查，既為兼顧應考人之權益，有關複查事項仍宜以法律定之。

REASONING: For the examinations held by the relevant authority, examination commissions are established to set the standards for test questions, grading, evaluating, admission and review of grades. Furthermore, the Control Yuan assigns ombudsmen to monitor the custody of test questions, the sealing of answer sheets, the check of the seal, the review of grades and the posting/announcement of test results. The ombudsmen shall report to the Control Yuan upon the finding of any collusion, switching answer sheets or other cheating behavior. These rules are made clear in the Act Governing the Administration of Examination and the Act for Examination Supervision.

For the abovementioned examinations, the graders correct the examination papers while the names on the answer sheets are covered to protect the examinees' privacy. Once the seal is removed, the answer sheet should not be re-graded upon the request of the examinee unless there is any obvious error regarding the grades, which can be found by formal

解釋理由書：考試機關依法舉行之考試，設典試委員會以決定命題標準、評閱標準、審查標準、錄取標準以及應考人考試成績之審查等事項，並由監察院派監察委員監試，在監試委員監視下，進行試題之封存，試卷之彌封、點封，應考人考試成績之審查以及及格人員之榜示與公布。如發現有潛通關節、改換試卷或其他舞弊情事，均由監試人員報請監察院依法處理之，此觀典試法及監試法有關規定甚明。

前項考試，其閱卷委員係於試卷彌封時評定成績，在彌封開拆後，除依形式觀察，即可發見該項成績有顯然錯誤者外，如循應考人之要求，任意再行評閱，縱再行彌封，因既有前次閱卷委員之計分，並可能知悉應考人為何人，亦難以維持考試之客觀與公平。考試院於中華民國七十五年十一月十二日修正發布之「應考人申請複查考試成績處理

check. The reasons are that the grading by the previous grader may have been seen and that the identity of the examinee may have been known. Under such circumstances, it is difficult to maintain the impartiality and fairness of examinations. Article 8 of the Regulation Governing the Review of the Grades upon the Application of Civil Test Participants, as revised by the Examination Yuan on November 12, 1986, provides that “for the review of the examination grade, the applicant may not request re-grading, model answers, or the viewing/copying of the answer sheets; nor may the applicant request the identity of the grader or other relevant information.” Such rule is to uphold the impartiality and fairness of the examination. Also, it is necessary to maintain respect for the academic evaluation of the grader and is consistent with Article 23 of the Act Governing the Administration of Examination regarding the “confidentiality requirement for the persons administering examinations.” In the event there is any obvious error such as failure to grade certain answers, Article 7 of the abovementioned Regulation provides for appropriate

辦法」，其第八條規定「申請複查考試成績，不得要求重新評閱、提供參考答案、閱覽或複印試卷。亦不得要求告知閱卷委員之姓名或其他有關資料」，係為維護考試之客觀與公平及尊重閱卷委員所為之學術評價所必要，亦與典試法第二十三條關於「辦理考試人員應嚴守秘密」之規定相符，而如發見有試卷漏閱等顯然錯誤之情形，該辦法第七條又設有相當之補救規定，與憲法尚無牴觸。惟考試成績之複查，既為兼顧應考人之權益，有關複查事項仍宜以法律定之。

remedies. Therefore, the Regulation is not in contravention with the Constitution. However, the review of examination grades is relevant to the interest of the participants, and, therefore, should be made clear by law.

Justice Yueh-Sheng Weng filed dissenting opinion in part, in which Justice Zu-Zan Yang, Justice Geng Wu joined.

本號解釋翁大法官岳生、楊大法官日然與吳大法官庚共同提出一部不同意見書。