

J. Y. Interpretation No.341 (March 11, 1994) *

ISSUE: Are the rules 3 of basic-level specific examination of 1981, providing that the registration, admission and assignment will be conducted and/or determined by district, and that a successful examinee shall serve in his or her original examination district for a certain period, in violation of the Constitution?

RELEVANT LAWS:

Articles 7, 18 of the Constitution (憲法第七條、第十八條) ; J.Y. Interpretations Nos. 155 and 205 (司法院釋字第一五五號、第二〇五號解釋) ; Article 3 of the Regulation for the Taiwan Province Basic-Level 1990 Civil Servants Specific Examination (七十九年特種考試臺灣省基層公務人員考試規則第三條) .

KEYWORDS:

the right of equality (平等權) , Examination Yuan (考試院) . **

HOLDING: The Regulation for the Taiwan Province Basic-Level 1990 Civil Servants Specific Examination were issued by the Examination Yuan based on its statutory authority. Under Section 3 of

解釋文：七十九年特種考試臺灣省基層公務人員考試規則係考試院依其法定職權訂定，該規則第三條規定，本項考試採分區報名、分區錄取及分區分發，並規定錄取人員必須在原報考區

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the aforementioned Regulation, the enrollment, qualification and appointment in connection with the examination thereof shall be held and based on separate administrative divisions, and any participant who has satisfied the criteria of the examiners must serve for the required period within the designated administrative division where he or she initially enrolled for the aforementioned examination. Such a policy for the examination, coping with the need of human resources for the position of basic level officers and considering the willingness of those participating in the examination, is deemed a necessary measure and is not inconsistent with the right of equality prescribed in the Constitution.

REASONING: The Examination Yuan as the supreme examination institution of this government based on its legal authority may prescribe rules for examination. This power is not in contradiction with the Constitution if such rules are prescribed within its scope of authority or cause no infringement on the right of the people to attend government ex-

內服務滿一定期間，係因應基層機關人力需求及考量應考人員志願，所採之必要措施，與憲法第七條平等權之規定，尚無牴觸。

解釋理由書：考試院為國家最高考試機關，得依其法定職權訂定考試規則，如未逾越其職權範圍，或侵害人民應考試之權利，即無牴觸憲法之可言，業經本院釋字第一五五號解釋釋示在案。又中華民國人民在法律上一律平等為憲法第七條所明定，人民依同法第十八條應考試服公職之權，在法律上自亦應一律平等。惟此所謂平等，係指實

aminations. This rationale has been illustrated in the holding of Judicial Yuan Interpretation No. 155. All the people are deemed equal before the law as provided in Article 7 of the Constitution. Further, all the people have an equal right to attend examinations in order to be qualified for appointment as governmental employees to civil service positions. Nevertheless, the term “equal” as mentioned above refers to virtual equality. Hence, with a view to coping with the demand in reality and with the purpose of holding an examination, the imposition of certain necessary restrictions may hardly be deemed inconsistent with the said principle of equality as explicitly reasoned in the holding of Judicial Yuan Interpretation No. 205. The Regulation for the Taiwan Province Basic-Level 1990 Civil Servants Specific Examination were issued by the Examination Yuan based on its statutory authority. Under Section 3 of the aforementioned Regulation, the enrollment, qualification and appointment in connection with the examination thereof shall be held and based on separate administrative divisions. Any participant in such an ex-

質上之平等而言，其為因應事實上之需要，及舉辦考試之目的，就有關事項，依法酌為適當之限制，要難謂與上述平等原則有何違背，亦經本院釋字第二〇五號解釋闡釋甚明。七十九年特種考試臺灣省基層公務人員考試規則係考試院依其法定職權訂定，該規則第三條規定，本項考試採分區報名、分區錄取及分區分發，並限定錄取人員必須在原報考區內服務滿一定期間，係因應基層機關人力需求及考量應考人員志願，所採之必要措施，其與考試主管機關，於同一時間在各縣市報考區內，分別為設置於各該區內省級以下之行政機關及公營事業機構進用人員舉行特種考試之情形相當。該項考試典試委員會基於職權，參酌各縣市提報之缺額及應考人員之考試成績，分別決定各考區各類科之錄取標準，致同一類科各考區錄取標準有所不同，乃屬當然，並為應考人員所預知，與憲法第七條平等權之規定，尚無牴觸。

amination who has satisfied the criteria of the examiners must serve for the required period within the designated administrative division where he or she initially enrolled for the aforementioned examination. Such a policy for the examination, coping with the need of human resources for the position of basic level officers and considering the willingness of those participating in the examination, is deemed a necessary measure. The above policy runs parallel to the situation where the examination authority simultaneously holds designated examinations for admitting personnel to the provincial or subordinate administrative institutions and governmental undertakings in each city or hsien (county) based on the need of enrollment for each division for the examination, respectively. The examiners of such an examination exercising their statutory authority and taking into consideration the results of the examination as well as the shortage of personnel reported by each city and hsien (county), respectively, set the criteria of qualifications for various categories of examination of each division, thus resulting in different criteria for

the same category of examination held in each designated division. Therefore, the said policy of which persons participating in the examination are informed in advance constitutes no violation of the right of equality prescribed in Article 7 of the Constitution.

Justice Chien-Tsai Cheng filed dissenting opinion, in which Justice Teh-Sheng Chang joined.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋鄭大法官健才、張大法官特生共同提出不同意見書；劉大法官鐵錚提出不同意見書。