

J. Y. Interpretation No.354 ( July 1, 1994 ) \*

**ISSUE:** Is the provision of the Act Governing the Handling of Land Grant Certificates to Soldiers, providing that a land grant certificate is deemed to have been issued to a retired non-duty officer in Taiwan who is away from his military post, unconstitutional?

**RELEVANT LAWS:**

Article 7 of the Constitution (憲法第七條) ; Article 11 of the Act Governing Farmland Grants to Anti-Communist and Anti-Soviet Soldiers (反共抗俄戰士授田條例第十一條) ; Article 10 of the Act Governing the Handling of Land Grant Certificates to Soldiers (戰士授田憑據處理條例第十條) ; Article 2 of the Regulation Governing the Handling of Armed Forces Non-Duty Officers (陸海空軍無軍職軍官處理辦法第二條) .

**KEYWORDS:**

retired non-duty officer in Taiwan away from his military post (在臺離職無職軍官) , land grant certificates for soldiers (戰士授田憑證) .\*\*

**HOLDING:** According to the applicable provisions of the Regulation Governing the Handling of Armed Forces

**解釋文：**在臺離營之無職軍官，依行政院於中華民國四十八年七月十四日核准由國防部發布之陸海空軍無

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\* Translated by Vincent C. Kuan.

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

Non-Duty Officers, as approved by the Executive Yuan on July 14, 1959, and promulgated by the Ministry of National Defense, a non-duty officer in Taiwan is not eligible for a land grant certificate if he is away from his military post even though his military status is still maintained because the Act Governing Farmland Grants to Anti-Communist and Anti-Soviet Soldiers, as promulgated on October 18, 1951, means that only those soldiers still stationed at their military posts are eligible for such land grant certificates. Article 10 of the Act Governing the Handling of Land Grant Certificates to Soldiers, as promulgated on April 23, 1990, provides, "A land grant certificate is deemed to have been issued to a veteran non-duty officer in Taiwan away from his military post who participated in the anti-communist-and-Soviet conflict prior to the promulgation and implementation of the Act Governing Farmland Grants to Anti-Communist and Anti-Soviet Soldiers and the relevant provisions of this Act shall thus apply, if such officer has received a certificate of retirement / discharge from military service and presently

軍職軍官處理辦法等相關規定，在四十年十月十八日反共抗俄戰士授田條例公布後，雖具有軍籍，但因該條例之授田憑據以在營軍人為發給對象，致此等軍官因未在營而不能領取授田憑據。七十九年四月二十三日公布之戰士授田憑據處理條例第十條：「反共抗俄戰士授田條例公布施行前，曾參加反共抗俄作戰，除因有叛國行為或逃亡而被判有期徒刑以上之刑者外，其餘在臺離營之退除役無職軍官，領有退伍除役證明書，且現居住臺灣地區者，視同已發給授田憑據，依本條例之規定處理」，係就上述情況，公平考量所為之規定，並非針對軍官與士兵身分不同，而作差別待遇，與憲法第七條尚無牴觸。

lives in Taiwan, provided, however, that he has not committed treason or engaged in any rebellious act or has deserted the army, for which a penalty of more than a fixed-term of imprisonment was imposed.” Such provision, having equitably taken into consideration the situations described above, does not support any discriminatory treatment based on the status of officer or soldier and, therefore, does not contradict Article 7 of the Constitution.

**REASONING:** According to Article 2 of the Regulation Governing the Handling of Armed Forces Non-Duty Officers, as approved by the Executive Yuan on July 14, 1959, and promulgated by the Ministry of National Defense on August 13 of the same year, a non-duty officer in Taiwan away from his military post shall mean an officer whose service is suspended, or whose name is off the regular muster roll, or who is laid off, or who, for any other reason, leaves his post without duly completing the applicable procedure related to either retirement/ discharge from military service or a provisional re-

**解釋理由書：**在臺離營之無職軍官，依行政院於四十八年七月十四日核准由國防部於同年八月十三日發布之陸海空軍無軍職軍官處理辦法第二條之規定，係指因停役、編餘、資遣及其他因故離職而未辦退除役或假退除役等情形之軍官而言。主管機關國防部於四十三年曾為此等人員辦理登記，保留其軍籍，其後並依上開辦法等相關規定列管或辦理退除役，是故上述人員在四十年十月十八日反共抗俄戰士授田條例公布後，雖仍具有軍籍，但因該條例第十一條以「現在陸、海、空軍部隊服務二年以上之戰士」為發給授田憑據之對象，致無職軍官因未在营而不能領取授田憑

tiement / discharge from military service. The competent authority, i.e., the Ministry of National Defense, conducted a registration for such personnel to maintain their military status and, subsequently, either entered their names on a control list or completed the procedure for such personnel's retirement/discharge from military service pursuant to the applicable provisions of the aforesaid Regulation. Consequently, even though such personnel still maintained their military status after the Act Governing Farmland Grants to Anti-Communist and Anti-Soviet Soldiers was promulgated on October 18, 1951, they are not eligible for land grant certificates since they are away from their military posts because, under Article 11 of the said Regulation, a land grant certificate is meant only for those "soldiers who have served either in the Army, the Navy, or the Air Force for two years or more." Article 10 of the Act Governing the Handling of Land Grant Certificates to Soldiers, as promulgated on April 23, 1990, provides, "A land grant certificate is deemed to have been issued to a veteran non-duty officer in Taiwan away from his

據。七十九年四月二十三日公布之戰士授田憑據處理條例第十條：「反共抗俄戰士授田條例公布施行前，曾參加反共抗俄作戰，除因有叛國行為或逃亡而被判有期徒刑以上之刑者外，其餘在臺離營之退除役無職軍官，領有退伍除役證明書，且現居住臺灣地區者，視同已發給授田憑據，依本條例之規定處理」，係就上述情況，公平考量所為之規定，並非針對軍官與士兵身分不同，而作差別待遇，與憲法第七條尚無牴觸。

military post who participated in the anti-communist-and-Soviet conflict prior to the promulgation and implementation of the Act Governing Farmland Grants to Anti-Communist and Anti-Soviet Soldiers and the relevant provisions of this Act shall thus apply, if such officer has received a certificate of retirement / discharge from military service and presently lives in Taiwan, provided, however, that he has not committed treason or engaged in any rebellious act or has deserted the army, for which a penalty of more than a fixed-term of imprisonment was imposed.” Such provision, having equitably taken into consideration the situations described above, does not support any discriminatory treatment based on the status of officer or soldier and, therefore, does not contradict Article 7 of the Constitution.