

J. Y. Interpretation No.357 (July 8, 1994) *

ISSUE: Is the Auditor General a political appointee?

RELEVANT LAWS:

Articles 104 and 105 of the Constitution (憲法第一百零四條、第一百零五條) ; Article 3 of the Organic Act of the National Audit Office (審計部組織法第三條) .

KEYWORDS:

Auditor General (審計長) , political appointee (政務官) .**

HOLDING: Unlike a political appointee who may be removed on policy grounds or because of a change of ruling party, the status of the Auditor General, as provided by Article 104 of the Constitution, is guaranteed. The six-year tenure of the Auditor-General, as provided in Article 3 of the Organic Act of the National Audit Office, is to ensure the stability of the office in order that its functions may be performed independently and thus not be in violation of the Constitution.

解釋文：依中華民國憲法第一百零四條設置於監察院之審計長，其職務之性質與應隨執政黨更迭或政策變更而進退之政務官不同。審計部組織法第三條關於審計長任期為六年之規定，旨在確保其職位之安定，俾能在一定任期中，超然獨立行使職權，與憲法並無牴觸。

* Translated by Professor Jyh-Pin Fa.

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

REASONING: The status of the Auditor General of the Control Yuan is stipulated in Article 104 of the Constitution. In addition to the duty, as stated in Article 105 of the Constitution, to submit an auditing report to the Legislative Yuan after reviewing the final accounts of revenues and expenditures of the Executive Yuan, he is authorized to supervise the enforcement of the public budget, review revenues and expenditures, investigate any financial misconduct, etc. Since his major work is closely related to the legislative power of reviewing budgetary bills, the consent of the Legislative Yuan is thus required by Article 104 of the Constitution. In order to maintain the independence of this office and the effective performance of its auditing function, following the common practice in other democracies, we decided to provide a necessary guarantee for auditing officials. They are free from interference; the Audit Act explicitly allows them to perform auditing functions independently. Moreover, Article 8 of the Act Governing the Appointment of Audit Personnel provides that they shall not be suspended, transferred or

解釋理由書：依憲法第一百零四條設置於監察院之審計長，其職權除依憲法第一百零五條規定：「審計長應於行政院提出決算後三個月內，依法完成其審核，並提出審核報告於立法院」外，並依監察院組織法、審計法及審計部組織法之規定，綜理審計業務，監督全國各機關預算之執行、核定收支命令、審核財務收支、稽察財物及財政上之不法或不忠於職務之行為等，職位重要。由於其主要職權為決算之審核，與立法院審議預算之權限，關係密切，憲法第一百零四條後段乃將審計長之任命，賦與立法院同意權，以昭慎重。為維護審計權之獨立行使，充分發揮審計功能，我國法律援民主憲政國家之通例，對審計人員行使職權予以必要之保障，於審計法第十條及審計人員任用條例第八條分別規定：「審計人員依法獨立行使其審計職權，不受干涉。」「審計官、審計、稽察，非有法定原因，不得停職、免職或轉職。」關於審計首長之職位，他國憲法或法律，或定為終身職（如荷蘭王國一九八四年憲法第七七條），或規定相當之任期（如美國一九二一年預算及會計法第三〇三條之十五年、德國一九八五年聯邦審計院法第三條第二項之十二年、日本一九八六年會

removed from office without legal causes as mandated by relevant personnel statutes. As for the tenure of the Auditor-General in other countries, he holds office for life in the Netherlands, 15 years in the United States, 12 years in Germany, and 7 years in Japan. The Organic Act of the National Audit Office in Taiwan provides a term of six years. The Legislative Yuan's purpose is to provide stability to this office and, accordingly, to allow it to function independently. The status of the Auditor General is different from that of other political appointees who may be removed at any time for policy reasons or because of a change of ruling party. Although the salary, pension and other related matters are regulated along with other political appointees by the same statutes, this arrangement is for convenience only and has nothing to do with the different status of the Auditor General. Therefore, the tenure of the Auditor General is not in violation of the Constitution.

計檢查院法第五條之七年)。現行審計部組織法亦於第三條規定：「審計長任期為六年」，以確保審計首長職位之安定，俾能在一定任期中，超然獨立行使職權而無所瞻顧。是審計長職務之性質，自與應隨執政黨更迭或政策變更而進退之政務官不同。至於現行法規將審計長或其他原非政務官而地位與之相當人員之待遇、退職酬勞及財產申報等事項與政務官合併規定，乃為法規制定上之便宜措施，於其非屬應隨執政黨更迭或政策變更而進退之政務官身分不生影響。綜上所述，審計部組織法關於審計長任期之規定，與憲法並無牴觸。