

J. Y. Interpretation No.387 (October 13, 1995) *

ISSUE: Shall the Premier (President of the Executive Yuan) submit his resignation to the President prior to the newly elected legislators' swearing-in for their new term?

RELEVANT LAWS:

Articles 54, 55, Paragraph 1, 56, 57, and 58 of the Constitution (憲法第五十四條、第五十五條第一項、第五十六條、第五十七條、第五十八條) .

KEYWORDS:

the Premier (行政院院長), the Executive Yuan (行政院), the Legislative Yuan (立法院), the democratic politics (民主政治) . **

HOLDING: Under Articles 54, 55, Paragraph 1, and 56 of the Constitution, the Executive Yuan establishes a premier, a vice-premier, some ministers, and a certain number of ministers without portfolio. The premier is appointed by the President with the consent of the Legislative Yuan. The vice-premier, ministers, and ministers without portfolio are nomi-

解釋文：行政院設院長、副院長各一人，各部會首長若干人，及不管部會之政務委員若干人；行政院院長由總統提名，經立法院同意任命之；行政院副院長、各部會首長及不管部會之政務委員，由行政院院長提請總統任命之。憲法第五十四條、第五十五條第一項、第五十六條定有明文。行政院對立法院負責，憲法第五十七條亦規定甚

* Translated by Professor Tsung-Fu Chen.

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nated by the premier and appointed by the President. Under Article 57 of the Constitution, the premier is accountable to the Legislative Yuan. Since the premier has to receive consent from and be politically accountable to the Legislative Yuan, the premier has to resign before the first session of each new Legislative Yuan so as to fulfill the doctrine of government by the people and his/her political accountability. Because the vice premier, ministers, and ministers without portfolio are nominated by the premier and appointed by the President, and because all of them are members of the Executive Yuan Council, they participate in administrative policy-making and have to step down when the premier resigns.

REASONING: Under Article 57 of the Constitution, the Executive Yuan is accountable to the Legislative Yuan. Politics in a democracy mainly involves popular politics and accountability politics. The legitimacy of a modern state to establish its government and to implement its administrative affairs is based on the will of the people. When legislators are re-

詳。行政院院長既須經立法院同意而任命之，且對立法院負政治責任，基於民意政治與責任政治之原理，立法委員任期屆滿改選後第一次集會前，行政院院長自應向總統提出辭職。行政院副院長、各部會首長及不管部會之政務委員係由行政院院長提請總統任命，且係出席行政院會議成員，參與行政決策，亦應隨同行政院院長一併提出辭職。

解釋理由書：依憲法第五十七條規定行政院應對立法院負責。民主政治以民意政治及責任政治為重要內涵；現代法治國家組織政府、推行政務，應以民意為基礎，始具正當性。從而立法委員因任期屆滿而改選時，推行政務之最高行政機關為因應最新民意，自應重新改組，方符民主政治之意旨。

elected at the end of their terms, the highest executive organ, which is in charge of carrying out administrative affairs, has to be re-organized so as to keep pace with the expressed will of the people and to fulfill the doctrine of democratic politics.

Under Articles 54, 55, Paragraph 1, and 56 of the Constitution, the Executive Yuan establishes a premier, a vice-premier, some ministers, and a certain number of ministers without portfolio; the premier is appointed by the President with the consent of the Legislative Yuan. The vice-premier, ministers, and ministers without portfolio are nominated by the premier and appointed by the President. Under Article 57 of the Constitution, the Executive Yuan is responsible for submitting a statement of its administrative policies and a report on its administration. When the Executive Yuan does not agree with the bills passed by the legislators and demands a second decision, the premier has to accept the bill or resign. The premier is appointed by the President with the consent of the Legislative Yuan. Accordingly, the premier is politically ac-

行政院設院長、副院長各一人、各部會首長及不管部會之政務委員若干人；行政院院長由總統提名經立法院同意任命之；行政院副院長、各部會首長及不管部會之政務委員，由行政院院長提請總統任命之。憲法第五十四條、第五十五條第一項、第五十六條定有明文。行政院有向立法院提出施政方針及施政報告之責；行政院移請立法院之覆議案，如經出席立法委員三分之二維持原決議，行政院院長應即接受該決議或辭職，憲法第五十七條亦規定甚詳。行政院院長由總統提名，經立法院同意任命，行政院院長對立法院負政治責任，此乃我國憲法有關總統、行政院、立法院三者間之制度性設計。行政院院長之任命，既須經由立法院同意，基於民意政治之原理，自應於每屆立法委員任期屆滿改選後第一次集會前提出辭職，俾總統得審視立法院改選後之政治情勢，重行提名新人選，咨請立法院同意以

countable to the Legislative Yuan. This is the institutional design of our constitution, which concerns the relationships among the President, the Executive Yuan, and the Legislative Yuan. Based on the doctrine of government by the people and because the appointment of the premier is confirmed by the Legislative Yuan, the premier has to resign prior to the first session of each new Legislative Yuan. Through this mechanism, the President is able to review the new political situations after the re-election of legislators, and then appoint a new premier with the consent of the Legislative Yuan, so as to reflect the expressed will of the people. Under Article 58 of the Constitution, the vice-premier, ministers, and ministers without portfolio are nominated by the premier and appointed by the President. Their nomination reflects the premier's political ideology. Since they attend the Executive Yuan Council and participate in policy-making, they have to resign along with the premier so as to manifest their accountability. Nonetheless, the heads of sub-organs in the Executive Yuan are not ministers without portfolio. Their resignation

反映民意趨向。行政院副院長、各部會首長及不管部會之政務委員，則係由行政院院長依其政治理念，提請總統任命，並依憲法第五十八條之規定，出席行政院會議，參與行政決策，亦應隨同行政院院長一併向總統提出辭職以彰顯責任政治。至於不具政務委員身分之行政院所屬機關首長，其辭職應依一般行政程序辦理，其中任期法律有明文規定者，不受上述行政院總辭之影響，乃屬當然。

has to accord with ordinary administrative procedures, which may be provided by other laws and is not influenced by the general resignation of the Executive Yuan.

Justice Geng Wu filed dissenting opinion.

本號解釋吳大法官庚提出不同意見書。