

J. Y. Interpretation No.14 (March 21, 1953) *

ISSUE: Are members of the National Assembly, the Legislative and Control Yuan, as well as provincial and county councils subject to impeachment?

RELEVANT LAWS:

Articles 97-99 of the Constitution (憲法第九十七條至第九十九條) .

KEYWORDS:

control power (監察權) , impeachment (彈劾) .**

HOLDING: Articles 97, 98 and 99 of the Constitution that are related to the present issue concerned are derived from Articles 102, 103 and 104 of the Constitution Draft. Article 102 originally stated that the Control Yuan may institute an Impeachment upon its finding of neglect of duties or violation of law regarding personnel of the Executive Yuan or its ministries or commissions. Article 103 concerned impeachment against Central and local administrative officials. Article

解釋文：查憲法與本問題有關之第九十七條、第九十八條、第九十九條，係由憲法草案第一百零二條、第一百零三條、第一百零四條而來。第一百零二條原稱監察院對於行政院或其各部會人員認為有違法失職情事，得提出彈劾案。第一百零三條則為中央及地方行政人員之彈劾。第一百零四條則為法官及考試院人員之彈劾。在制憲會議中，若干代表認為監察院彈劾權行使之對象應包括立法委員、監察委員在內。曾經提出修正案數起，主張將第一百零二條

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104 dealt with impeachment against judges and Examination personnel. Several Delegates of the Constitutional Conference believed that those who may be subject to the control power of the Control Yuan should include Members of the Legislative Yuan and Control Yuan, and proposed a number of bills to insert [the language] “personnel of each Yuan and its ministries or commissions” in lieu of “personnel of the Executive Yuan or its ministries or commissions” so as to include personnel of the Legislative Yuan and Control Yuan and to delete Article 104 concerning judges and personnel of the Examination Yuan. The results showed that none of the amendments carried, which clearly demonstrates that Members of the Legislative and Control Yuan are exempt. It is also difficult, through the route of interpretation, by stretching the language “officials of the Central Government” to argue that Members of the Legislative and Control Yuan shall [all] be included. It is the intention of the Constitution drafters that Members of the Legislative and Control Yuan are representatives of public opinion, either

行政院或其各部會人員改為各院及其各部會人員，包括立法院、監察院人員在內，並將第一百零四條有關法官及考試院人員之條文刪去。討論結果，對此毫無疑義之修正文均未通過，即所以表示立監委員係屬除外。若謂同時，復以中央公務人員字樣可藉解釋之途徑，使立監委員包括在內，殊難自圓其說。在制憲者之意，當以立監委員為直接或間接之民意代表，均不認其為監察權行使之對象。至立監兩院其他人員與國民大會職員，總統府及其所屬機關職員，自應屬監察權行使範圍。故憲法除規定行政、司法、考試三院外，復於第九十七條第二項及第九十八條，另有中央公務人員之規定。

directly or indirectly, and are not subject to the exercise of control power. Yet other personnel of the Legislative and Control Yuan as well as staff of the National Assembly, the Presidential Office and its affiliated agencies are within the scope of control power. Therefore, except for provisions on the Executive, Judicial and Examination Yuan, Article 97, Paragraph 2, and Article 98 of the Constitution further separately stipulate [impeachment and other control power against] public officials of the Central Government.

Delegates to the National Assembly are [also] representatives of public opinion, and it goes without saying that they are not subject to the control power. There were no propositions on the impeachment of Delegates to the National Assembly within the Constitutional Draft or each respective amending bill, which is consistent with the fact that none of the amendments concerning the impeachment of Members of the Legislative and Control Yuan was adopted.

國民大會代表為民意代表，其非監察權行使對象更不待言。憲法草案及各修正案，對於國大代表均無可以彈劾之擬議，與立、監委員包括在內之各修正案不予採納者，實為制憲時一貫之意思。

Autonomy personnel who belong to

自治人員之屬於議事機關者，如

a parliamentary agency, such as members of the provincial or county council, are also representatives of public opinion and naturally are not subject to the exercise of control power.

省縣議會議員，亦為民意代表，依上述理由，自亦非監察權行使之對象。