

J. Y. Interpretation No.30 (January 15, 1954) *

ISSUE: May a member of the Legislative Yuan concurrently be a delegate to the National Assembly?

RELEVANT LAWS:

Articles 25, 27, 62 and 75 of the Constitution (憲法第二十五條、第二十七條、第六十二條及第七十五條) .

KEYWORDS:

Member of the Legislative Yuan (立法委員) , delegate to the National Assembly (國民大會代表) , initiative (創制權) , referendum (複決權) .**

HOLDING: Although Article 75 of the Constitution merely prohibits a Member of the Legislative Yuan from holding a government post at the same time, it does not connote that any concurrent holding of a non-government position would be permissible. It would still depend on whether the nature of that position is compatible with the function of a Member of the Legislative Yuan. Article 27 of the Constitution empowered the

解釋文：憲法第七十五條雖僅限制立法委員不得兼任官吏，但並非謂官吏以外任何職務即得兼任，仍須視其職務之性質，與立法委員職務是否相容。同法第二十七條規定國民大會複決立法院所提之憲法修正案，並制定辦法行使創制、複決兩權，若立法委員得兼國民大會代表，是以一人而兼具提案與複決兩種性質不相容之職務，且立法委員既行使立法權，復可參與中央法律之創制與複決，亦顯與憲法第二十五條及

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National Assembly to amend the Constitution and to make laws exercising the rights of initiative and referendum. Were a Member of the Legislative Yuan able to become concurrently a delegate to the National Assembly, he or she would then be able to submit a legislative bill and cast a vote of referendum on that same bill. This is a conflict of interest. Besides, allowing a Member of the Legislative Yuan to exercise legislative power, while at the same time participating in the initiative and referendum of national laws, is in congruent with the spirit of Articles 25 and 62 of the Constitution. Therefore, no Member of the Legislative Yuan shall concurrently be a delegate to the National Assembly.

第六十二條規定之精神不符，故立法委員不得兼任國民大會代表。