

J. Y. Interpretation No.51 (August 13, 1955) *

ISSUE: Should a soldier who, upon his absence without leave for over a month, committed another crime, be subject to military trial?

RELEVANT LAWS:

Article 20 of the Conscription Act (兵役法第二十條) ; Article 5 of the Armed Forces Criminal Act (陸海空軍刑法第五條) ; Article 1 of the Military Justice Act (軍事審判法第一條) ; Interpretation Yuan-Tze No.2822 (司法院院字第二八二二號解釋) .

KEYWORDS:

Permission (核准) , adjudicative body (審判機關) .**

HOLDING: Pursuant to Article 20, Paragraph 1, Subparagraph 3, of the Conscription Act, the soldier who is absent from duty over one month without permission will lose the status of active duty soldier. As a result, once a soldier is absent from duty over one month and commits a crime, the soldier will be judged on a civilian standing by the adjudicative body. Accordingly, Interpretation

解釋文：士兵未經核准離營已逾一個月者，依兵役法第二十條第一項第三款規定，已失現役軍人身分，如其另犯他罪，依非軍人之例定其審判機關。本院院字第二八二二號解釋，應予變更。

* Translated by Lawrence L. C. Lee.

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Yuan-je Tze No.2822 [as explained in 1945] should be changed.