

J. Y. Interpretation No.66 (November 2, 1956) *

ISSUE: May a public functionary who is sentenced on probation for corruption participate in a national exam or serve a public office prior to the expiry of the probation?

RELEVANT LAWS:

Article 74 of the Criminal Code (刑法第七十四條); Article 8, Paragraph 1, Subparagraph 2 of the Examination Act (考試法第八條第一項第二款); Article 17, Subparagraph 2 of the Public Functionaries Appointment Act (公務人員任用法第十七條第二款).

KEYWORDS:

Graft (貪污), irrevocable judgment (確定判決), probation (緩刑).**

HOLDING: All the conditions listed in Article 8, Paragraph 1, Subparagraph 2 of the Examination Act and Article 17, Subparagraph 2 of the Public Functionaries Appointment Act stipulate the negative qualifications of a public functionary in accordance with J.Y. Interpretation No.56.

解釋文：考試法第八條第一項第二款及公務人員任用法第十七條第二款所列情事，均屬本院釋字第五十六號解釋所謂他項消極資格，其曾服公務而有貪污行為經判決確定者，雖受緩刑之宣告，仍須俟緩刑期滿而緩刑之宣告並未撤銷時，始得應任何考試或任為公務人員。

* Translated by Lawrence L. C. Lee.

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According to the forgoing J. Y. Interpretation, the term “negative qualifications” refers to, among others [Since the word “qualifications” is used here, other crimes besides graft or the taking of bribes must be included in the Law and Act mentioned above.], the act of taking graft, for which criminal act a public functionary has been sentenced by an irrevocable judgment. Even if such public functionary has been granted probation, he or she is not allowed to take a civil service examination or serve as a public functionary until the expiration of the probation period and the announcement of probation is quashed.