

J. Y. Interpretation No.81 (December 17, 1958) *

ISSUE: May a member of the Control Yuan concurrently serve as either a director, a supervisor, or a manager of a privately owned enterprise?

RELEVANT LAWS:

Article 103 of the Constitution (憲法第一百零三條).

KEYWORDS:

the member of the Control Yuan (監察委員), civil servant (公務人員), power of supervision (監察權), directors (董事), manager (經理人), privately owned enterprise (民營公司), administer of corporate affairs (執行公司業務).**

HOLDING: The corporate affairs carried out by directors, supervisors and managers of a privately owned enterprise shall fall within the scope of business administration referred to in Article 103 of the Constitution.

解釋文：民營公司之董事、監察人及經理人所執行之業務，應屬於憲法第一百零三條所稱執行業務範圍之內。

REASONING: Article 103 of the Constitution specifically provides that a member of the Control Yuan can not

解釋理由書：查監察委員不得兼任其他公職或執行業務，為憲法第一百零三條所明定，其所以於不得兼任其

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serve concurrently as a member of the Control Yuan and a civil servant or business administrator. The reason for prohibiting a member of the Control Yuan from serving concurrently as a member of the Control Yuan and a civil servant or business administrator is that a member of the Control Yuan should remain impartial (unprejudiced) in exercising his or her power of supervision. A restriction is thus imposed upon the members of the Control Yuan. Directors, supervisors and managers of a privately owned enterprise are persons who administer the corporate affairs of the enterprise. The corporate affairs carried out by directors, supervisors and managers of a privately owned enterprise are in conflict with the power of supervision exercised by a member of the Control Yuan. Therefore, the corporate affairs administered by directors, supervisors and managers of a privately owned enterprise shall fall within the business administration restriction imposed upon a member of the Control Yuan under Article 103 of the Constitution.

他公職之外並不得執行業務者，乃為貫徹監察權之行使，保持監察委員之超然地位，故亦予以限制，民營公司董事監察人及經理人均為執行民營公司業務之人，其所執行之業務與監察委員職權之行使自不相宜，應屬於憲法第一百零三條所稱監察委員不得執行業務之範圍。