

J. Y. Interpretation No.82 ( June 17, 1959 ) \*

**ISSUE:** What is the punishment for a person who forges a document while forging a public seal?

**RELEVANT LAWS:**

Articles 212 and 218 of the Criminal Code ( 刑法第二百十二條及第二百十八條 ) .

**KEYWORDS:**

falsification of public seal ( 偽造公印 ) , simultaneously ( 同時地 ) , imprisonment ( 徒刑 ) , purpose of legislation ( 立法本意 ) .\*\*

**HOLDING:** Article 218 of the Criminal Code stipulates specific punishment for falsification of the public seal, which is more serious than that of Article 212 of the Criminal Code. If a person falsifies a public document under Article 212 and the public seal under Article 218 of the Criminal Code simultaneously, he or she should be judged under Article 212 but not under Article 218 of the Criminal Code. Therefore, Interpretation (before

**解釋文：**偽造公印，刑法第二百十八條既有獨立處罰之規定，且較刑法第二百十二條之處罰為重，則於偽造刑法第二百十二條之文書同時偽造公印者，即難僅論以該條之罪而置刑法第二百十八條處刑較重之罪於不問。本院院解字第三零二零號第三項解釋於立法本旨並無違背，尚無變更之必要。

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\* Translated by Lawrence L. C. Lee.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

1948) No.3020, Subparagraph 3, does not violate the purpose of legislation, and hence should not be amended.

**REASONING:** Pursuant to the Resolution of the 118th Meeting of the Grand Justices: The central or local authority has some doubts about when to apply the Constitution law or orders that were interpreted by the Judicial Yuan and has thus petitioned for interpretation. Pursuant to Article 4 or 7 of the Grand Justices Council Adjudication Act, the grand justices should convene to re-interpret the law.

Because the case concerns the questions the Supreme Court has about Subparagraph 3 of Interpretation (before 1948) No.3020, it should be re-interpreted according to the abovementioned petition. Article 212 of the Criminal Code stipulates specific punishment for a person who falsifies public or private documents. Article 218 of the Criminal Code stipulates specific punishment for falsification of the public seal. If a person falsifies a public document under Article 212 and

**解釋理由書：**查司法院大法官會議第一百十八次會議議決：「中央或地方機關就職權上適用憲法、法律或命令對於本院所為之解釋發生疑義聲請解釋時，本會議得依司法院大法官會議法第四條或第七條之規定再行解釋」，本件係最高法院對於本院院解字第三零二零號第三項解釋發生疑義，依照上項決議認為應予以解釋。

按刑法第二百十二條係就公私特種文書之偽造及變造而為規定，偽造公印刑法第二百十八條既有獨立處罰之規定，則於偽造刑法第二百十二條之文書同時偽造公印者，即難僅論以該條之罪而置刑法第二百十八條之罪於不問，本院院解字第三零二零號解釋於立法本旨並無違背要難謂為不當，且依照刑法第二百十八條規定偽造公印者尚處以五年以下有期徒刑，倘於偽造同法第二百十二條之文書而又偽造公印者，反依同法第二百十二條之規定僅處以一年以下有

the public seal simultaneously, he should be judged under Article 212 but not under Article 218 of Criminal Code. Therefore, Interpretation (before 1948) No.3020, Subparagraph 3, does not violate the purpose of legislation. Moreover, pursuant to Article 218 of the Criminal Code, a person convicted of falsification of the public seal may be sentenced to imprisonment of up to five years. If a person falsifies a public document under Article 212 and the public seal under Article 218 simultaneously, he or she may be sentenced to imprisonment of not more than one year or subject to a fine of under NTS300. Thus, the punishment is unfair and violates the purpose of legislation.

Based on those reasons, Interpretation (before 1948) No.3020, Subparagraph 3, should not be amended.

Justice Pu-Yuan Hsu filed dissenting opinion, in which Justice Yien-Wou Huang, Justice Fan-Kang Tseng and Justice Shi-Ding Chin joined.

期徒刑、拘役或三百元以下之罰金，尤恐輕重失衡，有違立法之本意。

基上理由，本院院解字第三零二零號第三項解釋尚無變更之必要。

本號解釋徐大法官步垣、黃大法官演渥、曾大法官繁康與金大法官世鼎共同提出不同意見書。