

J. Y. Interpretation No.84 (December 2, 1959) \*

**ISSUE:** Will the official duties of a public functionary be automatically suspended if he is sentenced to deprivation of his civil rights and simultaneously to probation?

**RELEVANT LAWS:**

Article 17, Subparagraph 2, of the Public Functionaries Disciplinary Act (公務員懲戒法第十七條第二款); Article 76 of the Criminal Code (刑法第七十六條).

**KEYWORDS:**

final instance (確定判決), civil death (褫奪公權刑), probation (證明), proclamation (宣告).\*\*

**HOLDING:** According to the final instance of the Criminal Code, a public functionary sentenced to civil death and probation should cease his function of office.

**REASONING:** Pursuant to Article 17, Subparagraph 2, of the Public Functionaries Disciplinary Act, Article 76 of the Criminal Code, and according to

**解釋文：**公務員依刑事確定判決受褫奪公權刑之宣告者，雖同時諭知緩刑，其職務亦當然停止。

**解釋理由書：**公務員依刑事確定判決受褫奪公權刑之宣告者，當然停止其職務，因罪科刑諭知緩刑者，須緩刑期滿緩刑之宣告未經撤銷時，其刑之

---

\* Translated by Lawrence L. C. Lee.

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

the final instance of the Criminal Code, a public functionary sentenced to civil death should cease his function of office. For a person who has been granted probation even though he is guilty, the announcement of a term of imprisonment will lose its potency when probation expires and the announcement of probation is not rescinded. According to the final instance of the Criminal Code, if a public functionary is sentenced to civil death and is in the period of probation, the proclamation is still effective and the reason for ceasing his function of office still exists. Therefore, according to the probationary period stipulation, a public functionary should cease his function of office. Hence, J.Y. Interpretation No.56 does not exclude the adoption of Article 17, Subparagraph 2, of the Public Functionaries Disciplinary Act.

Justice Pu-Yuan Hsu filed dissenting opinion, in which Justice Pou-Yeh Hu and Justice Shi-Ding Chin joined.

宣告始失其效力，此觀於公務員懲戒法第十七條第二款、刑法第七十六條之規定甚明，依刑事確定判決受褫奪公權刑之宣告者，雖同時諭知緩刑，在緩刑期內宣告既未失其效力，自難謂為其停職原因業經消滅，按之首開規定，公務員之職務當然停止，本院釋字第五十六號解釋並不排除公務員懲戒法第十七條第二款之適用。

本號解釋徐大法官步垣、胡大法官伯岳與金大法官世鼎共同提出不同意見書。