

J. Y. Interpretation No.89 (February 10, 1961) \*

**ISSUE:** Which court has the jurisdiction over a dispute arising from the revocation or rescission of liberated public farmland?

**RELEVANT LAWS:**

Article 1 of the Administrative Proceedings Act (行政訴訟法第一條); Article 2 of the Court Organic Act (法院組織法第二條).

**KEYWORDS:**

Revocation (撤銷), open up receive (放領), receive (承領), person who has right to receive (承領人).\*\*

**HOLDING:** Pursuant to the Implemental Guide on the Release of Government-Owned Tillable Land to Self-tilling Farmers in the Taiwan Province, the government authority extends cultivation of public lands to farmers. Disputes that arise from revocation or dissolution of opening up these lands for cultivation should be resolved by civil procedure.

**解釋文：**行政官署依臺灣省放領公有耕地扶植自耕農實施辦法，將公有耕地放領於人民，其因放領之撤銷或解除所生之爭執，應由普通法院管轄。

**REASONING:** In order to help

**解釋理由書：**查臺灣省放領公

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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.

farmers, the government has enacted the Implemental Guide on the Release of Government-Owned Tillable Land to Self-tilling Farmers in the Taiwan Province and extended cultivation of public lands to farmers based on it. Whether a person receives such land or not, he who has the right to receive it can choose to receive private cultivated lands of his own free will. Reception of such land is not mandatory. To open up such land for cultivation is a commercial contract of private law between the county and the person who has the right to receive such land. Pursuant to Article 14, Paragraph 4, of the Implemental Guide on the Release of Government-Owned Tillable Land to Self-tilling Farmers in the Taiwan Province, a commercial contract has been established when a certificate for issuance of land has been received. Disputes over revocation or dissolution of the reception of such land which arise from this contract should be resolved by civil procedure. Disputes which arise from enforcing the Land-to-the-Tiller Act are under the jurisdiction of the administrative court. The Supreme Court and administrative court have both agreed with this conclusion.

有耕地扶植自耕農實施辦法係政府為扶植自耕農而將公有耕地放領於耕作人，私有耕作其是否承領，承領人本可自由選擇，並非強制，其放領行為屬於代表國家與承領人訂立私法上之買賣契約，經依該辦法第十四條第四款發給承領證書買賣契約即行成立，人民對於是項契約之撤銷或解除而發生之爭執，自應循民事訴訟程序以求解決。至因實施耕者有其田條例土地收回所生之爭執，向由行政法院管轄，此為最高法院及行政法院所不爭，自無庸解釋。

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

Justice Ji-Dong Lin filed dissenting opinion, in which Justice Lu Chu Ger and Justice Ji-Jong Wang joined.

本號解釋金大法官世鼎與徐大法官步垣共同提出不同意見書；林大法官紀東、諸葛大法官魯與王大法官之侑共同提出不同意見書。