

J. Y. Interpretation No.94 (February 14, 1962) *

ISSUE: May a public functionary sentenced to deprivation of civil rights eligible to act as a lawyer?

RELEVANT LAWS:

Article 2, Subparagraph 4, of the Lawyer's Act (律師法第二條第四款); Article 36, Subparagraph 1, of the Criminal Code (刑法第三十六條第一款).

KEYWORDS:

civil death (褫奪公權), public servant (公務員), punishment of dismissing from office (受撤職之懲戒處分).**

HOLDING: When civil death has been pronounced on a civil servant because he has committed repeat offenses, the punishment of dismissal from office is included in civil death. However, Article 2, Subparagraph 4, of the Lawyer's Act does not apply to this situation. Interpretation Yuan Tzu No. 2658 should thus be supplemented.

解釋文：公務員因同一行為經宣告褫奪公權者，其應受撤職之懲戒處分已為褫奪公權所吸收，初非無律師法第二條第四款之適用，本院院字第二六五八號解釋應予補充。

REASONING: Pursuant to Ar-

解釋理由書：按刑法第三十六

* Translated by Lawrence L. C. Lee.

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

ticle 36, Subparagraph 1, of the Criminal Code, pronouncing civil death on a person means to deprive that person of the opportunity to be qualified as a public servant. The effect of civil death is more serious than the punishment of dismissal from office. When civil death is pronounced on a public servant because he has committed repeat offenses, the punishment of dismissal from office is included in civil death. In procedure, such person should not be punished again. The stipulation of Article 25 of the Public Functionaries Disciplinary Act is clear on this matter. However, Article 2, Subparagraph 4, of the Lawyer's Act does not apply to this situation. Interpretation Yuan Tzu No. 2658 should thus be supplemented.

Justice Ji-Jong Wang filed dissenting opinion, in which Justice Jou-Kang Jing, Justice Fan-Kang Tseng and Justice Yien-Wou Huang joined.

條第一款規定褫奪公權係褫奪為公務員之資格，其效果原較撤職之懲戒處分為重，公務員既因同一行為經宣告褫奪公權，則其應受撤職之懲戒處分即為褫奪公權所吸收，在程序上自無庸再為懲戒處分，此觀於公務員懲戒法第二十五條之規定至為明顯，實難排除律師法第二條第四款之適用，本院院字第二六五八號解釋應予補充。

本號解釋王大法官之侑、景大法官佐綱、曾大法官繁康與黃大法官演渥共同提出不同意見書。