

J. Y. Interpretation No.95 (February 28, 1962) *

ISSUE: Are the passive qualifications for a public functionary still applicable upon his or her appointment?

RELEVANT LAWS:

Article 17, Subparagraph 2, of the Public Functionaries Appointment Act (公務人員任用法第十七條第二款) .

KEYWORDS:

negative qualification (消極資格), legislative purpose (立法本意) .**

HOLDING: The restriction stipulated in Article 17, Subparagraph 2, of the Public Functionaries Appointment Act applies to a public servant who is guilty of derelict behavior after appointment .

解釋文：公務人員任用法第十七條第二款所定之限制，即在任用後發生者亦有其適用。

REASONING: Article 17, Subparagraph 2, of the Public Functionaries Appointment Act stipulates the negative qualifications of a public servant. Article 2 of the Public Functionaries Disciplinary

解釋理由書：查公務人員任用法第十七條係規定公務人員不得具有之消極資格，與公務員懲戒法第二條所定懲戒原因之限於違法廢弛職務或其他失職行為者其意旨顯有不同，其有公務人

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Act stipulates reasons that are limited to illegal use of position and other derelict behavior. The main purposes of the Functionaries Appointment Act and the Public Functionaries Disciplinary Act are different. A person who is guilty of the above-mentioned acts cannot be a public servant. However, if such acts are committed by an appointed public servant, he can be removed from office based on the legislative purpose. Pursuant to J.Y. Interpretation No.66, if a public servant has been granted probation after being found guilty of corruption, he is still considered a public servant after the expiration of the probation. However, he will be demoted and his salary will be reduced (See Yuan Tzu Interpretation No. 2451).

Justice Ji-Dong Lin filed dissenting opinion.

員任用法第十七條第二款所定之情形者既不得任為公務人員，則於被任為公務人員後而始發生該項情事時，依立法本意自非不得免去其現職，至公務人員因貪污行為經判決確定受緩刑之宣告者，依本院釋字第六十六號解釋，於緩刑期滿再任公務人員時，其所受降級減俸之懲戒處分仍應依法執行（參照本院院字第二四五—號解釋）。

本號解釋林大法官紀東提出不同意見書。