

J. Y. Interpretation No.96 (June 27, 1962) *

ISSUE: Is bribery considered as an offense of dereliction of duty?

RELEVANT LAWS:

Article 122, Paragraph 3, of the Criminal Code (刑法第一百二十二條第三項) .

KEYWORDS:

offering bribes (行賄) , malfeasance (瀆職) , aiding or abetting bribery (幫助或教唆) , specific identity (特定身分) .**

HOLDING: The conduct of offering bribes prescribed in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance in nature. Any person who aids and abets in the conduct of offering bribes is also not considered to have committed an offense of malfeasance.

REASONING: To be guilty of the offense of malfeasance, the offender must have a specific identity (civil

解釋文：刑法第一百二十二條第三項之行賄行為，性質上不屬於瀆職罪，其幫助或教唆者亦同。

解釋理由書：查刑法瀆職罪以具有特定身分之人為犯罪主體，刑法第一百二十二條第三項所規定之行賄行為

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servant). However, in regard to the offering of bribes prescribed in Article 122, Paragraph 3, of the Criminal Code, the offender need not have a specific identity (civil servant). Thus, the elements of offense, criminal sanction, and reduction or exemption of sentence for those offering bribes are different from the elements of offense, criminal sanction, and reduction or exemption of sentence for a civil servant who receives bribes. The conduct of offering bribes prescribed in Article 122, Paragraph 3, of the Criminal Code is a distinct offense. The provisions set forth in Article 31, Paragraph 1, of the Criminal Code are therefore not applicable to the conduct of offering bribes prescribed in Article 122, Paragraph 3, of the Criminal Code (See J.Y. Interpretation No. 2729). The aiding and abetting of the conduct of offering bribes shall be respectively governed by the provisions set forth in Articles 29 and 30 of the Criminal Code. The provisions set forth in Article 31, Paragraph 1, of the Criminal Code are therefore not applicable to the aiding and abetting of the conduct of offering bribes. Any person who offers bribes without requir-

其犯罪主體既不須具特定身分，而其犯罪構成要件處罰及刑之減免均與公務員受賄行為不同，乃係獨立犯罪，並不適用刑法第三十一條第一項之規定（參照本院院字第二七二九號解釋），幫助或教唆行賄應分別適用刑法第二十九條、第三十條之規定，更無適用刑法第三十一條第一項規定之餘地，行賄人之行求交付賄賂不問對方之承諾或收受與否，均獨立構成犯罪，而對於賄賂要求之期約非必構成犯罪，故行賄行為與受賄行為二者性質不同，其間並無必要共犯之關係，亦不適用一般關於共犯之規定，依上開說明，應不屬於瀆職罪之內，刑法第一百二十二條將行賄行為與受賄行為並列者，乃為立法上之便利，其情形正與第一百三十二條第三項並列非公務員洩漏國防以外之秘密罪相同。

ing the offeree to give/do something in return or to accept bribes is considered to have committed an offense of bribery. On the other hand, any person who demands bribes within a specific time, has not necessarily committed an offense of bribery. Since the conduct of offering bribes and the conduct of receiving bribes are different in nature, the person who offers bribes and the person who receives bribes are not necessarily accomplices of bribery. The provisions governing accomplices are therefore not applicable to the person who offers bribes and the person who receives bribes. For the aforementioned reasons, the conduct of offering bribes prescribed in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance. The conduct of offering bribes and the conduct of receiving bribes are listed together in Article 122 of the Criminal Code for legislative convenience only. The same ruling is applicable to the disclosure of classified national security information by a civilian listed in Article 132, Paragraph 3, of the Criminal Code together with the disclosure of classified national security information by a civil servant.

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

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