

J. Y. Interpretation No.113 (May 11, 1966) \*

**ISSUE:** Shall the Public Functionary Service Act be applicable to government-contracted employees *mutatis mutandis*?

**RELEVANT LAWS:**

Articles 13 and 24 of the Public Functionary Service Act (公務員服務法第十三條及第二十四條); Article 21 of the Public Functionaries Appointment Act (公務人員任用法第二十一條); Article 13 of the Regulation Governing Contracted Employees of the Government (雇員管理規則第十三條); Interpretation Yuan-je Tzu No. 2903 (司法院院解字第二九〇三號解釋).

**KEYWORDS:**

government contracted employees (雇員), regulation (規則), public functionary (公務員).\*\*

**HOLDING:** The regulation of contracted employees of the government, except as otherwise provided by law, shall be governed by the Public Functionary Service Act. The section in this Yuan's Interpretation Yuan-je Tze No. 2903 which excludes contracted employees of

**解釋文：**雇員之管理，除法令別有規定外，準用公務員服務法之規定。本院院解字第二九零三號所為雇員不受公務員服務法第十三條第一項限制之解釋，不再有其適用。

\* Translated by Wei-Feng Huang.

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

the government outside the operation of Paragraph 1, Article 13 of the Public Functionary Service Act is no longer applicable.

**REASONING:** Although contracted employees of the government are not those who are referred to in Article 24 of the Public Functionary Service Act, as public functionaries receiving a salary from the government, they are people who provide public services under the law. Article 21, Paragraph 2, of the Public Functionaries Appointment Act states that “rules for the regulation of contracted employees of the government shall be mandated by the Examination Yuan.” Pursuant to the foregoing, the Examination Yuan promulgated, in the second sentence of Article 13 of the Regulation Governing Contracted Employees of the Government, stating that “all the provisions in the Public Functionary Service Act are applicable to contracted employees of the government,” the regulation of which, unless otherwise provided in law, shall be governed by the Public Functionary Service Act.

**解釋理由書：**雇員雖非公務員服務法第二十四條所稱受有俸給之文武職公務員，但究同屬依法令從事於公務之人員。公務人員任用法第二十一條第二項既明定：「雇員管理規則由考試院定之」。而考試院所據以頒行之雇員管理規則第十三條後段又規定：「公務員服務法各規定，於雇員適用之」。則其管理，除法令別有規定外，自應準用公務員服務法之規定。

This Yuan's Interpretation Yuan-je Tze No. 2903 seeks to clarify the relevant laws operative as of June, 1945. With the amendment to the relevant laws, the section in said Interpretation that excludes contracted employees of the government outside the operation of Paragraph 1, Article 13 of the Public Functionary Service Act is no longer applicable.

Justice Shi-Ding Chin filed dissenting opinion.

本院院解字第二九零三號解釋，係於民國三十四年六月就當時有效之關係法令所為之解釋，現在法令既有變更，其中關於雇員不受公務員服務法第十三條第一項之規定限制，應不再有其適用。

本號解釋金大法官世鼎提出不同意見書。