

J. Y. Interpretation No.120 (March 1, 1967) *

ISSUE: Can a member of the Control Yuan serve concurrently as a publisher of a newspaper or magazine?

RELEVANT LAWS:

Article 103 of the Constitution (憲法第一百零三條) .

KEYWORDS:

the publisher of a newspaper or magazine (新聞雜誌發行人) , a member of the Control Yuan (監察委員) , censor (監督) .**

HOLDING: The business activities carried out by the publisher of a newspaper or magazine fall within the scope of business as referred to in Article 103 of the Constitution. Thus, a member of the Control Yuan is prohibited from serving concurrently as a member of the Control Yuan and the publisher of a newspaper or magazine.

解釋文：新聞紙雜誌發行人執行之業務，應屬於憲法第一百零三條所稱業務範圍之內。

REASONING: Since the primary function of members of the Control

解釋理由書：監察委員，職司風憲，居於超然地位，故憲法第一百零

* Translated by Li-Chih Lin, Esq., J.D.

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

Yuan is to supervise the actions of the government, all members of the Control Yuan should maintain an impartial (unprejudiced) position and are therefore prohibited from conducting business as referred to in Article 103 of the Constitution. A publisher of a newspaper or magazine cannot publish his or her newspaper or magazine without obtaining prior approval from the competent executive authority. Thus the competent executive authority will censor the business activities carried out by the publisher of a newspaper or magazine. If a member of the Control Yuan serves concurrently as a member of the Control Yuan and the publisher of a newspaper or magazine, he will be censored by the competent executive authority. This is obviously inconsistent with the function of members of the Control Yuan in supervising the actions of the government. Thus, the business activities carried out by the publisher of a newspaper or magazine fall within the scope of business prohibited in Article 103 of the Constitution. A member of the Control Yuan is therefore prohibited from serving concurrently as a member of the Control

三條有不得執行業務之規定。新聞紙雜誌之發行，須經行政官署核准，新聞紙雜誌發行人，所執行之業務，須受行政官署監督，與監察職權，顯不相容。自屬於憲法第一百零三條所稱業務範圍之內。

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Yuan and the publisher of a newspaper or magazine.

Justice Fan-Kang Tseng filed dissenting opinion.

本號解釋曾大法官繁康提出不同意見書。