

J. Y. Interpretation No.127 (September 5, 1969) *

ISSUE: Is a public functionary subject to automatic removal from his or her office upon commission of an offense of corruption?

RELEVANT LAWS:

Article 15, Paragraph 1, Subparagraph 3 and Article 15, Paragraph 2, of the Public Functionaries Appointment Act (公務人員任用法第十五條第一項第三款及第十五條第二項); Article 17, Subparagraph 3, of the Public Functionaries Disciplinary Act (公務員懲戒法第十七條第三款) .

KEYWORDS:

corruptive act (貪污行為), civil servant (公務人員), discharge (免職), suspension of punishment (緩刑), offense of rebellion (內亂罪), offense of treason (外患罪), serving sentences in jail (刑期開始執行) .**

HOLDING: A civil servant shall be discharged immediately from his official duties if one of the following circumstances occurs: (1) he has committed a corruptive act and been convicted; (2) the period of suspension granted has ended but the suspension has not been revoked;

解釋文：公務人員犯貪污罪，緩刑期滿，緩刑之宣告未經撤銷，或犯他罪，刑期執行完畢始被發覺者，均仍應予免職。

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(3) he is convicted of other offenses and is currently serving his sentence in prison; or
(4) his corruptive act is discovered after he has finished serving his sentence in prison.

REASONING: Article 15, Paragraph 2, of the Public Functionaries Appointment Act provides that a public official who has committed a corruptive act shall be disqualified as a civil servant once he is convicted. If the conviction is affirmed and valid, the person shall be discharged immediately from his official duties even when a suspension of punishment is granted. A civil servant shall also be discharged immediately from his official duties even when the period of suspension has ended but the suspension has not been revoked. Article 15, Paragraph 1, Subparagraph 3, of the Public Functionaries Appointment Act and Article 17, Subparagraph 3, of the Public Functionaries Disciplinary Act also respectively provide that: (1) a public official who commits an offense of rebellion or an offense of treason shall be disqualified as a civil servant once he is convicted; and (2) a civil ser-

解釋理由書：曾服公務有貪污行為者，一經判決確定即不得為公務人員，此為公務人員任用法第十五條第二款所明定，雖同時諭知緩刑但確定判決之效力並未喪失，當時即應免除其職務，縱於緩刑期滿，緩刑之宣告未經撤銷始被發覺，亦不得不予以免職。公務人員犯貪污罪外之內亂罪、外患罪經判決確定者，不得為公務人員。犯其他罪受拘役以上刑之宣告在執行中者，其職務當然停止，停職原因未消滅者，不得為公務人員。公務人員任用法第十五條第一款第三款後段，公務員懲戒法第十七條第三款亦有明文。在判決確定或刑開始執行之時，既已不得為公務人員，其原有之職務即應予以免除。不應因刑期執行完畢始被發覺而排斥各該條款之適用。

vant shall be discharged immediately from his official duties once he is convicted of other offenses and begins to serve his sentence in prison; and he shall be disqualified as a civil servant if the reason for discharging his official duties is not revoked. Since a public official is disqualified as a civil servant once he is convicted or he begins to serve a sentence in prison, he shall be discharged immediately from his official duties and subject to the aforementioned provisions even when his corruptive act is discovered after he has finished serving his sentence in prison.