

J. Y. Interpretation No.131 (September 24, 1971) *

ISSUE: May a civil servant under the Public Functionary Service Act serve concurrently as the president or director of a private school?

RELEVANT LAWS:

Interpretation Yuan-tze No. 2320 (司法院院字第二三二〇號解釋); Article 14 of the Public Functionary Service Act (公務員服務法第十四條); Article 27, Paragraph 2 of the Civil Code (民法第二十七條第二項); Articles 19 and 26 of the Regulation Governing Private Schools (私立學校規程第十九條及第二十六條).

KEYWORDS:

civil servant (公務員), president (董事長), director (董事), private school (私立學校), exemption (解除). **

HOLDING: The Public Functionary Service Act provides that a civil servant should not serve concurrently as a civil servant and the president or director of a private school, except as otherwise permitted in other laws or orders. This Interpretation is to supplement and clarify

解釋文：公務員服務法上之公務員，不得兼任私立學校之董事長或董事，但法律或命令規定得兼任者，不在此限。本院院字第二三二〇號解釋應予補充釋明。

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

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

Interpretation Yuan-tze No. 2320.

REASONING: The directors who carry out all businesses in a corporation are deemed by law to be the representatives of the corporation. Article 27, Paragraph 2, of the Civil Code explicitly provides that a private school is an educational business responsible for educating students. The function of a private school is different from the function of a business enterprise such as a clubhouse or a charity organization. Articles 19 and 26 of the Regulation Governing Private Schools provide that the president and the directors should decide all the primary business of a private school. Thus, duties carried out by the president or the directors of a private school fall within the scope of business under Article 14 of the Public Functionary Service Act. Except as otherwise permitted in other laws or orders under special circumstances, the president or director of a private school cannot be a civil servant, whether such school has been incorporated and registered as a business enterprise or not. This restriction is to comply with the legislative intent of

解釋理由書：查「董事就法人一切事務，對外代表法人」，為民法第二十七條第二項所明定。私立學校，係教育事業，負作育人才之責任，其任務，與會館、慈善事業等財團法人有別；學校之主要事項，均須董事長及董事決定（參看私立學校規程第十九條及第二十六條）。其所擔任之職務，自難謂為非公務員服務法第十四條所稱之業務，除法律或命令基於事實需要規定得由公務員兼任者外，無論私立學校，已未為財團法人之設立登記，其董事長或董事均非公務員服務法上之公務員所得兼任，以符合公務員服務法限制公務員不得兼任他項職務之立法本旨，本院院字第二三二〇號解釋，應予補充釋明。至私立學校規程有關公務員為私立學校之創辦人，得充任為董事，自係合於同法第十四條除外之規定；如有其他事實需要，亦自得以法令規定公務員得以兼任，併予說明。

the Public Functionary Service Act. This Interpretation is to supplement and clarify Interpretation Yuan-tze No. 2320. As for the Regulation Governing Private Schools allowing a civil servant who is the founder of a private school to also serve as a director of such private school is an exemption provided in Article 14 of the same Act. If a civil servant who is the founder of a private school is also required under a special circumstance to serve as the director of such private school, it will be permitted under the law. This Interpretation is to clarify the above-mentioned exemption as well.

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋王大法官之侖提出不同意見書。