

J. Y. Interpretation No.137 (December 14, 1973) \*

**ISSUE:** Should a judge be bound by an administrative order issued for purpose of interpreting a law or regulation while hearing a case?

**RELEVANT LAWS:**

Articles 80 and 172 of the Constitution (憲法第八十條及第一百七十二條) .

**KEYWORDS:**

administrative orders of statutory interpretation (有關法規釋示之行政命令), lawful and accurate judicial interpretation (合法適當之見解) .\*\*

**HOLDING:** With regard to the administrative orders of statutory interpretation handed down by the government agencies in accordance with their respective authorities, the court may not refuse to apply them if they are applicable to the case. However, a judge shall, based on his or her fair and honest belief in the accurate interpretation of the law, give a lawful and legitimate legal opinion on a contro-

**解釋文：**法官於審判案件時，對於各機關就其職掌所作有關法規釋示之行政命令，固未可逕行排斥而不用，但仍得依據法律表示其合法適當之見解。

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

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

versy which requires an accurate judicial interpretation.

**REASONING:** With regard to the administrative orders of statutory interpretation or the basis for determining the facts or ruling of the case handed down by the government agencies in accordance with their respective authorities, the court may not refuse to apply them if they are applicable to the case. However, there are millions of different administrative orders of statutory interpretation and some of them may be inconsistent with the law, or may violate Article 172 of the Constitution. Thus, the court shall adjudicate the case pursuant to the administrative orders of statutory interpretation only when the court reasonably believes that the statutory interpretation in the administrative orders is fairly accurate. Article 80 of the Constitution provides that a judge is obligated to adjudicate a case neutrally and independently pursuant to the law. Therefore, with regard to the facts-finding or application of the law, a judge shall, based on his or her fair and honest belief in the accurate interpretation of the law,

**解釋理由書：**法官於審判案件時，對於各機關就其職掌所作有關法規釋示之行政命令，或為認定事實之依據，或須資為裁判之基礎，固未可逕行排斥而不用。惟各種有關法規釋示之行政命令，範圍廣泛，為數甚多。其中是否與法意偶有出入，或不無憲法第一百七十二條之情形，未可一概而論。法官依據法律，獨立審判，依憲法第八十條之規定，為其應有之職責。在其職責範圍內，關於認事用法，如就系爭之點，有為正確闡釋之必要時，自得本於公正誠實之篤信，表示合法適當之見解。

give a lawful and legitimate legal opinion on a controversy which requires an accurate judicial interpretation.

Justice Ji-Jong Wang filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋王法官之儗、金大法官世鼎分別提出不同意見書。