

J. Y. Interpretation No.140 (November 15, 1974) \*

**ISSUE:** What remedy should be sought where a public prosecutor unlawfully issued a non-prosecution ruling as to a case already prosecuted?

**RELEVANT LAWS:**

Article 258 of the Code of Criminal Procedure (刑事訴訟法第二百五十八條) .

**KEYWORDS:**

ruling nolle prosequi (不起訴處分), reconsideration (再議) .\*\*

**HOLDING:** When a case is pending in the criminal court, if the prosecutor illegally makes a ruling nolle prosequi on the basis of substantial evidence, if the complainant duly applies for reconsideration of the ruling, the chief prosecutor or prosecutor general of a higher court shall set aside the ruling.

**解釋文：**案經起訴繫屬法院後，復由檢察官違法從實體上予以不起訴處分，經告訴人合法聲請再議，上級法院首席檢察官或檢察長，應將原不起訴處分撤銷。

**REASONING:** When a case is pending in the criminal court, it shall be

**解釋理由書：**案經起訴繫屬法院後，即應依法審判，若檢察官復從實

---

\* Translated by Lee & Li, Attorneys-At-Law.

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

tried by law. If the prosecutor makes a ruling *nolle prosequi* on the basis of substantial evidence, the ruling will obviously be illegal and therefore invalid. If the complainant duly applies for reconsideration of the invalid ruling, the chief prosecutor or prosecutor general of a higher court shall correct the error by setting aside the ruling, which may have come into effect nominally.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shueh-Teng Lee filed dissenting opinion, in which Justice Yueh-Sheng Weng joined.

體上予以不起訴處分，該項處分，顯係重大違背法令，應屬無效。告訴人對於該無效處分合法聲請再議時，上級法院首席檢察官或檢察長，應將該項已具有形式上效力之處分，予以撤銷，俾資糾正。

本號解釋陳大法官世榮提出不同意見書；李大法官學燈與翁大法官岳生共同提出不同意見書。