

J. Y. Interpretation No.143 (June 20, 1975) *

ISSUE: Is a person who resells a train ticket for profits subject to the offense of fraud?

RELEVANT LAWS:

J.Y. Interpretations Yuan-je-tze Nos. 2920 and 3808 (司法院解字第二九二〇號解釋及第三八〇八號解釋) ; Article 339, Paragraphs 1 and 2, of the Criminal Code (刑法第三三九條第一項及第二項) .

KEYWORDS:

offense of fraud (詐欺罪) , defrauding others by misrepresentation (以詐術使人陷於錯誤) , monetary loss (詐財損失) , fraudulent act (詐術) , undue profit (不法之利益) .**

HOLDING: Whether a person who purchases train tickets and resells them to other passengers for profit is considered to have committed an offense of fraud will be determined based upon whether the person has done acts which have elements of fraud by defrauding others by misrepresentation. Whether the

解釋文：關於購買火車票轉售圖利，是否構成詐欺罪，要應視其實際有無以詐術使人陷於錯誤，具備詐欺罪之各種構成要件而定。如自己並不乘車，而混入旅客群中，買受車票，並以之高價出售者，仍須視其實際是否即係使用詐術，使售票處因而陷于錯誤，合於詐欺罪之各種構成要件以為斷。本院

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

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action of a person who does not intend to ride the train but purchases train tickets along with other passengers and subsequently resells them to other passengers for a higher price constitutes an offense of fraud will be determined based upon whether he or she has done acts which have elements of fraud by defrauding others by misrepresentation resulting in economic loss for the ticket office. J.Y. Interpretations Yuan-je-tze Nos. 2920 and 3808 both hold that a fraudulent purchase of train tickets refers to the purchase of train tickets with an intent to engage in misrepresentation. However, the latter J.Y. Interpretation emphasizes the fraudulence committed against the passengers resulting in their monetary loss. The former J.Y. Interpretation emphasizes the fraudulence committed against the ticket office resulting in economic loss for the ticket office and undue profit obtained by the offender. Thus, these two different defrauding acts shall be respectively governed by Article 339, Paragraphs 1 and 2, of the Criminal Code.

REASONING: Whether a per-

院解字第二九二〇號暨第三八〇八號解釋據來文所稱之套購，應係意指使用詐術之購買而言。惟後一解釋，重在對於旅客之詐財；前一解釋，重在對於售票處之詐欺得利；故應分別適用刑法第三百三十九條第一項及第二項之規定。

解釋理由書：關於購買火車票

son who purchases train tickets and resells them to other passengers for profit has committed an offense of fraud will be determined based upon the facts of an individual case depending upon whether the person has done acts which have elements of fraud. There are various kinds of train tickets with different types of restrictions. Whether the action of a person who does not intend to ride the train but purchases train tickets along with other passengers and subsequently resells them to other passengers for a higher price constitutes an offense of fraud will be determined based upon whether he or she has done acts which have elements of fraud by defrauding others by misrepresentation resulting in economic loss for the ticket office. If the person has not done acts which have the elements of fraud, he or she can hardly be convicted of the offense of fraud under the Criminal Code even when his or her actions are restricted or prohibited under other laws. J.Y. Interpretations Yuan-je-tze Nos. 2920 and 3808 both hold that a fraudulent purchase of train tickets refers to the purchase of train tickets with an intent to engage in misrepresentation.

轉售圖利，是否構成詐欺罪，應視具體事實，有無司法院大法官解釋彙編具備詐欺罪之各種構成要件，分別情形以定之。如來文所附原函之設問，有謂「自己並不乘車，而混入一般旅客群中買受車票，並以之高價出售」之情形，因車票之種類不同，限制購買之寬嚴亦不一致，故仍須視其實際是否即係使用詐術，使售票處因而陷於錯誤，合於詐欺罪之各種構成要件以為斷。如於要件有所未備，縱依其他法令有予限制或禁止之必要，尚難遽執刑法上之詐欺罪以相繩。本院院解字第二九二〇號暨三八〇八號解釋，所據當時來文有用套購之一詞，其涵義即係指使用詐術之購買而言。此徵之前一解釋引為合於詐術之要件，殊甚明顯，惟後一解釋係重在對於旅客以詐術使其為財物之交付；前一解釋，則重在對於售票處以詐術取得財產上不法之利益；故應分別適用刑法第三百三十九條第一項及第二項之規定。

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The former J.Y. Interpretation explicitly requires the commission of a fraudulent act to constitute an offense of fraud. However, the latter J.Y. Interpretation emphasizes the fraudulence committed against the passengers resulting in their monetary loss. The former judicial interpretation emphasizes the fraudulence committed against the ticket office resulting in economic loss for the ticket office and the undue profit obtained by the offender. Thus, these two different defrauding acts shall be respectively governed by Article 339, Paragraphs 1 and 2, of the Criminal Code.

Justice Ou Kuan filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋管大法官歐、陳大法官世榮與金大法官世鼎分別提出不同意見書。