

J. Y. Interpretation No.145 (April 30, 1976) *

ISSUE: Does the term “majority of people” elaborated in Interpretation Y.T. No. 2033 regarding Article 234 of the Criminal Code include “a specific majority of people”?

RELEVANT LAWS:

Article 234 of the Criminal Code (刑法第二百三十四條) .

KEYWORDS:

a majority of people (多數人) , a specific majority of people (特定之多數人) , publicly (公然) , an indecent act (猥褻罪) .**

HOLDING: The so-called “majority of people” elaborated in Interpretation Yuan-Tze No. 2033 regarding Article 234 of the Criminal Code includes “a specific majority of people”. Yet it should be further elaborated as to the number of people that constitutes “publicly” pursuant to purposes of legislation and actual circumstances.

解釋文：本院院字第二〇三三號解釋，所謂多數人，係包括特定之多數人在內，至其人數應視立法意旨及實際情形已否達於公然之程度而定。應予補充釋明。

REASONING: Inasmuch as In-

解釋理由書：本院院字第二〇

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terpretation Yuan-Tze No. 2033 regarding Article 234 of the Criminal Code states that, “the ‘publicly’ criterion is satisfied as long as a non-specific number of people or a majority of people may all see or hear an indecent act”, it is thus not necessary to require that a non-specific number of people or a majority of people did see or hear such an indecent act to satisfy the ‘publicly’ criterion in Article 234 of the Criminal Code, as long as the de facto circumstance of a non-specific number of people or a majority of people being able to see or hear satisfies the ‘publicly’ criterion. It is quite clear, after reviewing the said Interpretation and the petition for the interpretation, that the so-called “a majority of people” includes “a specific majority of people”. As for the numerical calculation of “a specific majority of people” needed to satisfy the ‘publicly’ criterion, it varies with different crimes just as the nature of such crimes also varies. The number of people that constitutes the ‘publicly’ criterion should be determined pursuant to purposes of legislation and actual circumstances. Therefore, the foregoing Interpretation should be further elaborated.

三三號解釋，既謂「刑法分則中公然二字之意義，祇以不特定人或多數人得以共見共聞之狀況為已足」，則自不以實際上果已共見共聞為必要，但必在事實上有與不特定人或多數人得以共見或共聞之狀況方足認為達於公然之程度。所謂多數人係包括特定之多數人在內，此觀於該號解釋及當時聲請解釋之原呈甚明。至特定多數人之計算，以各罪成立之要件不同，罪質亦異，自應視其立法意旨及實際情形已否達於公然之程度而定。本院上開解釋，應予補充釋明。

Justice Fan-Kang Tseng filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋曾大法官繁康、陳大法官世榮與金大法官世鼎分別提出不同意見書。