

J. Y. Interpretation No.150 (September 16, 1977) *

ISSUE: Is the Executive Yuan's decree suspending further filling of vacancies left by the term of the Legislative Yuan constitutional?

RELEVANT LAWS:

Paragraph 6 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion (動員戡亂時期臨時條款第六項); Articles 29 and 45 of the Legislator Election and Recall Act (立法院立法委員選舉罷免法第二十九條及第四十五條); J. Y. Interpretation No. 31 (司法院釋字第三十一號解釋).

KEYWORDS:

elected central representatives (中央民意代表), Executive Yuan (行政院), Legislative Yuan (立法院).**

HOLDING: Paragraph 6 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion does not alter the term of elected central representatives under the Constitution. The Executive Yuan's decree not to fill

解釋文：動員戡亂時期臨時條款第六項，並無變更憲法所定中央民意代表任期之規定。行政院有關第一屆立法委員遇缺停止遞補之命令，與憲法尚無牴觸。

* Translated and edited by Professor Andy Y. Sun.

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vacancies in the First Legislative Yuan does not contradict the Constitution.

REASONING: The petitioner in this case argued, among other things, that Article 65 of the Constitution states, “The term for members of the Legislative Yuan shall be three years,” yet Paragraph 6, Subparagraph 2, of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, promulgated on March 23, 1972, provides that the terms of elected central representatives under the Constitution were to extend across the board until such time that “the recaptured areas in Mainland China conduct the election of central representatives, respectively,” and that all laws and regulations which contradict this provision are declared invalid. Petitioners are stand-by candidates for the First Legislative Yuan. Their petitions to fill the vacancies in the Legislative Yuan were denied by the Executive Yuan, the Grievances Review Board and the Grievances Review Appeal Board based on a not-to-fill decree promulgated by the Executive Yuan. Petitioners

解釋理由書：本件聲請人聲請意旨略稱：憲法第六十五條雖規定：「立法委員之任期為三年」，但民國六十一年三月二十三日公布之動員戡亂時期臨時條款第六項第二款規定：則將憲法有關中央民意代表之任期一律延長至「大陸光復地區次第辦理中央民意代表之選舉」為止，與之牴觸之法令，均應失效。聲請人等為第一屆立法委員候補人，經依該條款聲請遞補，並提起訴願、再訴願及行政訴訟，均被援引行政院所為停止遞補之命令，予以駁回，侵害聲請人等憲法上所保障之權利，聲請予以解釋。

thus filed the present petition [for constitutional interpretation] on the ground that their rights protected under the Constitution have been infringed upon.

Article 65 of the Constitution specifically provides that the term of a member of the Legislative Yuan is three years. By reference to Articles 29 and 45 of the Legislator Election and Recall Act, it is clear that when vacancies are created, they are to be filled by stand-by candidates in due course and order to serve out the remainder of that term. As a result, once the term of the First Legislative Yuan expired on May 7, 1951, there were no vacancies to fill. Due to national emergencies, although in reality it was impossible to conduct elections after the terms of members of the First Legislative Yuan's term had expired, in accordance with this Yuan's Interpretation No. 31 and to uphold the five-branch constitutional framework, members were allowed to continue to carry out their duties until the Second Legislative Yuan was elected and convened. Based upon this Interpretation, only those who were already members at

按立法委員之任期為三年，憲法第六十五條著有明文。立法委員出缺時，由候補人依次遞補，其任期至原任任期屆滿之日為止，參照立法院立法委員選舉罷免法第二十九條及同法第四十五條之規定至為明顯。是第一屆立法委員於民國四十年五月七日任期屆滿之後，已無從遞補。第一屆立法委員於任期屆滿後，因國家發生重大變故，事實上不能依法改選，為維護憲法樹立五院制度之本旨，在第二屆立法委員未能依法選出集會以前，繼續行使其職權，經本院釋字第三十一號解釋有案。依此解釋，第一屆立法委員任期屆滿之際，已任立法委員者，始能繼續行使其職權。

the time the term of the First Legislative Yuan expired could remain in office.

Paragraph 6, Subparagraph 2, of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, as promulgated on March 23, 1972, provides that members of the First Legislative Yuan [should continue to] carry out their duties in accordance with the law. This is the same legal rule as the above-indicated Interpretation. With regard to the wording “elected central (national) representatives shall be elected by the general population of the whole nation,” as provided in the same Section, as far as members of the Legislative Yuan are concerned, it refers to those elected in 1948, those who have already filled the vacancies in accordance with the law as of May 7, 1951, and those newly-elected members in accordance with Paragraph 5 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, as promulgated on March 22, 1966. The wording “the recaptured areas in

民國六十一年三月二十三日公布之動員戡亂時期臨時條款第六項第二款所稱：第一屆中央民意代表依法行使職權，與本院上開解釋法意相同。同款所稱：「第一屆中央民意代表，係經全國人民選舉所產生。」；在立法委員，乃指民國三十七年當選及民國四十年五月七日前已依法遞補暨依民國五十五年三月二十二日公布之動員戡亂時期臨時條款第五項規定增選之立法委員而言。至前引同項款：「大陸光復地區次第辦理中央民意代表之選舉」一語，與憲法第六十五條後段：「立法委員選舉於每屆任滿前三個月內完成之」相若，乃為選舉時期之規定，而據同項規定：「總統得訂頒辦法充實中央民意機構，不受憲法第二十六條、第六十四條及第九十一條之限制」。其非變更第一屆中央民意代表任期之規定，尤為顯然。

Mainland China are to conduct the election of central representatives, respectively,” contained in the same Section and cited above, is similar to the last Paragraph of Article 65 of the Constitution, which states, “The election of Legislators shall be completed within three months prior to the expiration of each term.” They are all provisions designed for the period of election. Yet in accordance with Paragraph 6, “notwithstanding Articles 26, 64 and 91 of the Constitution, the President shall promulgate rules to maintain the central representative body.” It is abundantly clear that these provisions were not created to alter the term of the first central representatives.

Based on the above illustration, the Executive Yuan's Tai 40 (Nei) No. 2337 decree stipulating that the term of the First Legislative Yuan expired as of May 7, 1951, and that all vacancies created thereafter shall not be filled does not contradict the Constitution.

Justice Wei-Kuang Yiau filed dissenting opinion.

依上說明，行政院台四十（內）字第二三三七號令暨有關第一屆立法委員之任期於民國四十年五月七日屆滿，此後遇有缺額，應停止遞補之命令，與憲法尚無牴觸。

本號解釋姚大法官瑞光提出不同意見書。