

J. Y. Interpretation No.155 (December 22, 1978) \*

**ISSUE:** Is it constitutionally permissible for the nation's highest examination body to enact rules and regulations on the methods of civil examinations and on-the-job training for those who wish to work as civil servants?

**RELEVANT LAWS:**

Articles 13, 83 and 85 of the Constitution (憲法第十三條、第八十三條及第八十五條) ; Article 6 of the Enforcement Rules of the Examination Act (考試法施行細則第六條) ; Article 8 of the Regulation for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination (六十三年特種考試臺灣省基層公務人員考試規則第八條) ; Article 4 of the Grand Justices Council Adjudication Act (司法院大法官會議法第四條) .

**KEYWORDS:**

examination organ (考試機關) , junior-grade public servants (基層公務人員) , apprenticeship (實習) , qualification certificate (及格證書) .\*\*

**HOLDING:** The Examination Yuan, being the highest examination organ of the State, may formulate rules for

**解釋文：**考試院為國家最高考試機關，得依其法定職權訂定考試規則及決定考試方式：「六十三年特種考試

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

and methods of examination within its authority. The review and approval of provisions concerning apprenticeship in Article 8 of the Regulation for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination, and the Qualification Measures of Apprenticeship for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination do not exceed the scope of the Examination Yuan's duty, nor do they abridge the people's right to take examinations or infringe upon the Constitution.

**REASONING:.** The applicant in this case applied for a qualification certificate after passing the 1974 Taiwan Province Basic-Level Civil Servants Specific Examination without having completed an apprenticeship. The relevant authority refused to issue such a certificate based on Article 8 of the Regulation for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination and its Qualification Measures of Apprenticeship. The applicant asserted that the said Regulation and Measures were administrative ordinances, and the chapter which imposed appren-

臺灣省基層公務人員考試規則」第八條關於實習之規定暨「六十三年特種考試臺灣省基層公務人員考試錄取人員實習辦法」之核定，均未逾越考試院職權之範圍，對人民應考試之權亦無侵害，與憲法並不牴觸。

**解釋理由書：**本件聲請意旨略以聲請人參加六十三年特種考試臺灣省基層公務人員考試錄取後，未經實習，請求發給及格證書，主管機關以六十三年特種考試臺灣省基層公務人員考試規則第八條暨其錄取人員實習辦法為依據，不予發給，惟該規則及實習辦法，係屬行政規章，其中所列經實習後始為完成考試程序一節，與考試法及其施行細則牴觸，致侵害其於憲法上所保障之人民有應考試服公職之權，經依法定程序向行政法院提起訴訟。該院仍基於上開規則第八條及其實習辦法之規定，以六十七年度判字第二六五號判決駁回。

ticeship as a part of the examination process was contrary to the Examination Act and its Enforcement Rules, thus abridging the people's right to examinations and public offices guaranteed by the Constitution. The said Yuan had dismissed the applicant's assertion in its Judgment No. 265 of 1978 by applying the provision of Article 8 of the abovementioned Regulation and Measures. The applicant requested an interpretation of the Constitution by this Yuan under Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act for the reason that the laws adopted in reaching the said final and binding judgment infringed upon the Constitution.

The Examination Yuan is the highest examination organ of the State, and is in charge of matters relating to examination under the authority granted by Article 83 of the Constitution. Pursuant to such authority, it may formulate examination rules and adopt suitable examination methods. Reference to "apprenticeship" in Article 8 of the Regulation for Taiwan Province Basic-Level 1974 Civil Servants

此項確定終局判決所適用之法令，顯有違憲之處等情，依司法院大法官會議法第四條第一項第二款之規定，聲請解釋憲法。

查考試院為國家最高考試機關，掌理考試等事項，為憲法第八十三條所賦與之職權，自得本此職權，訂定考試規則及酌採適當之考試方式。六十三年特種考試臺灣省基層公務人員考試規則第八條暨同考試錄取人員實習辦法所定之「實習」，乃實地學習之意，與考試法施行細則第六條所稱之「學習」同，係考察試驗應考人才能之一種適當方法，使其對於任職後之業務有所瞭解，俾能

Specific Examination and in its Measures means “on-the-job,” and can be equated with “learning” as referred to in Article 6 of the Enforcement Rules of the Examination Act. Apprenticeship is a proper means of testing the examination candidates, providing them with an understanding of the duties involved and preparing them for the position. Therefore, the candidates must have successfully completed an apprenticeship before they are issued a qualification certificate. Apprenticeship is a component of the examination process, and should be distinguished from “probation.” The imposition of apprenticeship, which applies to all qualified candidates, does not exceed the Examination Yuan’s authority nor is it contradictory to the spirit of the examination system contained in Article 85 of the Constitution. Even if Article 8 of the aforementioned Regulation delegates matters concerning apprenticeship to the determination of the Taiwan provincial government, such delegation cannot be said to have abridged the people’s right of examination nor will it infringe upon Article 18 of the Constitution. Furthermore, the applicant’s asser-

勝任，故必須實習成績及格後，始發給考試及格證書，仍為考試程序之一部，與「試用」有別，此項實習，未逾越考試院職權之範圍，且對於該次考試所有錄取人員一律適用，與憲法第八十五條所定考試制度之精神，尚無違背。至依上述考試規則第八條於規定實習原則後，將實習之事項，委由臺灣省政府擬定辦法，核定實施，其委任行為，亦難謂為對人民應考試之權有所侵害，與憲法第十八條並不牴觸。再本件聲請人指摘上述考試規則第八條暨實習辦法有無牴觸考試法並違反典試法及監試法，其制定程序是否合法等，均非解釋憲法問題，依司法院大法官會議法第四條第一項第二款應不予解釋，合併敘明。

tion that Article 8 of the aforementioned Regulation and Apprenticeship Measures are inconsistent with the Examination Act and have infringed upon the Act Governing the Administration of Examination and Examination Supervision Act, or the question of whether their promulgation procedures were legal, are not questions concerning the interpretation of the Constitution. Therefore, under Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act, they should not be considered by this court.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。