

J. Y. Interpretation No.157 (April 13, 1979) *

ISSUE: May a public functionary without the supervisory power over private schools serve concurrently as a chairman or director of a private school?

RELEVANT LAWS:

Articles 16, 20, 21 and 51 of the Private School Act (私立學校法第十六條、第二十條、第二十一條及第五十一條); Article 27 of the Civil Code (民法二十七條); Article 14 of the Public Functionary Service Act (公務員服務法第十四條); J.Y. Interpretation No. 131 (司法院釋字第一三一號解釋).

KEYWORDS:

private school (私立學校), chairman of the board of directors (董事長), director (董事), public functionary (公務人員). **

HOLDING: The Private School Act provides that any civil servant who has the authority to supervise a private school may not serve as director on the board of a private school. J.Y. Interpretation No. 131, which holds that a public

解釋文：私立學校法施行後，對於私立學校不具監督權之公務員，除法律或命令另有規定外，亦不得兼任私立學校之董事長或董事，本院釋字第一三一號解釋，仍應有其適用。

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

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functionary who does not have the authority to supervise a private school may not serve as a chairman or a director of a private school without authorization under the law or ordinance is still applicable to a public functionary who does not have the authority to supervise a private school.

REASONING: Private schools have a duty to educate. The primary business of a private school must be decided by its chairman or directors on the board of the school under the law (See Articles 20, 21 and 51 of the Private School Act and Article 27 of the Civil Code) Such business is not the “business” referred to in Article 14 of the Public Functionary Service Act. Public functionaries have an obligation to serve their country faithfully. To maintain impartiality and to prevent the adverse effect of other employment on the performance of his or her civil duty, a public functionary may not take another civil position or conduct other business without authorization under the law or ordinance. If the competent authority concludes functionary to serve concurrently as a that it is necessary to authorize a pub-

解釋理由書：私立學校，負作育人才之重任，其主要業務，依法均須董事長及董事決定（參看私立學校法第二十條、第二十一條、第五十一條及民法第二十七條）。此項業務，要難謂非公務員服務法第十四條所稱之業務。公務員對國家負有忠實服務之義務，為保持其超然地位及防止兼任其他業務有礙其本身職務之執行，除法律或命令規定得由公務員兼任者外，不得兼任他項公職或業務。如主管機關基於實際需要，認為有准許兼任私立學校董事長或董事之必要時，自得另以法令規定之。本院釋字第一三一號解釋所指不得兼任私立學校董事長或董事之公務員，並非僅以現任主管教育行政機關人員或對私立學校具有監督權之公務員為限。私立學校法第十六條：「現任主管教育行政機關人員或對私立學校具有監督權之公務員，不得兼任董事」之規定，係擴大前

lic chairman or a director on the board of a private school, the competent authority may enact a statute to regulate such authorization. J.Y. Interpretation No. 131 holds that a public functionary may not serve as a chairman or a director on the board of a private school. This holding is not limited to the personnel currently working in an educational or administrative government agency or to a public functionary who has the authority to supervise a private school. Article 16 of the Private School Act provides that any personnel currently working in an educational or administrative government agency or any public functionary who has the authority to supervise a private school may not serve as a director on the board of a private school. This provision is to enlarge the scope of restriction set forth in Article 17 of the Regulation Governing Private Schools, which provides that any personnel currently working in an educational or administrative government agency may not serve as a director on the board of a private school. Article 16 of the Private School Act does not preclude the application of Article 14 of the Public

私立學校規程第十七條所定：「……現任有關主管教育行政機關人員，不得兼任董事」之禁止範圍，並未排除公務員服務法第十四條規定之適用，故私立學校法施行後，對於私立學校不具監督權之公務員，除法律或命令另有規定外，亦不得兼任私立學校之董事長或董事，本院釋字第一三一號解釋，仍應有其適用。

Functionary Service Act. Therefore, even though the Private School Act has been promulgated, a public functionary who does not have the authority to supervise a private school may not serve as a private school's president or as a chairman or a director on the board of a private school without authorization under the law or ordinance. J.Y. Interpretation No. 131 is still applicable to a public functionary who does not have the authority to supervise a private school.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。