

J. Y. Interpretation No.158 ( June 22, 1979 ) \*

**ISSUE:** Are the relevant provisions of the Public Functionaries Appointment Act regarding the passive qualifications of a public functionary applicable to a briber?

**RELEVANT LAWS:**

Articles 4 and Article 7 of the Grand Justices Council Adjudication Act ( 司法院大法官會議法第四條及第七條 ) ; J.Y. Interpretation No. 96 ( 司法院釋字第九十六號解釋 ) ; Article 11, Paragraph 1, and Article 12, Paragraph 2, of the Anti-Corruption Act during the Period for Suppression of the Communist Rebellion ( 戡亂時期貪污治罪條例第十一條第一項及第十二條第二項 ) ; Article 15, Paragraph 2, of the Public Functionaries Appointment Act ( 公務人員任用法第十五條第二項 ) .

**KEYWORDS:**

the conduct of offering a bribe ( 行賄行為 ) , corruptive conduct ( 貪污行為 ) , public functionary ( 公務人員 ) .\*\*

**HOLDING:** Regardless of the identity of the offender, the conduct of offering a bribe is distinct from the corruptive conduct of accepting a bribe in

**解釋文：**行賄行為，不論行賄人之身分如何，其性質均與貪污行為有別，不適用公務人員任用法第十五條第二款之規定，本院釋字第九十六號解釋

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

nature. Article 15, Paragraph 2, of the Public Functionaries Appointment Act is not applicable to the conduct of offering a bribe. J.Y. Interpretation No. 96, which holds that the conduct of offering a bribe prescribed in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance, is consistent with the substance of this Judicial Interpretation and shall therefore be upheld.

**REASONING:** The Grand Justices Council reached a resolution at the 180th Grand Justices Council Meeting stating that: “When a central or local government agency applies for a supplemental constitutional interpretation of a judicial interpretation because a controversy has arisen from the application of the Constitution, statutes or ordinances under their authorities pursuant to that interpretation, the Grand Justices Council may provide a supplemental constitutional interpretation of the judicial interpretation at issue pursuant to the provisions set forth in Article 4 or Article 7 of the Grand Justices Council Adjudication Act.” The purpose of the aforementioned resolution is

仍予維持。

**解釋理由書：**查司法院大法官會議第一百十八次會議議決：「中央或地方機關就職權上適用憲法、法律或命令，對於本院之解釋發生疑義，聲請解釋時，本會議得依司法院大法官會議法第四條或第七條之規定，再行解釋。」係以闡明原解釋適用時所生之疑義或予更正、補充為主旨。本件係考試院對於本院釋字第九十六解釋發生疑義，依照上項決議，認為應予解釋。

to clarify the controversy arising from the application of the judicial interpretation or to ratify or supplement the judicial interpretation. This J.Y. Interpretation was applied by the Examination Yuan under its authority for a controversy arising from the application of J.Y. Interpretation No. 96, which held that the conduct of offering a bribe prescribed in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance. The Examination Yuan concludes that the Grand Justices Council shall provide a supplemental constitutional interpretation of the J.Y. Interpretation No. 96 pursuant to the aforementioned resolution.

To offer a bribe, it is not necessary that the offender must have a specific identity (public functionary ). While the counterpart of offering a bribe to a public functionary is the corruptive conduct of a public functionary accepting a bribe, the elements of offense, criminal sanction, and reduction or exemption of sentence for offering a bribe are different from the elements of offense, criminal sanction, and reduction or exemption of sentence

按行賄行為，其犯罪主體不以有特定身分為必要，雖與公務人員受賄之貪污行為具有對行關係，但其犯罪構成要件、處罰及刑之減免均不相同。故其行為之性質與貪污行為有別。戡亂時期貪污治罪條例第十一條第一項之規定，旨在就對於依據法令從事公務之人員及受公務機關委託承辦公務之人行賄而加重處罰，並非變更行賄行為之性質。縱因其情節輕微，而其行求期約或交付財物在三千元以下者，依同條例第十二條第

for a public functionary accepting a bribe. Thus, the conduct of offering a bribe is distinct from the corruptive conduct of accepting a bribe in nature. The provisions in Article 11, Paragraph 1, of the Anti-Corruption Act during the Period for Suppression of the Communist Rebellion (hereinafter “The Act”) were set forth to provide an additional sanction on a person who performs civil duty under the law or under commission by a government agency. The provisions in Article 11, Paragraph 1, of the Act were not set forth to change the nature of the bribing conduct. Even when the bribing conduct may be separately governed by Article 12, Paragraph 2, of the Act or other Acts which provide a lenient sentence when the bribing conduct is not serious, and the bribe demanded within a specific time is less than NT\$ 3000, the conduct of offering a bribe is still distinct from the corruptive conduct of accepting a bribe. Thus, Article 15, Paragraph 2, of the Public Functionaries Appointment Act is not applicable to the conduct of offering a bribe. J.Y. Interpretation No. 96, which held that the conduct of offering a bribe prescribed

二項適用有較輕處罰之刑法或其他法律，致適用法律有所差異，亦不能因此之故與貪污行為混為一談，自不適用公務人員任用法第十五條第二款之規定，本院釋字第九十六號解釋，與此主旨並無不同，仍應予以維持。

in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance, is consistent with the substance of this Judicial Interpretation and shall therefore be upheld.

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。