

J. Y. Interpretation No.165 (September 12, 1980) *

ISSUE: Articles 32, 73 and 101 of the Constitution provide that no member of the National Assembly, Legislature and Control Yuan shall be held liable for opinions expressed and votes cast during his attendance at its respective session, should the-said provisions be applicable *mutatis mutandis* to the delegates of the Provincial Assemblies and Local Councils?

RELEVANT LAWS:

Articles 32, 73, 78 and 101 of the Constitution (憲法第三十二條、第七十三條、第七十八條、第一百零一條); Articles 4 and 7 of the Grand Justices Council Adjudication Act (司法院大法官會議法第四條、第七條); J. Y. Interpretation No.122 (司法院釋字第一二二號解釋).

KEYWORDS :

Local Council (地方議會), freedom of speech (言論自由).**

HOLDING: Delegates of the Provincial Assemblies and Local Councils shall not be held responsible for opinions expressed at the Council meetings regarding matters of such meetings. Neverthe-

解釋文：地方議會議員在會議時就有關會議事項所為之言論，應受保障，對外不負責任。但就無關會議事項所為顯然違法之言論，仍難免責。本院釋字第一二二號解釋，應予補充。

* Translated by Jiunn-rong Yeh.

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

less, they shall be held responsible for expressed opinions that are unrelated to the subject matters and clearly in violation of laws. The foregoing shall supplement the explanation in this Yuan's Interpretation No.122.

REASONING: Article 78 of the Constitution prescribes that the Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretation of laws and regulations. A petition for re-interpretation may be filed in accordance with Articles 4 and 7 of the Grand Justices Council Adjudication Act, should national or local government agencies, when applying Constitution, laws and regulations, have doubts concerning a previous interpretation made by this Council. This was decided in the 118th Council meeting. The concerned case was filed with this Council before by the Control Yuan, indicating that Explanation No. 3735 of the Judicial Yuan on the responsibility of magistrate councilors for expressed opinions and another interpretative rule made by the Ministry of the Interior were inconsistent with the Constitu-

解釋理由書：憲法第七十八條規定：「司法院解釋憲法，並有統一解釋法律及命令之權。」中央或地方機關就職權上適用憲法、法律或命令，對於本院所為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，業經本會議第一一八次會議決議在案。本件前經監察院以本院「院解字第三七三五號對縣參議員發言責任之解釋及內政部依據該項解釋所為之釋示，顯屬違憲，且不應適用於行憲今日之台灣省議會及各縣市議會議員。」函請予以解釋。經以釋字第一二二號解釋後，監察院依上開決議，聲請補充解釋，應予受理。合先說明。

tion. It was asserted that after the Constitution went into effect such interpretations should not have been made applicable to current members of the provincial assemblies and county or city councils. This Council had considered such a petition and rendered Interpretation No. 122. However, because the Control Yuan is requesting re-interpretation of No. 122, based on the aforementioned meeting resolution, this Council makes this Interpretation accordingly.

Articles 32, 73 and 101 of the Constitution protect delegates of the National Assembly and members of the Legislative and Control Yuans from being held responsible for opinions expressed or votes cast at the meetings of the Assembly and in the Yuans. This is to assure the people's national representatives' freedom of speech and vote in order for them to properly carry out their duty to express concerns about and criticisms of the government. The Constitution does not, however, expressly extend such protection to local representatives of the people, nor do the constitutions of other countries. Among

憲法第三十二條、第七十三條及第一百零一條，對於國民大會代表、立法委員及監察委員在會議時或院內所為之言論及表決，分別特設對外不負責任之規定，旨在保障中央民意代表在會議時之言論及表決之自由，俾能善盡言責。關於地方民意代表言論之保障，我國憲法未設規定，各國憲法亦多如此。未設規定之國家，有不予保障者，如日本是（參考日本最高裁判所昭和四十二年五月二十四日大法庭判決），有以法規保障者，如我國是。地方議會為發揮其功能，在其法定職掌範圍內具有自治、自律之權責，對於議員在會議時所為之言論，並宜在憲法保障中央民意代

them, some, such as that of Japan, do not extend such protection to local representatives (See the decision by the Grand Tribunal of the Supreme Court of Japan on May 24, 1967), while others may provide statutory protection such as our country's does. For the Provincial Assemblies and Local Councils to function well, they should enjoy self-governance and self-discipline within their legally prescribed jurisdictions and duties. Moreover, in the spirit of the Constitution, which protects freedom of speech of national representatives, it shall also be appropriate to extend such protection, in accordance with laws, to delegates of the Provincial Assemblies and Local Councils regarding opinions expressed at the meetings. This is to safeguard delegates of the Provincial and Local Councils when expressing the people's concerns about and criticisms of local governments. Nonetheless, since such protection is to assure that delegates of the Provincial Assemblies and Local Councils properly carry out their duties, it shall be limited to matters with regard to discussing bills, addressing inquiries, etc., at the meetings. Should opinions on unrelated

表言論之精神下，依法予以適當之保障，俾得善盡表達公意及監督地方政府之職責。惟上項保障，既在使地方議會議員順利執行職務，自應以與議案之討論、質詢等有關會議事項所為之言論為限，始有免責之權，如與會議事項無關，而為妨害名譽或其他顯然違法之言論，則係濫用言免責權；而權利不得濫用，乃法治國家公法與私法之共同原則，即不應再予保障。故地方議會議員在會議時就有關會議事項所為之言論，應受保障，對外不負責任。但就無關會議事項所為顯然違法之言論，仍難免責。本院釋字第一二二號解釋應予補充。

matters be expressed at the meetings and be libelous, defamatory, or in violation of laws, they shall be considered as abuses of such protection. Then, such protection shall be removed given the principle applicable to both public and private laws that those who abuse rights should no longer be protected in accordance with the rule of law. To sum up, delegates of the Provincial Assemblies and Local Councils shall not be held responsible for opinions expressed at the Council meetings and with regard to matters of such meetings. Nevertheless, they shall be held responsible for expressed opinions that are unrelated to the subject matters and clearly in violation of laws. The foregoing shall supplement the explanation in this Yuan's Interpretation No.122.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋陳大法官世榮提出不同意見書。