

J. Y. Interpretation No.174 (April 16, 1982) *

ISSUE: What is the force and effect of an interpretation issued by the Judicial Yuan where the law or regulation based on which the interpretation was made has changed but a new interpretation has yet to be issued?

RELEVANT LAWS:

Articles 6 and 12 of the Anti-Corruption Act during the Period for Suppression of the Communist Rebellion (動員戡亂時期貪污治罪條例第六條、第十二條) ; J. Y. Interpretations Nos. Yuan-je Tze 3015 and Yuan-je Tze 3080 (司法院院解字第三零一五號、院解字第三零八零號解釋).

KEYWORDS:

amendment of the ruling content (法令內容變更), interpretation of an amendment (變更解釋), the validity of an explanation (解釋之效力). **

HOLDING: This Yuan explains, where there is an amendment to the content of its basis of rulings, prior to rendering an interpretation of its amendment, if the objective of the new ruling is consistent with the previous ruling, the legal

解釋文：本院解釋，其所依據之法令內容變更者，在未經變更解釋前，若新舊法令之立法本旨一致，法理相同，解釋之事項尚存或解釋之內容有補充新法之功用者，仍有其效力。依法令從事公務之人員侵占職務上持有之非

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cause is the same, the interpretation matter still exists or the content of the interpretation can be used to supplement the new ruling, the ruling remains valid. Under the ruling, where a public servant takes advantage of his or her position and occupies personal property which is not for public use, such act is considered embezzlement, and should be punishable separately in accordance with Article 6, Subparagraph 3 or 4, of the Anti-Corruption Act during the Period for Suppression of the Communist Rebellion. If the case is minor, and the proceeds or the property goods acquired are valued at less than NT\$3,000, then Article 12, Paragraph 1, of the said act shall apply. This Yuan's Explanations Nos. 3080 and 3015 shall thus require supplemental interpretations.

REASONING: As clearly expressed in the reasoning of J.Y. Interpretation No. 108: "This Yuan explains, unless the ruling content has been amended and became null, prior to the establishment of an amendment, the ruling remains valid,

公用私有財物者，為貪污行為，應分別按戡亂時期貪污治罪條例第六條第三款或第四款論罪。如其情節輕微，而其所得或所圖得財物在三千元以力。依法令從事公務之人員侵占職務下者，應有同條例第十二條第一項之適用。本院院解字第三〇八〇號及院解字第三〇一五號解釋，應予補充解釋。

解釋理由書：查本院釋字第一〇八號解釋於其解釋理由書中明示：「本院解釋，除因法令內容變更而失效者外，在未經變更前，仍有其效力，不得抵觸。」其所謂因法令內容變更而失效，係指解釋所依據之法令業已失效，

and should not be otherwise contradicted.” The citation that the ruling content has been amended and become void refers to a ruling used as interpretational basis that has become null, and the interpretation content is contradictory to the current ruling. If before the amendment of an interpretation, it appears that the legal objectives of the new and old rulings are consistent, the legal explanations are the same, the subject matter of the interpretation still exists or the content of the interpretation can be used to supplement the new ruling, then the existing ruling will remain in effect. For the authority who requested this interpretation, we want to clarify that since the Anti-Corruption Act used as ruling basis of our Explanations Nos. 3015 and 3080 was abolished, after the promulgation of the Act for Bribery Punishment during the Period for Suppression of the Communist Rebellion, it raises doubt as to the applicability of this interpretation.

Based on regulations, concerning the act of embezzlement committed by public officials, in addition to the itemized

解釋之內容復與現行法令牴觸者而言。若解釋未經變更前，而有新舊法令之立法本旨一致，法理相同，解釋之事項尚存或解釋之內容有補充新法之功用等情形者，仍有其效力。本件聲請解釋機關，對本院院解字第三〇一五號及院解字第三〇八〇號解釋所依據之懲治貪污條例業已廢止，於戡亂時期貪污治罪條例頒行後，可否援用，發生疑義，聲請解釋，合先釋明。

按依法令從事公務人員之貪污行為，戡亂時期貪污治罪條例除列舉者外，並於第六條第三款及第四款設有概

provisions of the Anti-Corruption Act, Article 6, Subparagraphs 3 and 4, of the Act provides a general rule for application, and the purpose of such act is to implement punishment of embezzlement in order to ensure the ethical behavior of public officials. The provisions of the two abovementioned subparagraphs, under the principle that a special law has precedence over an ordinary law, shall have precedence over the provisions of the Criminal Code in application. Where a public official takes advantage of his or her position and occupies personal property that is not for public use, this is considered an act of embezzlement. As there is no specific provision for punishment under said statute, such action should be penalized in accordance with the abovementioned two subparagraphs depending upon whether this case is a matter concerning the competent authority or a supervisor. It is evident that the provisions of the two abovementioned subparagraphs and the legal purpose of Article 4, Subparagraphs 6 and 7, of the abolished Anti-Corruption Act are the same. The interpretations in our Explanations Nos. 3080 and 3015 still

括規定，其立法本旨在貫徹嚴懲貪污，以澄清吏治。該二款規定，依特別法優於普通法之原則，應先於刑法之規定而適用。公務人員侵占職務上持有之非公用私有財物者，為貪污行為，同條例既無處罰專條，自應視其是否主管或監督之事務等情節，分別按上開二款規定論罪。查該二款規定，與失效之懲治貪污條例第四條第六款及第七款之立法本旨相同，本院院解字第三〇八〇號及院解字第三〇一五號解釋，對現行法仍有補充之功用，自不因懲治貪污條例廢止而失其效力。惟如其情節輕微，而其所得或所圖得財物在三千元以下者，應有戡亂時期貪污治罪條例第十二條第一項規定之適用，併予補充解釋。

have supplemental application to the current ruling, and thus have not lost their effect due to the abolishment of the Anti-Corruption Act. However, if the case is minor, and the proceeds or the property goods acquired are valued at less than NT\$3,000, then Article 12, Paragraph 1, of the Anti-Corruption Act shall apply and provide supplemental interpretation.

Justice Shau-Hsien Chai filed dissenting opinion.

本號解釋翟大法官紹先提出不同意見書。