

J. Y. Interpretation No.176 (August 13, 1982) *

ISSUE: Does the criminal act stipulated in Article 216 listed in Article 5, Subparagraph 5 of the Criminal Code include causing the circulation of documents specified in Articles 210, 212, 213 and 215 of the Criminal Code?

RELEVANT LAWS:

Articles 5, Subparagraph 5, 210, 212, 213, 215, and 216 of the Criminal Code (刑法第五條第五款、第二百十條、第二百十二條、第二百十三條、第二百十五條及第二百十六條).

KEYWORDS:

principle of territorialism (屬地主義), principle of protection (保護主義), the public trust and faith (公務信守), public documents (公文書), forgery and alteration of documents (偽造、變造文書), making false entries (登載不實事項), public seals (公印), public servants (公務員), perpetrator of a criminal offence (犯罪主體).**

HOLDING: The criminal act stipulated in Article 216 listed in Article 5, Subparagraph 5 of the Criminal Code does not include causing the circulation of documents specified in Articles 210,

解釋文：刑法第五條第五款所列第二百十六條之罪，不包括行使第二百十條、第二百十二條及第二百十五條之文書，但包括行使第二百十三條之文書。

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

212 and 215 of the Criminal Code, except for that specified in Article 213 of the Criminal Code.

REASONING: The Criminal Code adopts the principle of territorialism, though the principle of protection is also applied thereto. However, for any R.O.C. citizen committing criminal offences outside the territory of the R.O.C., the Criminal Code shall apply only, except for criminal acts listed in Articles 5 and 6 of the Code, when such criminal offences, if said citizen is proven guilty, shall result in a three-year minimum sentence of imprisonment: a legal principle that is clearly manifested in Article 7 of the Code. The purpose of Article 5, Subparagraph 5 of the Code is to emphasize the protection of the public trust and faith that lies within a public document, such that only Articles 211 and 214, both regarding public documents only, are listed therein. Therefore, even though Article 216 of the Code stipulates that “a person who causes circulation of a document specified in Articles 210 to 215 of the Code shall be penalized in accordance with provisions regarding

解釋理由書：我國刑法，以屬地主義為原則，雖兼採保護主義；但中華民國人民在中華民國領域外犯罪，除第五條及第六條所列各罪外，以其最輕本刑為三年以上有期徒刑者，始適用之，此觀之同法第七條自明。第二百十六條雖規定：行使第二百十條至第二百十五條之文書者，依偽造、變造文書或登載不實事項或使登載不實事項之規定處斷；但第五條第五款之設，重在保護國家之公務信守，故僅列第二百十一條、第二百十四條。依此意旨其所列第二百十六條之罪，自不包括行使第二百十條、第二百十二條及第二百十五條之文書。蓋第五條第五款，既不列第二百十條、第二百十二條及第二百十五條之偽造、變造或登載不實事項之文書，即無獨適用於其行使之理，此與第五條第五款僅適用於第二百十八條之偽造公印罪，而不列第二百十七條偽造印章罪，同其旨趣。至第二百十三條公務員登載不實罪，係以公務員為其犯罪主體，乃於第六條第三款另設規定。此項公文書，既在保護之列，行使之者，無論是

forgery and alteration of documents, making false entries or causing false entries to be made", criminal offences stipulated in Articles 210, 212 and 215 referred by Article 216 listed in Article 5, Subparagraph 5, of the Code should not be included. Since forgery and alteration of documents, making false entries or causing false entries to be made (specified respectively in Articles 211, 212 and 215 of the Code) are not listed in Article 6, Subparagraph 5 of the Code, it is groundless to claim the applicability of Article 6, Subparagraph 5 of the Code on the criminal offence of causing the circulation of documents. Such interpretation also applies to the fact that Article 5, Subparagraph 5 of the Code only applies to the criminal offence of forging public seals stipulated in Article 218 of the Code, without listing the criminal offence of forging seals stipulated in Article 217 of the Code. The criminal offence of making false entries in a public document by a public servant stipulated in Article 213 of the Code is then listed in Article 6, Subparagraph 3 of the Code on the ground that such public servant is the perpetrator of the criminal offence. Still,

否為公務員，均應處罰，故第五條第五款所列第二百十六條之罪，包括行使第二百十三條之文書。

be he or she public servant or not, the person causing the circulation of such public document containing false entries shall be penalized because such public document is protected by the Code. Consequently, the criminal offence stipulated in Article 216 listed in Article 5, Subparagraph 5 of the Code shall include the circulation of public documents specified in Article 213 of the Code.

Justice Shih-Ron Chen filed dissenting opinion in part.

本號解釋陳大法官世榮提出一部不同意見書。