

J. Y. Interpretation No.184 (December 23, 1983) *

ISSUE: Does the information which may be requested by the local council in deliberating the audit reports submitted by the audit office after its review of the local government's annual audit include original documentations as defined under the Audit Act?

RELEVANT LAWS:

Articles 90 and 104 of the Constitution (憲法第九十條及第一百零四條) ; Articles 3, 4, 5, 10, 34, 36 and 71 of the Audit Act (審計法第三條、第四條、第五條、第十條、第三十四條、第三十六條及第七十一條) ; Articles 26, 27 and 31 of the Financial Statement Act (決算法第二十六條、第二十七條及第三十一條) ; Article 14 of the Organic Act of National Audit Office (審計部組織法第十四條) ; Articles 51 and 52 of the Accounting Act (會計法第五十一條及第五十二條) .

KEYWORDS:

audit institutes (審計機關) , review (審核) , assembly (議會) , deliberation (審議) , original evidence (原始憑證) , audit reports (審核報告) .**

* Translated by THY Taiwan International Law Offices.

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

HOLDING: Audit institutes will draft audit reports upon reviewing annual audits prepared by local governments in accordance with Article 34, Paragraph 4, of the Audit Act. When a local government deliberates the said report in its assembly, pursuant to its authority under Article 27 of the Financial Statement Act, it may request information from the relevant audit institute, with the exclusion of original evidence audited by such institute pursuant to Articles 36 and 71 of the Audit Act.

REASONING: Article 34, Paragraph 1, of the Audit Act stipulates: “At the end of each financial year, the government shall prepare an annual financial statement and submit it to the audit institute for review.” Article 26 of the Financial Statement Act provides: “The Auditor-General shall, within three months after delivery of the annual financial statement prepared by the central government, complete the review process, draft the final audited financial statement, and furnish its report to the Legislative Yuan.” Article 27, Paragraph 2, of the

解釋文：地方政府依審計法第三十四條第四項規定編製之年度總決算，經審計機關審核後所提出之審核報告，地方各級議會準用決算法第二十七條對之審議時，固得通知審計機關提供資料，但不包括審計機關依審計法第三十六條及第七十一條審定之原始憑證在內。

解釋理由書：審計法第三十四條第一項規定：「政府於會計年度結束後，應編製總決算，送審計機關審核。」決算法第二十六條規定：「審計長於中央政府總決算送達後三個月內，完成其審核，編造最終審定數額表，並提出其審核報告於立法院。」同法第二十七條第二項規定：「立法院審議時，審計長應答復質詢，並提供資料。對原編造決算之機關，於必要時，亦得通知其列席備詢，或提供資料」。至地方政府年度總決算之編造、審核、審議，依審計法第三十四條第四項、決算法第三十一條第二項，則準用上開各規定。

same Act states: “During deliberation by the Legislative Yuan, the Auditor-General shall answer questions and provide information. When requested, a representative of the institute responsible for drafting the annual financial statement shall be notified to attend the meeting and answer questions, or to provide information.” With respect to the preparation, review and deliberation of the local government’s annual financial statement, Article 34, Paragraph 4, of the Audit Act and Article 31, Paragraph 2, of the Financial Statement Act stipulate that the abovementioned provisions shall be equally applicable.

Reference to “provide information” in Article 27 of the Financial Statement Act means information required for the deliberation of the report on annual audits, with the exclusion of original evidence audited by the audit institutes pursuant to the law. The Control Yuan has the power to audit (Article 90 of the Constitution), to appoint the Auditor-General (Article 104 of the Constitution), to set up audit institutes throughout the nation, and to permit

決算法第二十七條所稱「提供資料」，係指為審議總決算審核報告之需要而提供有關審核報告之資料而言，自不包括審計機關依法已審定之原始憑證在內。蓋審計權屬於監察院（憲法第九十條），於監察院設審計長（憲法第一百零四條），並於全國各地方設審計機關，由審計人員依法獨立行使之（審計部組織法第十四條、審計法第三條至第五條及第十條）。各機關應照會計法及會計制度之規定，編製會計報告，連同

independent conduct by audit personnel pursuant to the law (Article 14 of the Organic Act of National Audit Office, and Articles 3 to 5, and 10 of the Audit Act). Each institute shall prepare accounting reports in accordance with the provisions of the Accounting Act and the accounting system, and submit them, with the original evidence, for review by the relevant audit institute (Article 36 of the Audit Act). The so-called “original evidence” refers to “evidence which proves any matter and based on which entries are recorded” (Article 51, Paragraph 1, and Article 52 of the Accounting Act). Responsibilities imposed upon personnel with regard to finance shall be terminated once auditing is complete (Article 71 of the Audit Act). The information requested from audit institutes by the local assembly, for its deliberation of the report on the local government’s annual audit, are limited to matters relevant to the administering of the budget, execution of policies, and review and relief of special matters; they are not directly related to the original evidence which is the basis of the audit institutes’ audit report.

原始憑證，依限送該管審計機關審核（審計法第三十六條），其所謂「原始憑證」，乃指「證明事項經過，而為造具記帳憑證所根據之憑證」（會計法第五十一條第一款及第五十二條），各機關人員對於財務上行為應負之責任，經審定後，亦即解除（審計法第七十一條）。地方議會準用決算法第二十七條審議地方政府年度總決算之審核報告時，通知審計機關提供之資料，係以審核報告中有關預算之執行、政策之實施及特別事件之審核、救濟等事項為限，與審計機關於審核會計報告時所根據之原始憑證，並無直接關係。

In conclusion, audit institutes will furnish audit reports upon reviewing annual financial statements prepared by local governments in accordance with Article 34, Paragraph 4, of the Audit Act. When a local government deliberates the said report in its assembly, pursuant to its authority under Article 27 of the Financial Statement Act, it may request information from the relevant audit institute, with the exclusion of original evidence audited by such institute pursuant to Articles 36 and 71 of the Audit Act.

Justice Wei-Kuang Yiau filed dissenting opinion.

基上所述，地方政府依審計法第三十四條第四項規定編製之年度總決算，經審計機關審核後所提出之審核報告，地方各級議會準用決算法第二十七條對之審議時，固得通知審計機關提供資料，但不包括審計機關依審計法第三十六條及第七十一條審定之原始憑證在內。

本號解釋姚大法官瑞光提出不同意見書。