

J. Y. Interpretation No.199 ( September 27, 1985 ) \*

**ISSUE:** Should the persons who are elected to the National Assembly pursuant to the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion take an oath under the Organic Act of National Assembly or under the of Oath Act like other original Assemblymen?

**RELEVANT LAWS:**

Article 4 of the Organic Act of the National Assembly ( 國民大會組織法第四條 ) ; Article 3 of the Oath Act ( 宣誓條例第三條 ) ; Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion ( 動員戡亂時期臨時條款 ) .

**KEYWORDS:**

National Assembly ( 國民大會 ) , members of the National Assembly ( 國民大會代表 ) , public officials ( 公職人員 ) .\*\*

**HOLDING:** The provision for an oath in Article 4 of the Organic Act of National Assembly is an oath to the exercise of duty. Additional members of the

**解釋文：**國民大會組織法第四條規定之宣誓，係行使職權之宣誓，依動員司法院大法官解釋彙編戡亂時期臨時條款增加名額選出之國民大會代表，

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

National Assembly who are elected pursuant to the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion are to exercise their authority together with the original members, thus they should swear an oath in accordance with the aforementioned provision.

**REASONING:** The objective of requiring public officials to be sworn into office is to make a public manifestation of the officials' self discipline and determination in the exercise of their authority, which shall conform to the Constitution, and that they will be loyal to their office.

Article 4, Paragraph 1, of the Organic Act of National Assembly provides: "Delegates to the National Assembly shall swear an oath at the commencement of the meetings of the National Assembly in the following words: I solemnly swear that I will abide by the Constitution and will follow the law when exercising my authority in representation of the people of the Republic of China." The aforementioned provision refers to the oath that the

既與國民大會原有代表依法共同行使職權，自應依上開規定宣誓。

**解釋理由書：**查公職人員之宣誓，旨在使宣誓人就其行使職權，應恪遵憲法、盡忠職務及自我約束之事項及決心，予以公開表示，俾昭信守。

國民大會組織法第四條第一項規定：「國民大會代表，於國民大會舉行開會式時，應行宣誓，其誓詞如左：某某謹以至誠，恪遵憲法，代表中華民國人民依法行使職權，謹誓」，係指國民大會代表於開會行使職權時，應行宣誓而言，惟該條與宣誓條例第三條具有特別法與普通法之關係，此就宣誓條例第三條第一項對國民大會代表之宣誓，設有除外規定，甚為明瞭，基於特別法優於普通法之原則，國民大會代表之宣

Delegates to the National Assembly should make before exercising their authority during meetings. Its relationship with Article 3 of the Oath Act is that of a special law and an ordinary law. Although Article 3, Paragraph 1, of the Oath Act has an exclusionary provision with regard to the oath taken by the Delegates to the National Assembly, Article 4 of the Organic Act of National Assembly applies in the circumstance because it is a special law, which prevails over ordinary laws. Thus, the Delegates to the National Assembly need not swear under the Oath Act.

The Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion is enacted through lawful procedures prescribed by the Constitution. Additional Delegates to the National Assembly elected under the said Act are to exercise their authority together with the original Delegates, thus they should swear an oath in accordance with Article 4 of the Organic Act of National Assembly.

誓，自應適用國民大會組織法第四條之規定，毋庸另依宣誓條例之規定宣誓。

動員戡亂時期臨時條款乃依憲法所定程序而制定，依該條款增加名額選出之國民大會代表，既與國民大會原有代表依法共同行使職權，自應依國民大會組織法第四條規定宣誓。