

J. Y. Interpretation No.200 (November 1, 1985) *

ISSUE: Is the provision of the Act of the Supervision of Temples, prescribing that the competent authority may replace an abbot of a temple if the temple delayed in registering the fundraising and/or construction of the temple, in violation of the Constitution?

RELEVANT LAWS:

Articles 5, 6 and 11 of the Act of the Supervision of Temples
(監督寺廟條例第五條、第六條、第十一條).

KEYWORDS:

change of temple administrator (寺廟管理人之撤換), property rights (財產權). **

HOLDING: The legal purpose of the rules of Article 11 of the Act of the Supervision of Temples, regarding the replacement of the temple administrator where the raising of funds for construction of a temple is concerned, is consistent with the Act of the Supervision of Temples, which is to protect the temple property and to promote relevant public inter-

解釋文：寺廟登記規則第十一條撤換寺廟管理人之規定，就募建之寺廟言，與監督寺廟條例第十一條立法意旨相符，乃為保護寺廟財產，增進公共利益所必要，與憲法保障人民財產權之本旨，並無牴觸。

* Translated by Louis Chen, Professor of Law.

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est. Therefore, such objective is not in contravention with the purpose of the Constitution to protect the property rights of the people.

REASONING: As provided under Article 5 of the Act of the Supervision of Temples: “A record of the assets and property of a temple should be filed with the government for registration” Article 6 of the same statute also provides: “The assets and property of a temple belong to the temple, and shall be administered by the headmaster or administrator of the temple. Any monk in the temple who has the administrative authority, no matter what title he is using, shall be considered a headmaster or an administrator. However, a non-citizen of the Republic of China cannot be a headmaster or administrator.” Any person who violates the preceding provision shall be subject to the preceding section of Article 11 of the same act, “The government authority in charge may replace the headmaster or administrator”. Even if the person who administers the temple is not a monk, and his title is not that of headmaster, if such

解釋理由書：按監督寺廟條例第五條規定：「寺廟財產及法物，應向該管地方官署呈請登記」。同條例第六條規定：「寺廟財產及法物為寺廟所有，由住持管理之。寺廟有管理權之僧道，不論用何名稱，認為住持。但非中華民國人民，不得為住持」。違反上述規定者，依同條例第十一條前段規定，「該管官署得革除其住持之職」。寺廟管理者雖非僧道，亦未用住持名稱，如實係對寺廟有管理權之人，依上述第六條立法意旨，自仍有上述第十一條之適用。

person has actual administrative power, the legal objective of the preceding Article 6 shall follow, and the above provision of Article 11 shall still apply.

The Ministry of the Interior stipulated the Regulation Governing the Registration of Temples based on its legal authority and Article 11 of said Regulation states, “Where a temple has been given notice for late filing of registration, and a newly established temple has not yet filed for registration, the temple authority shall be required to register; and if there is no special reason for such delay, the authority in charge may replace the headmaster or administrator” For fundraising of temple construction, the legal objective is consistent with the legal purpose of the aforementioned Act of the Supervision of Temples, which is to protect the property and assets of the temple, and to enhance the necessary public interest. Thus, it is not contradictory to the core objective of the Constitution which is to protect the property rights of the people. With regards to the replacement of the dismissed headmaster or administrator, who has been in

內政部依法定職權訂定寺廟登記規則，其第十一條規定：「寺廟於通告後逾期延不登記及新成立寺廟不聲請登記者，應強制執行登記，如無特殊理由，並得撤換其住持或管理人」，就募建之寺廟言，與前開監督寺廟條例之立法意旨相符，乃為保護寺廟財產，增進公共利益所必要，與憲法保障人民財產權之本旨，並無牴觸。至募建寺廟之住持或管理人經革除後更換問題，業經本院院字第一七八八號解釋在案。

charge of fundraising for temple construction, this issue is explained in our Yuan's Interpretation No. 1788.

This interpretation is mainly intended to address the issue of fundraising for temple construction. Any other issues regarding temples are beyond the scope of this interpretation.

本件解釋，係就募建寺廟而為，
其他寺廟不在解釋範圍，併此說明。