

J. Y. Interpretation No.207 (July 18, 1986) *

ISSUE: Shall council members or the Speaker of the Provincial or City Councils concurrently hold the position of a private school principal?

RELEVANT LAWS:

Article 51 of the Private School Act (私立學校法第五十一條) ; J.Y. Interpretations No.30 and No.75 (司法院釋字第三十號、第七十五號解釋) .

KEYWORDS:

elected representatives (民意代表) , authority (職權) , principal (校長) , Speaker (議長) , compatible (相容) .**

HOLDING: Whether elected representatives may hold concurrent jobs depends on whether there are prohibitory provisions in the Constitution or laws that do not infringe upon the Constitution, and on whether the nature of such jobs is compatible with the duties of elected representatives. Principals of private schools and colleges bear great responsibilities

解釋文：民意代表可否兼任他職，須視憲法或與憲法不相牴觸之法規有無禁止規定，或該項職務之性質與民意代表之職權是否相容而定。私立學校校（院）長責重事繁，私立學校法第五十一條第三項規定：「校（院）長應專任，除擔任本校（院）教課外，不得兼任他職」，旨在健全校務以謀教育事業之發展；省及院轄市議會議員、議長自

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and have numerous duties. Thus Article 51, Paragraph 3, of the Private School Act stipulates: "Principals shall be exclusive employees and may not engage in other jobs, except to teach in schools or colleges." The purpose of the foregoing Article is to ensure the all-round handling of administrative matters and development of the educational system; therefore, the members of, or the Speaker of, the Provincial or Yuan-governed City Councils shall not assume the position of school principals. Those who have assumed both positions prior to the proclamation of this Interpretation shall resign from one of the two positions.

REASONING: Whether elected representatives may hold concurrent jobs depends on whether there are prohibitory provisions in the Constitution or laws that do not infringe upon the Constitution, and on whether the nature of such jobs is compatible with the duties of elected representatives. According to this Yuan's Interpretation No.15, members of the Control Yuan shall not concurrently hold offices as members of the National

不得兼任之。其在本解釋公布前已兼任者，應於兩項職務中辭去一項職務。

解釋理由書：民意代表可否兼任他職，須視憲法或與憲法不相牴觸之法規有無禁止規定，或該項職務之性質與民意代表之職權是否相容而定。本院釋字第十五號解釋：監察委員不得兼任國民大會代表；釋字第七十五號解釋：國民大會代表非不得兼任官吏；釋字第三十號解釋：立法委員不得兼任官吏，但非謂官吏以外任何職務即得兼任，仍須視其職務之性質與立法委員職務是否相容，性質不相容之職務，立法委員不

Assembly. Interpretation No.75 provides that Delegates to the National Assembly shall not concurrently assume the office of government officials. Interpretation No.30 stipulates that members of the Legislative Yuan shall not work as government officials at the same time. However, it does not mean that they may assume positions other than those of government officials; therefore, one needs to consider whether the nature of such positions is compatible with the duties of the members of the Legislative Yuan. The said members shall not hold positions which are incompatible with their duties.

Private schools and colleges are responsible for the important task of educating students. In accordance with Article 51, Paragraph 1, of the Private School Act, principals shall handle administrative matters pursuant to the laws, execute the resolutions of the directors, and be subject to supervision by the relevant executive educational bodies. Principals hold great responsibilities and have numerous duties, and, unless they devote all their efforts to their position, may not be able to fulfill all

得兼任，均係本於斯旨。

私立學校（院）負有作育人才之重任，其校（院）長依私立學校法第五十一條第一項規定，依據法令綜理校（院）務，執行董事會之決議，並受主管教育行政機關之監督，責重事繁，非專心從事，難以克盡厥職，為防止兼任其他職務，有礙本身職務之執行，同條第三項遂明定：「校（院）長應專任，除擔任本校（院）教課外，不得兼任他職」，旨在健全校務以謀教育事業之正常發展。

of their duties. In order to prohibit them from holding other positions which could impede their efforts, Paragraph 3 of the same Article expressly provides: "Principals shall be exclusive employees and may not engage in other jobs, except to teach in schools or colleges." The purpose of the foregoing is to ensure the all-round handling of administrative matters and development of the educational system.

Members of the Provincial or City Councils are elected representatives according to this Yuan's Interpretation No.14. Their duties are numerous and burdensome. They not only have to determine provincial or municipal legislations, budgets and the allocation of assets, to review the provincial or municipal annual audits, and to hear and review the provincial or municipal government's legislative reports, but also have to handle administrative matters and chair meetings. If they assume the position of private school or college principals, they will not only be distracted from handling the school or college's administrative matters, but will also intermix the authority and

省（市）議會議員，參照本院釋字第十四號解釋之意旨，均為民意代表，其職權除議決省（市）單行法規、省（市）預算、省（市）財產之處分及審議省（市）決算等事項外，並須聽取省（市）政府之施政報告及提出質詢，其擔任議長者，尚須綜理會務及主持會議，職責尤為繁重，若再兼任私立學校校（院）長，不僅分心旁騖，影響校務，且易致權責混淆，二者有其不相容之處，故省（市）議會議員、議長，自不得兼任之。

duties pertaining to both positions, which are incompatible. Therefore members of, or the Speaker of, the Provincial or City Council shall not concurrently hold the positions of private school or college principals.

Those who have assumed both positions prior to the proclamation of this Interpretation shall resign from one of the two positions.

其在本解釋公布前已兼任者，應於兩項職務中辭去其一項職務。