

J. Y. Interpretation No.214 ( April 17, 1987 ) \*

**ISSUE:** Do the Executive Yuan Order, stating that “credit cooperatives can no longer be established in any township,” and the Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives, contradict the Constitution?

**RELEVANT LAWS:**

Article 14 and Article 145, Paragraph 2, and Article 149 of the Constitution (憲法第十四條、第一百四十五條、第一百四十九條); Articles 5, 10, of the Cooperative Act (合作社法第五條、第十條); Articles 26, 29 of the Banking Act (銀行法第二十六條、第二十九條); Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives (金融主管機關受託統一管理信用合作社暫行辦法) .

**KEYWORDS:**

freedom of association (結社自由), credit cooperative (信用合作社), financial institutions (金融機構) .\*\*

**HOLDING:** Credit cooperatives involved in the transaction of some banking business belong to financial enter-

**解釋文：**信用合作社經營部分銀行業務，屬於金融事業，應依法受國家之管理。行政院五十三年七月廿四日

\* Translated by Ching P. Shih.

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

prises. Accordingly, they shall be supervised by the state by law. Executive Yuan Order T.C.T. No. 5148 issued on July 24, 1964, stating that “credit cooperatives can no longer be established in any township” and the Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives promulgated through Directive T.C.C.T No. 13957 issued on June 5, 1970, by the Ministry of Finance are measures made under its legal duty and authorization, used to manage financial institutions in consideration of actual needs for social economy and finance. Referring to Articles 26, 29 of the Banking Act and Articles 5, 10, of the Cooperative Act, the measures mentioned above do not contradict Article 14 and Article 145, Paragraph 2, of the Constitution.

**REASONING:** That the people have the freedom of association is clearly stated in Article 14 of the Constitution. Also, that the cooperative enterprises shall be encouraged and assisted by the state is also provided in Article 145, Paragraph 2,

台五十三財字第五一四八號關於「信用合作社在鄉鎮不得再設立」之命令及財政部五十九年六月五日以台財錢字第一三九五七號令訂定之「金融主管機關受託統一管理信用合作社暫行辦法」，乃係依其法定職權及授權，斟酌社會經濟與金融之實際需要，為管理金融機構所採之措施，參酌銀行法第二十六條、第二十九條、合作社法第五條、第十條各規定意旨，與憲法第十四條及第一百四十五條第二項並無牴觸。

**解釋理由書：**按人民有結社之自由，因為憲法第十四條所明定，合作事業應受國家之獎勵與扶助，亦為憲法第一百四十五條第二項所規定，惟金融機構應依法受國家之管理，憲法第一百四十九條定有明文。設立合作社雖屬結

of the Constitution. However, that the financial institutions shall be supervised by the state by law is clearly stated in Article 149 of the Constitution. Although cooperatives are a kind of association, matters such as approving loans and receiving deposits carried out by a cooperative and prescribed in Article 3, Subparagraph 4, of the Cooperatives Act are transactions conducted by the banking business. Thus, credit cooperatives belong to financial enterprises and shall accordingly be supervised by the state by law. Article 26 of the Banking Act states: "The central competent authority may, in consideration of domestic conditions of economy and finance, restrict the enlargement of a bank and its branch in a specific area." That an institution other than a bank cannot transact banking business except as prescribed by law is otherwise also stated in Article 29, Paragraph 1, of the same Act as above. Furthermore, in respect to the cooperative, which receives deposits and dispenses loans, Article 5 of the Cooperatives Act prescribes restrictions regarding the receiving of deposits from persons other than members. In addition, accord-

社之一種，但經營合作社法第三條第四款業務之合作社，其貸放資金與收受存款等事項，本為銀行業務，故信用合作社乃屬金融事業，自應依法受國家之管理。銀行法第二十六條規定：「中央主管機關得視國內經濟、金融情形、於一定區域內限制銀行或其分支機構之增設」。同法第二十九條第一項，亦有除法律另有規定外，非銀行不得經營銀行業務之明文。合作社法第五條對於經營存放款業務之合作社，收受非社員之存款，更設有限制，而合作社之設立，依同法第十條，主管機關並得為准否之批示。綜合上述各規定意旨，行政院基於國家最高行政機關之職權，於五十三年七月二十四日以台五十三財字第五一四八號令，規定「信用合作社在鄉鎮不得再設立」，並於五十九年一月二十三日以台五十九財字第〇六〇八號令及六十年十二月十八日以台六十財字第一二二八九號令，將信用合作社之管理，委託金融主管機關統一辦理，財政部乃於五十九年六月五日以台財錢第一三九五七號令頒及六十年台財錢字第二九一八號令修正「金融主管機關受託統一管理信用合作社暫行辦法」，均係行政院及財政部依據法定職權及授權關係，斟酌當時社會經濟與金融之實際需要，為管理

ing to Article 10 of the same Act, the competent authority may make the decision of approval or not. Summarily reviewing the intentions of the above provisions, based on its duty as the supreme authority of the state, the Executive Yuan issued Order T.C.T. No. 5148 on July 24, 1964, ruling that “The credit cooperatives can no longer be established in any township,” and Order T.C.T. No. 12289 authorizing the relevant supervising financial authority to oversee the management of credit cooperatives uniformly. Hence, the Ministry of Finance promulgated the Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives through Directive T.C.C.T. No. 13957 on June 5, 1970, and its revision through Directive T.C.C.T. No. 2918 in 1971. Those were measures made by the Executive Yuan and the Ministry of Finance under their legal duties and the relationship of authorization used to manage financial institutions on consideration of actual needs for social economy and finance at that time. They did not contradict Article 14 and Article 145, Paragraph

金融機構所採之措施，與憲法第十四條及第一百四十五條第二項並無牴觸、至信用合作社之設立條件及管理事項，應視社會經濟與金融之實際情形，隨時檢討依法調整，乃屬當然。

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2, of the Constitution. It is certain that the requirements for the establishment of a credit cooperative and the matters to be managed shall, on consideration of the actual conditions of social economy and finance, be adjusted by law from time to time.