J. Y. Interpretation No.230（August 5, 1988）*

ISSUE: It is held by the Administrative Court in its precedent that a mere description of facts or statement of reasons made by a government agency is not an administrative act within the meaning defined in the Administrative Appeal Act and that no administrative appeal against such description or statement is legally permissible. Does this precedent impose a limitation on the right of the people under the Administrative Appeal Act and thereby contradict Article 16 of the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Article 1 and Article 2, Paragraphs 1 and 2 of the Administrative Appeal Act（訴願法第一條、第二條第一項、第二項）; Article 1 of the Administrative Proceedings Act（行政訴訟法第一條）; J. Y. Interpretation No. 156（司法院釋字第一五六號解釋）; The Supreme Administrative Court's Precedent T.T. 41 (Supreme Administrative Court 1973)（行政法院六十二年裁字第四一號判例）.

KEYWORDS:

administrative appeal（訴願）, administrative act（行政處分）, deemed administrative act（視同行政處分）, logical construction（當然解釋）, administrative litigation（行政爭訟）.**

---

* Translated by Raymond T. Chu.

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

HOLDING: Under Article 1 of the Administrative Appeal Act, the prerequisite for the institution of an administrative appeal is that there exists an administrative act, and the term "administrative act" is expressly defined in Article 2 thereof. The Supreme Administrative Court held in Precedent T.T. 41 (Supreme Administrative Court, 1973): "A mere description of facts or statement of reasons made by a government agency does not constitute an approval or disapproval given to an application submitted by any citizen, nor does such description or statement result in any legal effect. It is therefore not an administrative act within the meaning defined in the Administrative Appeal Act. Consequently, no administrative appeal against such description or statement is permissible under law." The decision is only a logical construction of the text of the Administrative Appeal Act and does not contradict Article 16 of the Constitution.

解釋文：提起訴願，依訴願法第一條規定，以有行政處分存在為前提，行政處分之定義，同法第二條亦有明文規定。行政法院六十二年裁字第四十一號判例：「官署所為單純的事實敘述或理由說明，並非對人民之請求有所准駁，既不因該項敘述或說明而生法律上之效果，非訴願法上之行政處分，人民對之提起訴願，自非法之所許」，係前開訴願法條文之當然詮釋，與憲法第十六條並無牴觸。

REASONING: While the people have the right to make an administrative appeal or bring a lawsuit under

解釋理由書：人民有訴願及訴訟之權，固為憲法第十六條所明定，惟行政爭訟之進行，仍應依有關法律之規

Article 16 of the Constitution, the process for conducting administrative litigations is governed by law. The Administrative Appeal Act provides in Article 1, the first sentence: “A person who believes that an administrative act of a central or local government authority is unlawful or improper, thereby causing injury to his right or interest, may institute an administrative appeal or re-appeal under this Act.” Article 2, Paragraph 1, of the same Act states: “The term 'administrative act' used in this Act means a unilateral administrative act taken by a central or local government authority in the exercise of its function in respect of a specific matter, with the effect in public law.” Paragraph 2 of the same Article says: “The omission of an act by a central or local government authority in response to a lawful application of the people, to which such authority is legally bound to act within the statutory period, thereby causing damage to the right or interest of any person, is deemed to be an administrative act.” These provisions are designed to require the existence of an administrative act or a deemed administrative act of an administrative authority

定。訴願法第一條前段：「人民對於中央或地方機關之行政處分，認為違法或不當，致損害其權利或利益者，得依本法提起訴願、再訴願」。第二條第一項：「本法所稱行政處分，謂中央或地方機關基於職權，就特定之具體事件所為發生公法上效果之單方行政行為」。同條第二項：「中央或地方機關對於人民依法聲請之案件，於法定期限內應作為而不作為，致損害人民之權利或利益者，視同行政處分」。係規定訴願之提起，以有行政機關就特定之具體事件所為發生公法上效果之行政處分或視同行政處之情形存在為前提。又行政訴訟法第一條則以人民認為行政處分損害其權利，經依訴願程序請求救濟，仍不服其決定為提起行政訴訟之要件，前開規定乃採取類似行政爭訟制度國家之通例。行政法院六十二年裁字第四十一號判例稱：「官署所為單純的事實敘述或理由說明，並非對人民之請求有所准駁，既不因該項敘述或說明而生法律上之效果，非訴願法上之行政處分，人民對之提起訴願，自非法之所許」。係前開訴願法條文之當然詮釋，並未違背本院釋字第一五六號解釋意旨，亦未限制人民依訴願法應享之權利，與憲法第十六條自無牴觸。

in respect of a specific matter, with the effect in public law, as a prerequisite for the institution of an administrative appeal. Similarly, Article 1 of the Administrative Proceedings Act provides that the essential element for the institution of administrative litigations is that a person's right is injured by an administrative act and that he is dissatisfied with the decision made upon his petition for remedy filed in pursuance of the administrative appeal procedure. The principle embodied in the foregoing provision is similar to the doctrine generally accepted among nations with a mechanism for administrative litigations. The Supreme Administrative Court held in Precedent T.T. 41 (Supreme Administrative Court, 1973): “A mere description of facts or statement of reasons made by a government agency does not constitute an approval or disapproval given to an application submitted by any citizen, nor does such description or statement result in any legal effect. It is therefore not an administrative act within the meaning defined in the Administrative Appeal Act. Consequently, no administrative appeal against such description or

statement is permissible under law." The decision is only a logical construction of the text of the Administrative Appeal Act and does not contradict the essence of our J. Y. Interpretation No. 156, nor does it impose any limitation on the right of the people under the Administrative Appeal Act. Thus, we do not find it to be contrary to Article 16 of the Constitution.