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## **J.Y. Interpretation No. 461 (July 24, 1998)\***

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### **Duty of the Chief of General Staff to Be Present and Answer Questions in Legislative Committees Case**

#### **Issue**

May the Chief of General Staff refuse to be present or answer questions in Legislative committees?

#### **Holding**

[1] Article 3, Paragraph 2, Subparagraph 1 of the Additional Articles of the Constitution, which requires the Premier, the Ministers and the heads of other agencies under the Executive Yuan to be interpellated by the Legislators, does not apply to the Chief of General Staff, who is not a Minister or head of agency.

[2] However, the Chief of the General Staff is still a government official under Article 67, Paragraph 2 of the Constitution, who may not reject the invitation to be present in legislative committees unless there is a justifiable reason that relates to the execution of military activities concerning national security.

#### **Reasoning**

[1] In accordance with Article 3, Paragraph 2, Subparagraph 1 of Additional Articles of the Constitution, promulgated on July 21, 1997, the Executive Yuan has the duty to present to the Legislative Yuan a statement on its administrative policies and a report on its administration. While the Legislative Yuan is in session, the Legislators may interpellate the Premier, the Ministers and the heads

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\* Translation and Note by Pijan WU

of other agencies under the Executive Yuan. This is an institutional design in the Constitution based on the principles of democracy and accountable government. Since the Ministry of National Defense is a ministry under the Executive Yuan and is in charge of affairs concerning national defense, the Legislators may interpellate the Premier and the Minister of National Defense on the policy statement and administration report involving the issues of national defense. The Chief of the General Staff is the chief of staff for, and reports directly to, the Minister of National Defense in the administrative system, and is not a Minister or agency head as referred to in Article 3, Paragraph 2, Subparagraph 1 of the Amendment to the Constitution. Therefore, this article does not apply to the Chief of the General Staff.

[2] The Legislative Yuan, consisting of Legislators elected among and by the people, is the highest legislature of the State and represents the people in exercising the legislative power. As separately provided for in Articles 62 and 63, the Legislative Yuan has the power to decide by resolution upon statutory and budgetary bills and motions concerning martial law, amnesty, declaration of war, conclusion of peace or treaties, as well as other important matters of the State. In accordance with Article 53 of the Constitution, the Executive Yuan is the highest administrative organ of the State. Article 3, Paragraph 2, Subparagraph 1, of the Additional Articles of the Constitution provides that the Executive Yuan shall be accountable to the Legislative Yuan. The Legislative Yuan may, pursuant to Article 67 of the Constitution, which remains unchanged after the Amendment to the Constitution, set up various committees in which government officials and private parties concerned are invited to be present and answer questions. Therefore, even though the Constitution has been amended many times, it is still based on the principles of democracy and accountable government. The principle of separation and equality of powers also remains unchanged. In order to exercise the above power conferred by the Constitution, the Legislative Yuan may invite

government officials and private parties concerned to be present and answer questions in the various committees by which the Legislators may understand the matters involved in the bills or motions through the statements of facts made or the opinions expressed in the answers. Furthermore, as stated in J.Y. Interpretation No. 325, the Legislative Yuan may request the relevant agencies to provide reference materials in respect of the matters involved in the bills or motions that need to be clarified through resolutions of the plenary meetings or the committee meetings; the requested agency may not reject without a legal basis or other justifiable reasons. [The rationale is that] Legislators may not know the existence of the relevant reference materials unless and until they conduct the interpellation; moreover, if the Legislators have questions regarding the contents of the reference materials provided by the related agencies, they may further interpellate for the purpose of clarification. In such case, the invited government officials may not turn down the request. In addition, since the central government system under the Constitution is different from a parliamentary system, and the Legislators shall not concurrently hold a government post, it is necessary for the government officials in charge of initiating or executing the bills to participate in the legislative process by answering questions. Consequently, the heads of ministries and their subordinates are under the obligation to be present and answer questions when requested by the various committees of the Legislative Yuan as provided by Article 67, Paragraph 2 of the Constitution, with the exception of those who discharge their duties independently and are free from external monitoring, such as prosecutors and Commissioners of the Fair Trade Commission. The Chief of the General Staff is the chief of staff for the Minister of National Defense under the Executive Yuan. The headquarters of the General Staff, Army, Navy and Air Force under his/her command are not agencies outside of the administrative system. Therefore, there is no doubt that although he/she is not a Minister or an agency head under Article 3, Paragraph 2, Subparagraph 1

of the Additional Articles of the Constitution, he/she is a government official as provided in Article 67, Paragraph 2 of the Constitution. In charge of important affairs concerning national defense, including the compilation and execution of budgets, the powers and duties of the Chief of the General Staff are closely related to the jurisdiction of the Legislative Yuan. The Chief of the General Staff may not reject the invitation by the various committees of the Legislative Yuan to be present in the committees unless there is a justifiable reason that relates to the execution of military activities concerning national security. Nevertheless, the Chief of the General Staff does not have to answer questions involving critical intelligence of national defense. With respect to the Judicial Yuan, Examination Yuan and Control Yuan, since they may present statutory bills for matters within their jurisdictions to the Legislative Yuan, which also reviews their budgetary bills, the subordinates of these Yuans who have administrative duties and are not mandated to independently exercise their functions shall also be subject to the above constitutional rule, *i.e.*, they must be present and answer questions when the statutory or budgetary bills proposed by their Yuans are concerned. Nevertheless, while the presidents of the Judicial Yuan, the Examination Yuan and the Control Yuan may be present in the plenary meeting of the Legislative Yuan and give opinions pursuant to Article 71 of the Constitution, they are not required to be present and answer questions in response to the request by the committees of the Legislative Yuan according to Article 67, Paragraph 2, *i.e.*, requests for government officials to be present and answer questions. This is based on mutual respect between the five Yuans and constitutional practice. Also, this exemption applies to the personnel of the Judicial Yuan, Examination Yuan and Control Yuan who independently exercise functions and are free from external check, such as judges and members of the Examination Yuan and Control Yuan.

**Background Note** by the Translator

J.Y. Interpretation No. 461 (1998) was made following the fourth amendments (called Additional Articles) to the Constitution adopted on July 21, 1997. Article 3, Paragraph 2, Subparagraph 1 of the Additional Articles provides that “the Executive Yuan has the duty to present to the Legislative Yuan a statement on its administrative policies and a report on its administration”, and, “While the Legislative Yuan is in session, the Legislators may interpellate the Premier, the Ministers and the heads of other agencies under the Executive Yuan.” A problem arose in regard to a situation when the Chief of General Staff, who was not a minister or a head of agency but was in charge of the military chain of command, was invited to be present and answer questions in the Legislative committees; whether or not he/she may refuse such invitation. J.Y. Interpretation No. 461 made clear that the Chief of General Staff is not under a duty to be interpellated by the Legislators according to Article 3, Paragraph 2, Subparagraph 1 of the Additional Articles. However, Article 67, Paragraph 2 of the Constitution, which remained intact after the amendments, requires the Chief of General Staff, as a government official, to be present and answer questions in legislative committees upon invitation.

Another issue in regard to the Legislative power to interpellate arose later, in 1999, with respect to the officials of local governments; whether or not they were under the duty to be present and answer questions in legislative committees according to Article 67, Paragraph 2 of the Constitution. J.Y. Interpretation No. 498 was issued to deal with that context.

J.Y. Interpretation No. 498 elaborated that, in consideration of the separation and equal division of powers between the central and local governments, the Legislative Yuan’s power to invite and interpellate local government officials under Article 67, Paragraph 2 of the Constitution was to be subject to appropriate restrictions. Since each of the central government and local self-governments has its own legislative body, officials of the local self-

government are not obligated to be present at the Legislative Yuan's meetings, unless otherwise required by law. Nevertheless, such officials may, at their own discretion, determine if it is necessary to attend such meetings.

Meanwhile, J.Y. Interpretation No. 498 underscored that the central government shall provide appropriate aid to local self-governing bodies so as to enable local self-governing bodies to meet their basic financial requirements, to ensure the stability or livelihood of the people nationwide and to attain a balanced nationwide economic development. (*see* Article 147 of the Constitution, Article 69 of the Local Government Act and Article 30 of the Act Governing the Allocation of Government Revenues and Expenditures) Therefore, it held that the Legislative Yuan may not reduce, deny or table financial aids, simply because officials of the local self-governing body refuse to be present at the Legislative Yuan's meetings. By contrast, this part of the holding is not seen in J.Y. Interpretation No. 461, although the Legislative Yuan in practice has used its budgetary power to pressure the officials of the central government to be present and answer questions.