
J.Y. Interpretation No. 527 (June 15, 2001)*

Petition for Interpretation of the Local Government Act Case

Issue

What are the meanings of the applicable provisions of the Local Government Act prescribing that petitions for interpretation may be filed with the Judicial Yuan?

Holding

[1] A local self-governing entity shall have its autonomy of internal organization and its authority to formulate rules and regulations in respect of self-governing affairs and implementation of the same under the premise that such autonomy and authority are subject to the Constitution and the law. The organization of a local self-governing entity and its subdivisions shall be prescribed by the local legislative body by drawing up self-governing statutes for such organizations based upon the guidelines formulated by the central competent authority, which is clearly set forth in Article 28, Subparagraph 3, Article 54 and Article 62 of the Local Government Act. Upon the promulgation and implementation of the said Act, the establishment of any and all offices and positions of a self-governing entity shall follow the aforesaid procedure. However, where the establishment of a position has been explicitly prescribed by law, it is not against the law for the respective local administrative agencies to establish and appoint relevant personnel pursuant to the applicable provisions of the Local Government Act with the practical purpose of handling their business on an interim basis, if it will take a considerable amount of time to formulate

* Translation by Ching-Yi LIU, based upon the previous translation by Chung-Hsi Vincent KUAN

relevant rules and regulations. As far as the positions that may be established by law, since a self-governing entity has the discretionary power to determine whether or not such positions will be established, a self-governing entity shall be able to appoint and employ relevant personnel under applicable self-governing statutes.

[2] Article 43, Paragraph 1 through Article 43, Paragraph 3 of the Local Government Act provides that the resolutions passed by local legislative bodies at various levels regarding self-governing affairs, as well as the self-governing laws and regulations described in Article 30, Paragraph 1 through Article 30 Paragraph 4 of the said Act, that are in conflict with the Constitution, laws, central rules and regulations, or self-governing laws and regulations promulgated by a superior self-governing entity, shall be null and void. Article 43, Paragraph 5 and Article 30, Paragraph 5 both provide to the effect that, when doubt arises as to whether or not there is a conflict under the aforesaid circumstances, petitions for interpretations thereof may be filed with the Judicial Yuan. The said provisions are intended to address such circumstances where the competent authority, at various levels, in charge of the supervision of self-governing entities concerning relevant affairs still has doubts as to whether a particular resolution or self-governing statute is in conflict with the Constitution, the laws or any other superior legal norm, and thus has filed a petition for interpretation with this Court instead of forthrightly declaring such resolution or self-governing statute null and void pursuant to Paragraph 5 of the respective articles. If a local self-governing entity has a different opinion as to the contents that are declared null and void, it may, depending on whether the subject matter that is declared null and void is a self-governing statute or self-governing rule, file a petition with this Court for constitutional interpretation or uniform interpretation of laws or regulations through its legislative body or administrative agency, respectively, based on the nature of the matter at issue. Article 8, Paragraph 1 and Article 8, Paragraph 2 of

the Constitutional Court Procedure Act shall apply to the procedure for filing the aforesaid petitions, respectively. Article 9 of the Constitutional Court Procedure Act therefore is not applicable under such circumstances. When there arises any dispute between a local administrative agency and the legislative body at the same level in regard to the enforcement of a resolution passed by the said legislative body, it shall be resolved in accordance with Article 38, 39 and other applicable provisions of the Local Government Act, but not through petitions to this Court for interpretations. In addition, a local legislative body that has passed a resolution or self-governing rule or regulation may not file a petition for interpretation on the grounds that it has doubts as to whether the originally-passed resolution is in conflict with the Constitution, laws, central rules and regulations or self-governing laws and regulations promulgated by a superior self-governing entity.

[3] If the competent authority at various levels in charge of the supervision of local self-governing entities has any doubt as to whether the administrative agency of a local self-governing entity (namely, the government of a municipality under direct jurisdiction of the Executive Yuan, a county or city or office of a township, town or city), in handling a particular self-governing affair under Paragraphs 2, 4 and 6 of Article 75 of the Local Government Act, has violated the Constitution, a law or any other superior legal norm, it may file a petition for interpretation with this Court according to Paragraph 8 of said Article when it chooses not to revoke, amend, repeal or suspend the implementation of the same pursuant to the respective provisions of said paragraphs. When the administrative agency of a local self-governing entity believes that the decision made by the aforesaid competent authority involves the validity of a self-governing law or regulation upon which self-governing affairs are handled due to its conflict with a superior legal norm, but a petition for interpretation may not be made pursuant to Article 30, Paragraph 5 of the said Act because the self-governing law or

regulation at issue is not declared by the competent authority as null and void, the administrative agency of a self-governing entity may directly file a petition for interpretation with this Court in accordance with Article 75, Paragraph 8 of the said Act. If the decision at issue leads to a doubt or dispute contemplated by Article 5, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act, a petition for constitutional interpretation may be otherwise made thereunder. If the aforesaid decision gives rise to infringement upon the rights or legal interests of a local self-governing entity, its administrative agency thereof may, on behalf of the local self-governing entity, file an administrative lawsuit pursuant to law. If there remains doubt as to whether a law or any other superior legal norm is unconstitutional after any and all remedies through litigation procedures at all levels are exhausted, a petition for interpretation may nonetheless be made with this Court if the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act are met. As for those issues that neither involve the validity of a resolution or self-governing statute of a local self-governing entity, nor give rise to any uncertainty about matters for which an administrative lawsuit may be filed, but instead are in their nature only disputes of authority between the central government and a local self-governing entity, or between local self-governing entities at different levels, they shall be resolved in accordance with Article 77 of the Local Government Act, and consequently no petition may be directly made with this Court.

Reasoning

[1] A local self-governing entity shall have its autonomy of internal organization and the authority to formulate rules and regulations in respect of self-governing affairs and implementation of the same, which has been made clear by this Court in J.Y. Interpretation No. 467. The autonomous power of internal organization refers to such authority of the legislative body and

administrative agency of a local self-governing entity to determine and implement such matters as whether a particular organ (or enterprise) or relevant positions or prescribed number of staff for an internal unit should be established based on the jurisdiction, population and other conditions of the self-governing entity on the premise that such power and authority are subject to the Constitution and the laws (*see* Article 28, Paragraph 3 of the Local Government Act). Dating to January 25, 1999, when the Local Government Act was promulgated and implemented, the procedure for the establishment of the organs and positions of a local self-governing entity has been required to be prescribed by the local legislative body through its drafting of self-governing statutes respecting such organs and positions based on the guidelines formulated by the central competent authority, which are unambiguously set forth in Articles 28, 54 and 62 of the Local Government Act. If any organ is established and staff employed in violation of the aforesaid procedure, the local legislative body may, of course, delete all of the relevant budget for the organ and its staff, and the auditing authority may eliminate and pursue the repayment of all of its expenditures. However, where the establishment of a position has been clearly prescribed by law and thus leaves no discretion for the local legislative body to decide against the establishment of the position or to decide on the number of the staff, it is not against the law for the respective local administrative agencies to establish and appoint relevant personnel with the consent of the central competent authority for the practical purpose of handling their business on an interim basis, if it will take a considerable amount of time to formulate relevant rules and regulations. As for such positions that may be established by law, a self-governing entity shall, of course, be able to appoint and employ relevant personnel under applicable organic self-governing statutes, because the self-governing entity has the discretionary power to determine whether or not such positions are to be established.

[2] Article 43, Paragraph 1 through Article 43, Paragraph 3 of the Local Government Act provides that the resolutions passed by local legislative bodies at various levels regarding self-governing affairs, as well as the self-governing laws and regulations described in Article 30, Paragraph 1 through Article 30, Paragraph 4 of the said Act, that are in conflict with the Constitution, laws, central rules and regulations, or self-governing laws and regulations promulgated by a superior self-governing entity, shall be null and void. Where a resolution, law or regulation is perhaps to be declared null and void as outlined above, the Executive Yuan shall, according to Article 43, Paragraph 4 of the said Act, issue a written notice to that effect in the case of a resolution passed by the city council of a municipality. The respective central competent authority shall issue the same written notice in the case of a resolution passed by the council of a county or city, and the county government shall do the same in the case of a resolution reached by the assembly of a township (town or city). Article 43, Paragraph 5 thereof provides that “when doubt arises as to whether or not there is a conflict between resolutions as to the self-governing affairs referred to in Paragraphs 1 through 3 and the Constitution, the laws, central laws and regulations, or county ordinances, petitions for interpretation thereof may be filed with the Judicial Yuan,” and Article 30, Paragraph 5 thereof reads that “when doubt arises as to whether or not there is a conflict between self-governing laws or regulations and the Constitution, the laws, rules and regulations authorized by law, or self-governing laws and regulations promulgated by a superior self-governing entity, petitions for interpretation thereof may be filed with the Judicial Yuan.” The above provisions are both intended to refer to such circumstances where the competent authorities at various levels in charge of the supervision of self-governing entities concerning relevant affairs still have doubts as to whether a particular resolution or self-governing statute is in conflict with the Constitution, the laws or any other superior legal norm, and therefore has chosen to file a petition for interpretation

with this Court instead of forthrightly declaring such resolution or self-governing statute null and void pursuant to the applicable provisions. If a local self-governing entity holds a different opinion as to the declared contents, its legislative body may, depending on the nature of the matter at issue, file a petition for interpretation with this Court for constitutional interpretation or uniform interpretation of laws or regulations through its adoption of a resolution when a self-governing statute is declared null and void, and thus Article 8, Paragraph 1 or Article 8, Paragraph 2 of the Constitutional Court Procedure Act will apply to the form and procedure for such a petition. At the same time, in the case of a self-governing rule, the supreme administrative organ thereof (namely, government of a municipality under direct jurisdiction of the Executive Yuan, a county or city, or office of a township, town or city) may file a petition with this Court for constitutional interpretation or uniform interpretation of laws or regulations without having to go through the administrative hierarchy as referred to in Article 9 of the Constitutional Court Procedure Act. Under such situation, the subject matter of the interpretation is the self-governing authority of a local self-governing entity that is declared null and void by the central competent authority or the superior government. Therefore, it would not be logical for the central competent authority or the superior government concerned to submit the petition on behalf of the self-governing entity, because the central competent authority or the superior government concerned has become a party to the dispute. If the self-governing rule or ordinance declared null and void is a delegation rule, it will not have become effective unless and until approved by the superior delegating agency, whose decision must be accepted by the local administrative agency pursuant to Article 29 of the Local Government Act. In this case, no petition for interpretation may be made to this Court. Furthermore, where there exists any dispute between the local administrative agency and the legislative body at the same level in respect of the enforcement of a resolution passed by the said

legislative body, it shall be resolved in accordance with the applicable provisions of Article 38 and Article 39 of the Constitutional Court Procedure Act, but not by way of filing petitions with this Court for interpretation. In addition, since the Local Government Act does not contain any provisions similar to that of Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act requiring a specific number of councilors or representatives of a local legislative body to cite and file a petition for interpretation with this Court if they have doubts as to the meaning of a constitutional provision governing their functions and authorities or when they have questions on the constitutionality of a statute at issue, a local legislative body that has passed a resolution may not file a petition for interpretation on the grounds that it has doubts as to whether the originally-passed resolution is in conflict with the Constitution, laws or any other superior norm, thus resulting in violation of the legal doctrine of estoppel.

[3] If the competent authorities at various levels in charge of the supervision of local self-governing entities have doubts as to whether the administrative agency of a local self-governing entity (namely, government of a municipality under direct jurisdiction of the Executive Yuan, a county or city, or office of a township, town or city), in handling a particular self-governing affair under Paragraphs 2, 4 and 6 of Article 75 of the Local Government Act, has violated the Constitution, the laws or any other superior legal norm, and at the same time does not revoke, amend, repeal or suspend the implementation of the decision of the above administrative agency of a local self-governing entity pursuant to the respective provisions of said paragraphs, it may file a petition for interpretation with this Court according to Paragraph 8 of Article 75. The said Paragraph 8, however, does not specify whether a local self-governing entity may initiate a petition with this Court for interpretation if it disagrees with any revocation, amendment, repeal or suspension of implementation made by the aforesaid competent authority, which did not file a petition with this Court prior to making the

aforesaid disposition. It should be emphasized that the system of our constitutional interpretation has been designed to impart authority to the constitutional interpretation organ to review various norms (*see* Article 78 of the Constitution). Though the Justices shall form a Constitutional Court to adjudicate matters relating to the dissolution of a political party violating the Constitution (*see* Article 5 of the Additional Articles of the Constitution), their authority does not extend to the review of the constitutionality or legality of a specific decision or disposition. Therefore, the administrative agency of a self-governing entity may directly file a petition for interpretation with this Court in accordance with Article 75, Paragraph 8, of the said Act only when the disposition made by the aforesaid competent authority gives rise to doubts as to the validity of a self-governing law or regulation based on which self-governing affairs are handled that may be in conflict with a superior legal norm; a petition for interpretation may not be made pursuant to Article 30, Paragraph 5 of the Local Government Act because the self-governing law or regulation at issue is not declared by the competent authority to be null and void. If a disposition made by a superior competent authority infringes upon the rights or legal interests of a local self-governing entity, the administrative agency thereof may, on behalf of the local self-governing entity, file an administrative lawsuit pursuant to law. If, after all remedies through litigation procedures are exhausted, doubt remains as to whether a law or any other superior legal norm is unconstitutional, a petition for interpretation may nonetheless be made with this Court if the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act are met. As for those issues neither concerning the validity of a resolution or self-governing statute of a local self-governing entity, nor respecting matters for which an administrative lawsuit may be filed, but instead involving a dispute of authority between the central government and a local self-governing entity, or between local self-governing entities at different levels, they shall be resolved in

accordance with Article 77 of the Local Government Act, and therefore no petition may be forthrightly made with this Court.

[4] When a local self-governing entity intends to file a petition for constitutional interpretation or uniform interpretation of laws in respect of matters not falling within the aforementioned categories while exercising its functions and authorities, the procedures for filing such a petition shall be differentiated as follows: (I) Upon the passage of a resolution by the local legislative body, it may make a petition with this Court for constitutional interpretation or uniform interpretation in accordance with Article 5, Paragraph 1, Subparagraph 1 or Article 7, Paragraph 1, Subparagraph 1, respectively, of the Constitutional Court Procedure Act without having to go through the administrative hierarchy (*see* J.Y. Interpretations Nos. 260, 293 and 307); (II) If the administrative agency of a municipality under direct jurisdiction of the Executive Yuan, or a county (or a city) (namely, the respective government thereof), in handling a particular self-governing affair, has any doubts or disputes as referred to in Article 5, Paragraph 1, Subparagraph 1 of the Constitutional Court Procedure Act, or any difference of opinion as referred to in Article 7, Paragraph 1, Subparagraph 1 thereof, and, depending on the nature of the matter at issue, such administrative agency is not bound by the opinions expressed by the central competent authority as to the Constitution or laws or regulations, the respective local government may forthrightly file a petition for interpretation with this Court without having to go through the administrative hierarchy in light of the constitutional intent to establish an institutional guarantee of local self-government; and (III) In implementing delegated affairs entrusted by the central government, the administrative agency of a municipality under direct jurisdiction of the Executive Yuan, or a county (or a city) shall be subject to the direction and supervision of the central competent authority, and consequently, where there is any doubt as to the application of a constitutional provision or difference of

opinion on the application of a law, it shall still file a petition for interpretation with this Court pursuant to the procedure prescribed in Article 9 of the Constitutional Court Procedure Act. By the same token, the aforesaid procedure shall be applicable to the administrative agency of a local self-governing entity enforcing a central law or regulation by its own power that does not concern the self-governing authority of the local self-governing entity.

Background Note by Ching-Yi LIU

The Taichung City Government, a local self-governing entity, nominated and appointed its deputy mayor after the confirmation of the Taichung City Council without first creating the deputy mayor position pursuant to Article 62, Paragraph 2 of the Local Government Act. The Ministry of the Interior, the central competent authority, issued a written notice on the meaning of the Article, but members of Taichung City Council had different opinions as to the issued content. The Taichung City Council, through its adoption of a resolution, filed a petition for interpretation with the Constitutional Court for uniform interpretation of laws or regulations according to Article 8, Paragraph 2 of the Constitutional Court Procedure Act.

At the same time, the Taichung City Council passed its budget, containing the salary of the deputy mayor under the condition that no self-governing statute for the Taichung City Government had been passed, and thus there were no prescribed position and staff for the deputy mayor. The Taichung City Council filed a petition, pursuant to Article 43, Paragraph 2 of the Local Government Act, for interpretation with the Constitutional Court to decide whether Article 43, Paragraph 2 of the said Act had been violated.

J.Y. Interpretation No. 527 is widely considered a significant interpretation of the Constitutional Court on the meanings of the applicable provisions of the

Local Government Act in regard to the circumstances under which petitions for interpretation may be filed with the Judicial Yuan. This interpretation is pivotal for our understanding as to the constitutional meaning and institutional arrangement of the Local Government Act.