

公營事業人員之法律地位研究 ——從公務員法與民營法之觀點

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我國公營事業人員是否適用公務員法，即其身份是否屬於公務員一直是法律上的一個爭論。此爭論的起因在於行政機關的私法形式行為以及公營事業所從事的經濟行為之特殊性。本論文從憲法、行政法、公務員法之觀點探討此一問題，研究內容另外及於公營事業民營化與存在行政爭訟問題時，公營事業人員之權利與地位。本文所得重要結論是，為保證公務員法及國家公法責任的完整性，公營事業人員不可一律採「僅具決策權人員為公務員」之設計，應回歸法制，實現僅公法組織得任用公務員的原則。

關鍵詞：公營事業、公營事業人員、公務員法、民營化、行政爭訟法、
勞動基準法第 84 條

緒 言

本文所要研究的對象是公營事業中的人員，及其在公務員法與民營法上的問題。公營事業在法律上的爭議肇因其本身所具備的兩大特徵：一為其所從事工作的經濟性質；二為其所慣用的私法法律形式。相同困擾也存在於公營事業人員是否適用公務員法的爭議中，形成公營事業人員與一般公務員地位不同的情形。這個情況在擬定公務人員基準法草案，決定公務員範圍的爭

Research on the Status of Government Enterprise Staff under Public Servant Law and Privatizationlaw

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ABSTRACT

The problem of whether government enterprise staff are subject to public servant laws has always been a legal controversy in Taiwan. The reasons for this are the special conditions under which administrative units conduct confidential formal activities and government enterprises engage in economic activities. This thesis studies this problem from the perspective of constitutional, administrative, and public servant laws. The rights and status of government enterprise staff when disputes arise over the privatization of public companies are also discussed. One important conclusion obtained is that, in order to ensure the inviolability of public servant laws and the government's obligation to public law, it is not acceptable for government enterprises to adopt the view that "only those who have the right to make policy decisions are considered to be public servants." The principle that only organizations formed under public law can employ public servants should be obeyed.

Key Words: government enterprises, government enterprise staff, public servant law, privatization, law of administrative proceedings