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Constitutional Debate on Public Enterprises and Foreign Trade

헌법 제1독회 — 주요산업 국유화 관련 질의응답

Constituent National Assembly · 28 June 1948

Original Korean source · English translation, Gwangbok Archive

Constituent National Assembly · 28 June 1948

Scope of this edition

The identified database record consists of six selected statements by expert adviser Yu Jin-o from the nineteenth plenary sitting. The ellipses at the opening of statements 1, 2, and 5 are present in the database selection and are retained. This is a complete translation of that selection, not of the whole sitting or every intervention on nationalization.

The Korean text follows the identified National Institute of Korean History transcription. Historical wording is retained. This edition does not reproduce the repository’s modern explanatory essays or scans.

Text and translation

Expert Adviser (Yu Jin-o): … Member Sin Gwang-gyun asked why Article 86, paragraph 3, of the Constitution states only that “foreign trade shall be under state control,” without expressly stating that the method of control shall be separately prescribed by law. This has no particular significance.

Expert Adviser (Yu Jin-o): … There was one more question. Regarding Article 86, Member Song Bong-hae asks whether allowing private operation to be authorized or revoked on grounds of public necessity might risk expanding the scope of private operation. The purpose of authorizing private operation is this: as I said, enterprises of this kind—transportation, communications, finance, insurance, electricity, water, gas, and other enterprises of a public character—are designated for state or public operation. If the state or a public body lacks sufficient capacity to operate them, however, merely calling them state or public enterprises in law without actually operating them would defeat the purpose. Ultimately the arrangement is adopted because it benefits the public welfare of the people and the state. If the state treats the entitlement as belonging to itself or a public body, prevents private persons from operating the enterprise, and then the state or public body cannot operate it either, that would instead harm us. In such circumstances, private operation may be authorized because public necessity requires it. If authorization is no longer necessary, it can be revoked and the state can operate the enterprise. That is the purpose. Depending on how this is administered, the scope of private operation may expand. The concern raised in the question is not altogether absent until the state or public bodies acquire the capacity to operate these state or

public enterprises directly for the benefit of the national economy.

Expert Adviser (Yu Jin-o): Another question on Article 86, from Member Hwang Yun-ho: important enterprises of a public character are to be operated by the state or public bodies, while private operation may be authorized on grounds of public necessity. He asks what “public necessity” means. This is the same as what I explained earlier regarding Article 84. Member Hwang Yun-ho also asks whether ordinary large-scale heavy industry is included, since many forms of heavy industry are not enumerated in Article 86. Certainly heavy industry and other enterprises of a public character fall within Article 86. Those not enumerated here must, however, be provided for by law. That concludes the answers to the questions.

Expert Adviser (Yu Jin-o): Something was omitted. Member Gwon Tae-uk asks why Article 86 describes important enterprises of a public character as subject to state or public operation but expresses foreign trade as though it lacked an important public character. Foreign trade may likewise be regarded as possessing a public character.

Expert Adviser (Yu Jin-o): … Member Hong Hui-jong asks: “Why does the provision merely state that foreign trade shall be under state control, without expressly stating that its method of control shall be separately prescribed by law?” Article 86 states that “the authorization of private operation on grounds of public necessity, or the revocation of that authorization, shall be carried out as prescribed by law.” This too will be prescribed by law.

Expert Adviser (Yu Jin-o): Member Gim Do-yeon asks that I explain the three alternatives: whether trade is to be controlled, managed, or supervised. “Supervision” means that, in principle, a private person conducts the activity and the state supervises it. “Management” would mean that the state itself directly operates trade. “Control” means that, rather than referring to whether the state or private persons handle it, the state intervenes in such matters as what goods should be exported or what goods should not be imported. This is the meaning expressed by state “control.”

Editorial and terminology notes

1. 國營 means state operation, 公營 public operation, and 私營 private operation. Those terms describe operation and must not automatically be treated as interchangeable with ownership. The English title identifies the record’s actual subjects without suggesting that a nationalization statute was enacted in this passage.

2. 特許 in this context is authorization or a concession to operate an enterprise, not a patent for an invention. Public necessity is the stated basis for allowing or revoking private operation.

3. 統制, 管理, and 監督 are rendered ‘control,’ ‘management,’ and ‘supervision.’ Yu distinguishes regulation of what may be imported or exported from direct state operation and oversight of private operators.

4. Articles 84 and 86 refer to the constitutional draft being discussed. The edition preserves that numbering and does not substitute numbering from the Constitution as finally promulgated.

Source and citation

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Korean transcription

○專門委員(兪鎭午) … 申光均議員으로부터 憲法 八十六條 第三項은 『對外貿易은 國家의 統制下에 둔다』 만 하고 統制方法은 따로히 法律로서 한다고 明示 안 함은 理由如何라고 말씀하였는데 이것은 特別한 意味가 없습니다

○專門委員(兪鎭午) … 또 한 가지 받은 것이 있었습니다 八十六條에 關해서 宋鳳海議員으로부터 公共 必要에 依하여 私營을 特許하거나 取消할 수 있다 하면 私營의 範圍가 擴大될 念慮가 있지 아니한가 이 私營의 特許의 趣旨는 이런 點에 말씀드린 바와 같은 이러한 運輸 通信 金融 保險 電氣 水道 까쓰 및 公共性을 가진 企業을 國營으로 公用으로 한다고 내놓고 萬一 國家가 公共團體가 이것을 運營할能力이 充分치 못할 境遇에는 이것을 法律로만 國營 또는 公共이라 해놓고 實際로 運營이 되지 않으면 趣旨와 背馳되는 것입니다 結局 가서는 한 國民 한 國家에 公共福利에 그것이 좋다고 해서 그렇게 하는 것은 그것은 國家가 權利를 公共團體의 權利라 해서 私私 사람에게는 하지 못하게 하고 實際로는 國家나 公共團體가 運營하지 못할 것 같으면 도리혀 우리에게 害가 될 것입니다 萬一 그러한 때에는 公共의 必要가 있어서 使用을 特許한다든지 또는 이 以上 使用을 特許할 必要가 없다고 하면 取消해 가지고 國家가 運營하게 된다 이러한 趣旨입니다 이 運營 如何에 따라서는 私營의 範圍가 넓어질 수 있습니다 아모쪼록 國家나 公共團體가 이러한 國營 또는 公營事業의 運營上에 있어서는 能力을 내가지고 直接으로 國家經濟에 利益이 되도록 運營할 程度까지를 質疑하신 바와 같이 憂慮가 없는 것은 아닙니다

○專門委員(兪鎭午) 八十六條에 亦是 黃潤鎬議員의 質問인데 重要한 公共性을 가진 企業은 國營 또는 公營으로 한다 또 그 公共 必要에 依하여 私營을 特許한다고 했는데 그 公共 必要라는 것은 어떤 것이냐 그것을 說明해 달라는 것인데 이것은 아까 八十四條에 關해서 말씀드린 것과 같습니다 또 黃潤鎬議員으로부터 八十六條에 列擧된 以外에 重工業되는 것이 多數 있는데 一般 大規模의 重工業도 包含할 것인가 勿論 重工業이라든지 또는 其他 公共性을 가진 企業은 이 八十六條에 包含되어 있는 것입니다 다만 여기에 列擧된 以外의것은 法律로서 制定해야 할 것입니다 그러면 이것으로 質問에 對한 것은 끝났습니다

○專門委員(兪鎭午) 빠진 것이 있습니다 權泰郁議員으로부터 八十六條에 對해서 重要한 公共性을 가진 企業은 國營 또는 公營으로 하면서 對外貿易은 重要한 公共性을 가지지 않은 듯이 表現되었는데 웬일이냐 이 말씀인데 亦是 對外貿易은 公共性을 가진 것으로 생각할 수 있는 것입니다

○專門委員(兪鎭午) … 洪熹種議員으로부터 『對外貿易은 國家의 統制下에 둔다 만 하고 統制方法은 따로히 法律로서 定한다고 明示 안 함은 理由 如何 이러한 質疑가 있습니다 이것은 八十六條의 『公共 必要에 依하여 私營을 特許하거나 또는 特許를 取消함은 法律의 定하는 바에 依하여 行한다』 亦是 法律로 定하게 되겠습니다

○專門委員(兪鎭午) 金度演議員으로부터 貿易을 統制한다고 하니 그것을 統制로 하느냐 管理하느냐 監督하느냐 세 가지를 說明하라고 하셨는데 그런데 그 監督이라면 原則的으로 私事로 한 사람에게 國家가 監督하는 것입니다 또 管理라고하면 貿易을 國家가 直接 運營하는 것이 管理라 하겠읍니다 이 統制라는 것은 國家나 私事가 取扱하는 것이 아니라 對外的 輸出을 어떤 物件을 내가야 하겠다든지 또는 輸入하는 데 있어서도 어떠한 物件은 그것은 안들어와야 한다든지 그러한 것을 모든 國家가 干涉한다는 그것을 國家가 統制한다는 이 뜻을 表現했습니다