

b. Administrative Law

The legality of a city's entertainment costs.

Decision by the Second Petty Bench of the Supreme Court on November 25, 1988. Case No. (*gyo-tsu*) 108 of 1987. A *jokoku* appeal claiming damages. 1298 *Hanrei Jihō* 109; 685 *Hanrei Taimuzu* 143.

[Reference: Local Government Act, Articles 242.2 and 2.]

[Facts]

The lawsuit was filed in February 1982 by Kiyoshi Miyagawa, a professor at Dokkyo University's English Department, and seven other residents of Ichikawa-shi (city), Chiba-ken (prefecture). The plaintiffs took issue with the fact that the mayor and other officials of the city of Ichikawa spent ¥385,000 out of the mayor's expense account when they twice invited eight officials of the Chiba prefectural government to dinner toward the end of 1980.

The payment covered dinner, drinks, souvenirs and taxi fares for the officials. The dinner and entertainment cost ¥18,000 per official for the first dinner and ¥13,000 per official for the second dinner. The dinner and entertainment were aimed at smoothing negotiations to obtain subsidies from the prefectural government for the city's plan to build a museum of local history and other facilities.

The plaintiffs claimed that ¥328,000 out of the ¥385,000 had been spent illegally because the amount was above the ceiling set for entertainment expenses under a city bylaw. They demanded that the mayor pay back the money to the city's treasury.

[History of the Case]

In February 1983, the Chiba District Court turned down the residents' request. In August the same year, the Tokyo High Court ruled that local residents could not file a lawsuit of this kind. In February 1986, the Supreme Court ordered the Tokyo High Court to hear the case again, saying that local residents did have the right to file such a lawsuit. In June 1987, the Tokyo High Court turned down the resi-

dents' request within the framework set by the Supreme Court. The plaintiffs subsequently appealed to the Supreme Court.

[Opinions of the Court]

Jokoku appeal dismissed.

"The Tokyo High Court held that the mayor's reception of prefectural government officials and the amount of money spent were within the boundaries of accepted social practice and the payment could not be regarded as illegal. Based on the evidence of that court, we do not find the faults that the appellants (plaintiffs) claim the original decision has."

[Comment]

A local government may do necessary and proper activities to draw subsidies from national or prefectural governments. The Court admitted that those activities were implicitly included within the authorized business of local government (Local Government Act, Article 2). But what is the legal boundary of those activities? What activity? How much spending?

In order to be granted a subsidy, a recipient has to explain the details of a to-be-subsidized program to the sponsor. This necessarily requires certain meetings between the parties and these meetings might be prolonged till late in the evening. Would-be recipient may be (usually is) quick enough to exploit the occasion, entertaining the sponsor to facilitate subsidization.

What entertainment and how much expenses are legally authorized? With the criterion whether "within the boundaries of accepted social practice," the Court regarded mayor's spending in this case as legal. With this, the Court seemed to imply that mayor's action was within the legal boundaries of administrative discretion. Preceding district court decisions had found entertainment by *geisha* girls on similar occasions an abuse of administrative discretion.

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