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# MAJOR JUDICIAL DECISIONS

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Jan. — Dec., 1996

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## 1. Constitutional and Administrative Law

**A case in which a political donation by a licensed tax accountant association was held to go beyond the scope of purpose of that form of corporation, and the resolution to collect a membership fee for the purpose of political donation was held to be invalid.**

Decision by the Third Petty Bench of the Supreme Court on March 19, 1996. Case No. (o) 1796 of 1992. A case demanding confirmation of the invalidity of a disposition to suspend the right to vote and eligibility for election. 50-3 *Minshū* 615; 1571 *Hanrei Jihō* 16.

[Reference: Constitution of Japan, Article 19; Civil Code, Article 43; Licensed Tax Accountant Law, Article 49 (2) (before abolition).]

### **[Facts]**

In 1978 Y, a South Kyushu licensed tax accountant association (defendant, *kōso* appellant, *jōkoku* respondent) adopted at a regular general meeting a resolution to collect five thousand yen as a special membership fee from its members to provide special funds necessary for a movement to amend the Licensed Tax Accountant

Law, and to donate all of the amount to each of the South Kyushu area's four licensed tax accountant political leagues, which are independent political organizations within the definition of the Political Fund Control Law. X (plaintiff, *kōso* respondent, *jōkoku* appellant), who is a licensed tax accountant and a member of the association, refused to pay the special membership fee because X opposed the movement to amend the Licensed Tax Accountant Law. Based on Y's regulations governing the election of officers in which a delinquency in paying a membership fee becomes a reason for incompetency to have the right to vote and ineligibility for election as an officer, Y held officers' elections without putting X's name on the voters' list. Thereafter, X brought an action demanding confirmation of the lack of an obligation to pay the special membership fee and damages by arguing, among other things, that Y's donating money to the political organizations goes beyond the scope of purpose of the licensed tax accountant association and that collection of the membership fee by force from X is in violation of X's freedom of thought and belief guaranteed by Article 19 of the Constitution of Japan.

Since the Kumamoto District Court ruled in favor of X in 1986 but the Fukuoka High Court overruled the decision in 1992, X appealed to the Supreme Court.

### *[Opinion of the Court]*

Donation of money by a licensed tax accountant association to political organizations with the definition of the Political Fund Control Law, if it was done with the intention of realizing political demands concerning enactment or repeal of laws and ordinances regulating licensed tax accountants, should be interpreted as an act that goes beyond the scope of the purpose of a licensed tax accountant association as provided in Article 49 (2) of the Licensed Tax Accountant Law. The resolution to the effect that the association should collect a special membership fee from its members for political donation should be interpreted as invalid.

It is established that an act within the scope of the purpose of a company is not limited to the purposes which are stated plainly

in the articles of incorporation; however, all acts are directly or indirectly necessary to accomplish those purposes. In addition, it is also established that donation of money to political parties by a company is not excluded from being within the scope of the purposes provided in the articles of incorporation, as long as that act is recognized as being done to perform the social role of the company if viewed objectively and in the abstract.

A licensed tax accountant association is a corporation that has a different kind of legal character from a company and cannot be discussed in the same way as a company with respect to the scope of its purpose.

In view of a licensed tax accountant's mission and responsibility, a licensed tax accountant association was defined in advance of its establishment by the Licensed Tax Accountant Law, and was established, as a result, for the purpose of providing instruction, liaison and direction to its members in order to contribute to their observing their professional responsibilities, and improving and advancing the profession of licensed tax accountant. The licensed tax accountant association is a corporation subject to the supervision of the Minister of Finance in order that its resolutions or acts by its officers do not violate laws and ordinances or the rules of the association. The licensed tax accountant association is also a compulsory admission association so that its members are virtually not permitted freedom of withdrawal.

Thus, since the licensed tax accountant association is a corporation that has a different kind of legal character from a company, it is obvious that accomplishment of the public purposes required by the law may be disturbed; additionally, the purport of the law may become disregarded if the scope of purpose is interpreted as broadly as that of a company.

The licensed tax accountant association acts as a corporation in accordance with the organization members' will, which is arrived at under the principle of decision by majority, following the form prescribed by the law and rules of the association. The constituent members have an obligation to comply with and collaborate with the association, and, as a corollary, have an obligation to pay a mem-

bership fee to provide economic support for the organization in accordance with the rules of the association. However, once the law makes the association compulsory for all licensed tax accountants, it is naturally presumed that persons having various thoughts, creeds, principles and opinions exist among the constituent members. Therefore, there is a natural limit on the association's scope of activities in accordance with the will of the constituents decided by the form and obligation to collaborate required of its members.

In particular, whether to donate money to political organizations such as political parties within the definition of the Political Fund Control Law should be a matter that is to be decided independently by each member in accordance with his or her own individual political thought, viewpoint, judgment, and so on as a citizen, just as there are two entities, each with freedom to vote independently in an election. The question of donating money to such organizations is closely related to the question of to which political parties or candidates in an election support is given since political organizations such as political parties under the definition in the Political Fund Control Law are naturally expected to engage in a wide range of political activities that include donating money for promoting political principles or policies, recommending certain candidates for public office, and so on.

Although the Licensed Tax Accountant Law, under its Article 49-12 (1), provides that the licensed tax accountant association may present a memorial to the public office in authority or answer its inquiry on tax administration or the profession of licensed tax accountant, and so on, it is impossible to equate donation of money to political organizations such as political parties under the definition of the Political Fund Control Law with a memorial or inquiry to the public office in authority.

Therefore, it should be said that a licensed tax accountant association having such a public character cannot decide such a matter to be the organization's will as decided by the principle of decision by majority, and cannot oblige its members to collaborate. It is not at all expected by the law that the association will engage in such an activity. It must be said that the donation of money by a licensed

tax accountant association to political organizations such as political parties within the definition of the Political Fund Control Law goes beyond the scope of the purpose of the association provided for by Article 49 (2) of the law if it is done with the intention of realizing the demands for the enactment and repeal of laws and ordinances concerning licensed tax accountants.

*[Comment]*

The first issue disputed in this cases is whether political donation by a licensed tax accountant association to political organizations is within the scope of purpose of the association. Generally speaking, if a certain act by a corporation is decided to be beyond the scope of its purpose, the corporation is not able to engage in such an act according to Article 43 of the Civil Code. To answer this question, then, it has often been argued that it is necessary to examine what act by the corporation is involved and what character or mission the corporation in question has, such as a compulsory or non-compulsory admission corporation, or a public service or for-profit corporation, and so on. It is the compulsory collection of money to use as a donation to political organizations that is the issue in this case, and political donation to political organizations is usually regarded as deeply involved with an individual's freedom of thought. There is no dispute that the political organizations in question are in fact such within the definition of the Political Fund Control Law and their activities may undoubtedly extend to a wide scope of political ones. Therefore, the inquiry concerning the character of the corporation in question becomes critical. In particular, if a certain corporation is one with compulsory admission and there is no or virtually no guarantee of freedom of withdrawal from the corporation for its members, to compel its members to abide by the collective decision infringing on their freedom of thought should be considered impermissible. In this sense, it should be appreciated that by emphasizing the character of an association with compulsory admission, the Court described a natural limitation on the licensed tax accountant association's activities and the obligation of collaboration imposed on its members. According to this rationale, other public

interest corporations such as bar associations may have the possibility of being similarly affected.

Even if the licensed tax accountant association is prohibited from making a political donation such as the one disputed here, there exists a further question concerning the permissible scope of its acts. In this respect, the Court held that donation of money by a licensed tax accountant association to political organizations as defined under the Political Fund Control Law, if done with the intention of realizing political demands concerning enactment or repeal of laws and ordinances applicable to licensed tax accountants, should be interpreted as an act that goes beyond the scope of the purpose of the association. On the other hand, the Court admitted that the association was entitled under the Licensed Tax Accountant Association Law to present a memorial to a public office in authority or answer its inquiry on tax administration or the profession of licensed tax accountant, and so on. Thus, there remains a question whether the law may be interpreted to say that the association cannot engage in any political activities except for presenting a memorial or answering the inquiry of the public office in authority as explicitly provided by the law. It is a controversial issue because (1) it should be inappropriate to limit the scope of the association's ability to engage in political activity as defined by legal provisions, (2) the association should be given a certain degree of latitude to engage in political acts in view of the constitutional guarantee of freedom of association, and (3) as the organization members' will is obtained and decided under the principle of decision by majority, the association should be permitted to engage in certain acts concerning enactment or repeal of laws and ordinances related to the profession of licensed tax accountant, unless it compels its members to abide by and violates their freedom of thought.

This decision has generally been welcomed in that it has faced the realities of political donation by a corporation and seems to give a strong warning to the nation about its political climate. Although this decision emphasizes the legal character of the licensed tax accountants association and clearly states the distinction from a company's equivalent act, it is expected that this decision will trigger

reexamination of the Court's notorious decision some twenty-six years ago, which permitted political donation by a for-profit corporation. Because whether to donate money to political organizations should be a matter that is decided independently by its members as citizens, as the Court noted, reexamination of the Court's candid approval of freedom of political activity by a company in that decision will be sooner or later unavoidable. In this sense, future development of this issue will be noteworthy.

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## **2. Law of Property and Obligations**

**The victim's subsequent death brought about by other causes and awards for the loss of future earnings derived from subsequent complications.**

Decision by the First Petty Bench of the Supreme Court on April 25, 1996. Case No. (ō) 527 of 1993. 50 *Minshū* 1221.

[Reference: Civil Code, Articles 416 and 709.]

### ***[Facts]***

On January 10, 1988, a motor truck driven by Y2, owned by Y1, and a car in which the victim (Z) was a passenger, collided. As a result, Z suffered serious injuries. Z had medical treatment but his injuries became chronic, i.e. his mental ability decreased, his peroneal nerve remained paralyzed, his eyes developed multiple vision, etc. At the time of the accident, Z was a carpenter, but afterwards he could not work. He went to the beach near his home and dug clams for the rehabilitation. On July 4, 1989, Z died of a heart attack while he was digging clams. X and others, Z's relatives, brought an action for compensation against Y1 and Y2, claiming that they had inherited