

J. Y. Interpretation No.440 (November 14, 1997) \*

**ISSUE:** Does the construction by the government, without expropriation or purchase, of underground public facilities beneath pre-existing roads or land reserved for urban planning use encroach upon the people's property rights guaranteed by Article 15 of the Constitution?

**RELEVANT LAWS:**

Article 15 of the Constitution (憲法第十五條); Articles 30 and 48 of the Urban Planning Act (都市計畫法第三十條、第四十八條); Article 15 of the Regulation Governing the Supervision of Taipei City Roads (台北市市區道路管理規則第十五條); Ordinance T.86 N. No.38181 (Executive Yuan, October 6, 1997) (行政院八十六年十月六日台八十六內字第三八一八一號函).

**KEYWORDS:**

principle of proportionality (比例原則), preexisting roads (既成道路), planned roads in city planning (都市計畫用地), special sacrifice (特別犧牲), underground facilities (地下設施物).\*\*

**HOLDING:** Article 15 of the Constitution provides that the people's

**解釋文：**人民之財產權應予保障，憲法第十五條設有明文。國家機關

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\*\* Contents within frame, not part of the original text, are added for reference purpose only..

rights of property shall be protected. When state organizations legally exercise their public power and incidentally cause harm to people's property, and this harm goes beyond the normal degree of tolerance the victim as a socially responsible person should display and becomes a special sacrifice to him/her, the state shall compensate him/her fairly. Those land-right holders of preexisting roads and of land reserved for urban planning use, whose powers to exercise those rights have been encroached upon by the burial of underground facilities by competent organizations prior to making purchase or expropriation according to law, and to the extent that the harm suffered has become a special sacrifice, obviously have the right to ask for fair compensation. Article 15 of the Regulation Governing the Supervision of Taipei City Roads, promulgated by the Taipei City Government on August 22, 1975, provides that "When not interfering with the original uses of and not causing danger to preexisting roads and land reserved for urban planning use, competent organizations may bury facilities underground without expropriating

依法行使公權力致人民之財產遭受損失，若逾其社會責任所應忍受之範圍，形成個人之特別犧牲者，國家應予合理補償。主管機關對於既成道路或都市計畫道路用地，在依法徵收或價購以前埋設地下設施物妨礙土地權利人對其權利之行使，致生損失，形成其個人特別之犧牲，自應享有受相當補償之權利。台北市政府於中華民國六十四年八月二十二日發布之台北市市區道路管理規則第十五條規定：「既成道路或都市計畫道路用地，在不妨礙其原有使用及安全之原則下，主管機關埋設地下設施物時，得不徵購其用地，但損壞地上物應予補償。」其中對使用該地下部分，既不徵購又未設補償規定，與上開意旨不符者，應不再援用。至既成道路或都市計畫道路用地之徵收或購買，應依本院釋字第四〇〇號解釋及都市計畫法第四十八條之規定辦理，併此指明。

for them. But harm to facilities above ground has to be compensated.” The part of this regulation concerning the burial of underground facilities without expropriation and compensation, being not consistent with the above reasoning, shall no longer apply. In other words, expropriations and purchases of preexisting roads and land reserved for urban planning use should be conducted in accordance with the requirements of J.Y. Interpretation No.400 and Article 48 of the Urban Planning Act.

**REASONING:** It has been provided in Article 15 of the Constitution that the people’s rights of property shall be protected. When state organizations legally exercise their public power and incidentally cause harm to people’s property, and this harm goes beyond the normal degree of tolerance the victim as a socially responsible person should display and becomes a special sacrifice to him/her, the state shall compensate him/her fairly. J.Y. Interpretation No. 400 declared: “To be consistent with this constitutional protection of property right,

**解釋理由書：**人民之財產權應予保障，憲法第十五條設有明文。國家機關依法行使公權力致人民之財產遭受損失，若逾其社會責任所應忍受之範圍，形成個人之特別犧牲者，國家應予合理補償。既成道路符合一定要件而成立公用地役關係者，其所有權人對土地既已無從自由使用收益，形成因公益而特別犧牲其財產上之利益，國家自應依法律之規定辦理徵收給予補償，各級政府如因經費困難，不能對上述道路全面徵收補償，有關機關亦應訂定期限籌措財源逐年辦理或以他法補償，業經本院釋字第四〇〇號解釋釋示在案。又關於

state organizations, for public necessity or other public interests, may expropriate a person's property according to law, but should give him/her fair compensation. Where a public easement has been established according to specific criteria on a preexisting road, the owners of those roads have been deprived of their freedom to use and make profit from the land in question, and their interest in the property has been specifically sacrificed for the general interest. The state has a legal obligation to expropriate the land according to law and give them compensation. If central or local governments, due to financial difficulties, are unable to completely expropriate and pay compensation for the land in question, concerned organizations should set a deadline for compensation to be paid by annual installment or by other means." With regard to the expropriation or purchase of reserve land in city planning, Article 48 of the Urban Planning Act provides that those competent organizations, which according to the Act designate reserve land for facilities by public utilities, should expropriate or purchase the designated privately owned land. The

都市計畫保留地之徵收或購買，都市計畫法第四十八條規定，依本法指定之公共設施保留地供公用事業設施之用者，由各該事業機構依法予以徵收或購買。其餘由該管政府或鄉、鎮、縣轄市公所依(一)徵收、(二)區段徵收、(三)市地重劃之方式取得之。為儘量保全土地權利人使用收益之權能，都市計畫法第三十條及行政院八十六年十月六日台八十六內字第三八一八一號函修正之都市計畫公共設施用地多目標使用方案第四點、第十一點附表甲規定，土地權利人在其土地被徵收前得申請於地下建造停車場或商場。是關於都市計畫保留地得予徵收或購買已有相關法律可資適用，主管機關基於增進公共利益之必要，依法使用計畫道路用地時，應否予以徵購，須考量其侵害之嚴重性，是否妨礙其原來之使用及安全等因素而為決定。對既成道路或都市計畫用地，主管機關在依據法律辦理徵購前，固得依法加以使用，如埋設電力、自來水管線及下水道等地下設施物，惟應依比例原則擇其損失最少之處所及方法為之；對土地權利人因此所受損失，並應給與相當之補償，以保護其財產上之利益。台北市政府於六十四年八月二十二日發布之台北市市區道路管理規則第十五條規定：「既成道

concerned government, village, town, or city government should take measures of (1) expropriation, (2) blocking of expropriation, or (3) redistribution of city land to acquire the other reserve land. To protect land-right holders' powers to use and profit from their land as much as possible, Article 30 of the Urban Planning Act and Ordinance T.86 N. No.38181 (Executive Yuan, October 6, 1997), which modifies Appendix A of the 4th item and 11th item of the Multiple Purpose Plans for Reserved Public Land under Urban Planning, have allowed the land-right holders to apply for the construction of parking lots or marts under their land. Therefore, it is obvious that there exist relevant laws and ordinances conferring on competent organizations powers to expropriate or purchase those reserve lands in city planning. Indeed, for the necessity of improving the public interest, competent organizations may legally expropriate the land which has been designated for road use in city planning. However, such decisions to expropriate or purchase have to be made after taking into account the severity of the harm caused thereby, such as whether

路或都市計畫道路用地，在不妨礙其原有使用及安全之原則下，主管機關埋設地下設施物時，得不徵購其用地，但損壞地上物應予補償。」其中對使用該地下部分，既不徵購又未設補償規定，與上開意旨不符者，應不再援用。至既成道路或都市計畫道路用地之徵收或購買，應依本院釋字第四〇〇號解釋及都市計畫法第四十八條之規定辦理，併此指明。

it has interfered with the original uses or created dangers. Accordingly, prior to exercising their powers to expropriate or purchase, competent organizations may legally use those preexisting roads or reserve lands in city planning to bury underground facilities for electricity distribution, water supply or sewage systems. However, under the principle of proportionality (*Verhältnismäßigkeitsprinzip*), this can only be done in the least harmful places and with the least harmful methods. Furthermore, the land-right holders in question have to be reasonably compensated as a means to protect their benefits from property. Article 15 of the Regulation Governing the Supervision of Taipei City Roads, promulgated by the Taipei City Government on August 22, 1975, provides that “When not interfering with the original uses of and not causing danger to preexisting roads and land reserved for urban planning use, competent organizations may bury facilities under those lands without expropriating them. But harm to facilities above ground has to be compensated.” The part of this regulation concerning the burial of underground fa-

cilities without expropriation and compensation, being not consistent with the above reasoning, shall no longer apply. In other words, expropriations and purchases of preexisting roads and land reserved for urban planning use should be conducted in accordance with the requirements of J.Y. Interpretation No.400 and Article 48 of the Urban Planning Act.