

J. Y. Interpretation No.444 (January 9, 1998) *

ISSUE: Does Article 25 of the Enforcement Guidelines for the Use Permission of Non-Urban Land of Taiwan Province stipulating that within ambit of the area any application for the set-up of pasturing facilities shall be denied and the use of such area as a pasturing ground forbidden contradict the Constitution?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution (憲法第十五條、第二十三條) ; Articles 1, 2 and 15 of the Zoning Act (區域計畫法第一條、第二條及第十五條) ; Article 11 of the Water Supply Act (自來水法第十一條) ; Article 28, Subparagraph 4 of the Water Pollution Control Act (水污染防治法第二十八條第四款) ; Articles 13 and 15 of the Enforcement Rules of the Zoning Act (區域計畫法施行細則第十三條、第十五條) ; Article 6, Paragraph 1, of the Regulation Governing the Utilization Control of Non-Urban Land (非都市土地使用管制規則第六條第一項) ; Article 25 of the Enforcement Guidelines for the Use Permission of Non-Urban Land of Taiwan Province (臺灣省非都市土地容許使用執行要點第二十五點) .

KEYWORDS:

principle of legal reservation (法律保留原則) .**

* Translated by Jer-Shenq Shieh.

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

HOLDING: The Zoning Act is enacted to promote conservation and the use of land and natural resources, improve the living environment, and enhance the public interest. The second sentence of Article 2 provides: “What is not stipulated in this Act applies to other laws.” Whatever law accords with the purpose of this Act will be among the laws to be applied. Article 6, Paragraph 1, of the Regulation Governing the Utilization Control of Non-Urban Land, promulgated by the Ministry of the Interior, based on the above provides: “Land designated for certain use should be used according to permitted use items, but other laws which prohibit or restrain certain use will be applied preemptively.” Article 25 of the Enforcement Guidelines for the Use Permission of Non-Urban Land of Taiwan Province, amended and promulgated on June 7, 1995, provides: “No new pasture ground can be set aside and no permit for building pasturing facilities can be set up in a water quality and quantity protection area.” Based on the intent of Paragraph 1, this exemplifies that land set aside for certain use should (or not) be used according to

解釋文：區域計畫法係為促進土地及天然資源之保育利用、改善生活環境、增進公共利益而制定，其第二條後段謂：「本法未規定者，適用其他法律」，凡符合本法立法目的之其他法律，均在適用之列。內政部訂定之非都市土地使用管制規則即本此於第六條第一項規定：「經編定為某種使用之土地，應依容許使用之項目使用。但其他法律有禁止或限制使用之規定者，依其規定。」中華民國八十四年六月七日修正發布之臺灣省非都市土地容許使用執行要點第二十五點規定：「在水質、水量保護區規定範圍內，不得新設立畜牧場者，不得同意畜牧設施使用」，係為執行自來水法及水污染防治法，乃按本項但書之意旨，就某種使用土地應否依容許使用之項目使用或應否禁止或限制其使用為具體明確之例示規定，此亦為實現前揭之立法目的所必要，並未對人民權利增加法律所無之限制，與憲法第十五條保障人民財產權之意旨及第二十三條法律保留原則尚無牴觸。

permitted use items or certain uses should (or not) be prohibited or be restrained in order to enforce the Water Supply Act and Water Pollution Control Act. This is necessary to fulfill the legislative purpose of the aforementioned Act, and does not add any limitation on the people's property right that is not provided by statutes. Therefore, it does not violate the intent of protection of private property of Article 15 of the Constitution and the principle of legal reservation (*Gesetzesvorbehaltprinzip*) of Article 23 of the Constitution.

REASONING: Land is necessary for the people's livelihood. The nation, based on the mutual reliance and mutual interest of geography, population, resources, economic activities, etc., and according with national economic development and environmental protection policy, shall enact land use and conservation plans to accord with social need. The Zoning Act is a law enacted to coordinate the various needs of land use and balance them with the interests of the people in a reasonable manner. The legislative purpose of Article 1 is: "to promote

解釋理由書：按土地為人民生存所不可或缺，國家基於地理、人口、資源、經濟活動等相互依賴及共同利益關係，並配合國家經濟發展及環境保護之政策，應訂定符合社會需要之土地使用保育計畫，區域計畫法即係為合理調整土地上各種不同的使用需求與人民整體利益之均衡考量所制定之法律，於第一條揭示其立法目的為：「促進土地及天然資源之保育利用，人口及產業活動之合理分布，以加速並健全經濟發展，改善生活環境、增進公共福利。」為貫定，非都市土地，按照非都市土地分區使用計畫，製定非都市土地使用分區徹

conservation and the use of land and natural resources, reasonable allocation of population and industrial activities, and to accelerate healthy economic development, improve the living environment, and enhance the public welfare.” To implement the public policy of non-urban land use control and ecological and environmental conservation, Paragraph 1 of Article 15 of the same Act provides that land use control on non-urban land, being zoned according to a non-urban zoning plan and designated as land for various uses, should be enforced, and the control rules should be enacted by the central authority concerned. In addition, the second sentence of Article 2 provides: “What is not stipulated in this Act applies to other laws.” Whatever laws accord with the purpose of this Act, i.e., the Water Supply Act and the Water Pollution Control Act, will be among the laws applied. Based on the above stipulation, the Ministry of the Interior enacted the Regulation Governing the Utilization Control of Non-Urban Land. According to Article 13 of the Enforcement Rules of the Zoning Act, it divides non-urban land into various use dis-

非都市土地之使用管制與生態環境保育之公共政策，同法第十五條第一項規圖，並編定各種使用地，實施管制，其管制規則，由中央主管機關定之；並於第二條後段規定：「本法未規定者，適用其他法律」，凡符合本法立法目的之其他法律，諸如自來水法及水污染防治法，均應在適用之列。內政部乃本此訂定非都市土地使用管制規則，將非都市土地依照區域計畫法施行細則第十三條之規定，劃分為各種使用區域，並依第十五條之規定在各使用區域內編成十八種用地，依照土地使用種類與使用性質進行管制；該規則第六條第一項規定：「經編訂為某種使用之土地，應依容許使用之項目使用，但其他法律有禁止或限制使用之規定者，依其規定。」中華民國八十四年六月七日修正發布之臺灣省非都市土地容許使用執行要點第二十五點規定：「在水質、水量保護區規定範圍內，不得新設立畜牧場者，不得同意畜牧設施使用」，係為執行自來水法第十一條及水污染防治法第二十八條第四款，而按本項但書意旨，就某種使用土地應否依容許使用之項目使用，或禁止或限制其使用為具體明確之例示規定（本例示規定已於八十六年八月六日經內政部（八六）內地字第八六八四八三

tricts, designates 18 categories of land use in every use district according to Article 15 and controls land use based on the varieties and nature of land use. Paragraph 1 of Article 6 of the Regulation provides: “Land designated for certain use should be used according to permitted use items, but other laws which prohibit or restrain certain use will be applied preemptively.” Article 25 of the Enforcement Guidelines for the Use Permission of Non-Urban Land of Taiwan Province, amended and promulgated on June 7, 1995, provides: “No new pasture ground can be set aside and no permit for building pasturing facilities can be set up in a water quality and quantity protection area.” Based on the intent of Paragraph 1, it exemplifies that land of certain use should (or not) be used according to permitted use items or certain uses should (or not) be prohibited or be restrained in order to enforce Article 11 of Water Supply Act and Subparagraph 4 of Article 28 of the Water Pollution Control Act. (This exemplification was deleted by (86) N. T. T. Directive No. 8684833 of the Ministry of the Interior on August 6, 1997). This is necessary to

三號函核定刪除），此亦為實現前揭立法目的所必要，並未對人民權利增加法律所無之限制，與憲法第十五條保障人民財產權之意旨及第二十三條法律保留原則尚無牴觸。至具體個案中之土地，是否屬於水質、水量保護區規定範圍，屬法院認事用法之問題，併此指明。

fulfill the legislative purpose of the aforementioned Act, and does not add any limitation on the people's property right that is not provided by statutes. Therefore, it does not violate the intent of protection of private property of Article 15 of the Constitution and the principle of legal reservation (Gesetzesvorbehaltprinzip) of Article 23 of the Constitution. Whether a piece of land in an actual case is within a water quality and quantity protection area is a matter of fact to be decided by judges.