

## J. Y. Interpretation No.449 ( March 13, 1998 ) \*

**ISSUE:** What does the holding in Interpretation No. 363, stating “the application for the establishment of public facilities during the enforcement period of the Act of Encouragement of Investment shall conform to Article 3 of said Act,” mean?

**RELEVANT LAWS:**

Article 53 of the Urban Planning Act (都市計畫法第五十三條) ; Articles 3, Paragraph 1, Sub Paragraph 11, and 58-1, Paragraph 1 of the Act of Encouragement of Investment (獎勵投資條例第三條第一項第十一款、第五十八條之一第一項) .

**KEYWORDS:**

public facilities (公共設施) , development of businesses (興闢業) , urban planning (都市計畫) , encouragement of investment (獎勵投資) .\*\*

**HOLDING:** The Notice Regarding Rewards for Investment in the Establishment of Retail Markets in Taipei City stipulates that those who apply for investment to establish markets shall be “private parties or groups holding all of

**解釋文：**台北市獎勵投資興建零售市場須知，對於申請投資興建市場者，訂有須「持有市場用地內全部私有土地使用權之私人或團體」之條件，增加都市計畫法第五十三條所無之限制，應不予適用，業經本院釋字第三六三號

---

\* Translated by Spenser Y. Hor.

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

the rights of use to the private land as and for the market use”, which is an additional restriction not imposed by Article 53 of the Urban Planning Act, and shall not be applicable as held in J.Y. Interpretation No. 363. The last sentence of the above-mentioned Interpretation stating, “the application for the establishment of public facilities during the enforcement period of the Act of Encouragement of Investment shall conform to Article 3 of said Act,” refers to the “development of businesses” under Paragraph 1, Subparagraph 11 of said Article 3. Although a land proprietor who is an natural person, yet plans to form a company limited by shares, may be given priority to invest pursuant to Article 58-1, Paragraph 1 of said Act, whether or not such person may enjoy each respective kind of preference shall be determined by said Act. The above-mentioned J.Y. Interpretation shall be accordingly supplemented.

**REASONING:** To enable private parties or groups to use publicly owned land or to acquire rights to land reserved for public use and owned by

解釋在案。至該解釋文末段所稱：「在獎勵投資條例施行期間申請興建公共設施，應符合該條例第三條之規定」，係指該條第一項第十一款之興闢業而言。土地所有權人為自然人而未組織股份有限公司者，雖得依該條例第五十八條之一第一項規定優先投資，惟能否享有各種優惠，仍應按該條例規定處理。本院上開解釋，應予補充。

**解釋理由書：**國家為使有投資意願之私人或團體得使用公有土地或藉政府公權力之介入，取得屬於公共設施保留地之他人土地使用權，加速公共設

other people through intervention of governmental power, and thus accelerate the establishment of public facilities to improve urban development, the nation specifically stipulates in Article 53 of the Urban Planning Act that “if the land (reserved for public facilities) needed by private parties or groups that are approved for investment in urban planning ventures is publicly owned, an application may be filed to lease said publicly owned land from the authority in charge; if the land is privately owned and an agreement to purchase could not be reached, said purchase price shall be readily prepared, and an application requesting the municipality or county government of that jurisdiction to purchase said land on their behalf shall be filed.” The prerequisites for such application to invest do not require the applicant to hold the rights of use to all privately owned land within the public-use land. The condition set forth in Paragraph 2, Subparagraph 1-1 of the Notice Regarding Rewards for Investment in the Establishment of Retail Markets in Taipei City promulgated by the Taipei Municipality on July 23, 1981, states that the applicants

施之興建，改善都市發展之狀況，於都市計畫法第五十三條特為規定：「獲准投資辦理都市計畫事業之私人或團體，其所需用之公共設施用地，屬於公有者，得申請該公地之管理機關租用；屬於私有而無法協議收購者，應備妥價款，申請該管直轄市、縣（市）局政府代為收買之」，並未以申請投資者應持有公共設施用地內全部私有土地使用權為提出申請之條件。台北市政府於中華民國七十年七月二十三日發布之台北市獎勵投資興建零售市場須知第二項(一)款(1)目以「持有市場用地內全部私有土地使用權之私人或團體」為申請投資之條件，係增加法律所無之限制，與法律要求各級政府應盡力協助私人投資興建公共設施，改善都市發展之目的不符，有違憲法保障人民權利之意旨，應不予適用，業經本院釋字第三六三號解釋在案。至於獎勵投資條例施行期間，申請興建公共設施而使用之土地，如由公共設施興闢業者循洽購、調處、照價收買程序而取得，對於土地所有權人應受保障之權益不無妨礙，此所以七十三年十二月三十日修正公布之獎勵投資條例（已於七十九年十二月三十一日廢止）第五十八條之一第一項前段規定「依本條例投資興闢尚未開發之公共設

must hold the rights of use to all the privately owned land as and for the market use, which has added a restriction not imposed upon by law. Such restriction contravenes the objective of the law to urge governments of each level to diligently assist private parties in investments to build markets and improve urban development, is in violation of the constitutionally protected rights of the people, and hence shall not be applicable, as held in J.Y. Interpretation No. 363. During the enforcement period of the Act of Encouragement of Investment, if in the application, the land used to build public facilities is acquired through negotiated purchase, mediation, or purchase at-value, this will interfere with the legally protected interests of the land proprietor. Therefore, Article 58-1, Paragraph 1 of the Act of Encouragement of Investment, as amended and promulgated on December 30, 1984, (abrogated on December 31, 1990) states, "For investment in developing as yet undeveloped land reserved for public use pursuant to this Act, the proprietor of said land may enjoy priority. However, in the event of no response or

施用地，土地所有權人得優先投資。但經該管地方政府書面通知其投資，滿二個月不為答復或自願放棄者，其他公共設施興闢業得逕行洽購」，徵諸行政院向立法院提出該條項原草案文字本為：

「依本條例投資興闢經都市計畫劃設而尚未開發之公共設施用地時，應由投資人逕行洽購」，對照以觀，得申請投資興建公共設施者，土地所有權人係優先於興闢業者，立法原意至為明顯。本院釋字第三六三號解釋解釋文末段所稱：

「在獎勵投資條例施行期間申請興建公共設施，應符合該條例第三條之規定」，係指興闢業者申請興建公共設施應符合該條第一項第十一款所定要件而言。若土地所有權人為自然人而未組織股份有限公司者，雖得依該條例第五十八條之一第一項規定優先投資，惟能否享有各種優惠，仍應按該條例規定處理。本院上開解釋，應予補充。

voluntary relinquishment by said land proprietor upon two months following service of written notice of the investment opportunity by the local government, other 'public facility development of businesses' may negotiate such purchase."

As set forth in the original draft proposed by the Executive Yuan to the Legislative Yuan, it reads: "For investment in developing as yet undeveloped land reserved for public use pursuant to this Act, the investor shall negotiate such purchase directly." In contrast, it is evident the legislative intent was to give the land proprietor priority over the business developers to invest in setting up public facilities. The last sentence of J.Y. Interpretation No. 363 stating, "the application for the establishment of public facilities during the enforcement period of the Act of Encouragement of Investment shall conform to Article 3 of said Act," means that the business developers when applying for building public facilities shall conform to Paragraph 1, Subparagraph 11 of the Act. Although the land proprietor, who is an natural person and has not formed a company limited by shares, may be given the

priority to invest, whether or not such person may enjoy each respective kind of preference shall be determined by said Act. The above-mentioned J.Y. Interpretation shall be accordingly supplemented.