

J. Y. Interpretation No.344 ( May 6, 1994 ) \*

**ISSUE:** Is the provision of the applicable standards prescribed by the Taipei City Government in respect of compensation for crops, lumber and fish, which imposes restrictions on the quantities of such crops, lumber or fish as are eligible for compensation, constitutional?

**RELEVANT LAWS:**

Article 15 of the Constitution ( 憲法第十五條 ) ; Articles 215, Paragraph 1, Subparagraph 4, and Article 215, Paragraph 3, and 241 of the Land Act ( 土地法第二百十五條第一項第四款、第三項、第二百四十一條 ) ; Appraisal Standards of Compensation for Crops, Lumber and Fish in the Case of Taipei City's Exercise of Eminent Domain ( 臺北市辦理徵收土地農林作物及魚類補償遷移費查估基準 ) .

**KEYWORDS:**

appraisal of compensation for eminent domain ( 徵收補償費之查估 ) , just compensation ( 公平補償 ) , unfair advantage ( 不當利益 ) . \*\*

**HOLDING:** The Appraisal Standards of Compensation for Crops, Lumber and Fish in the Case of Taipei City's Ex-

**解釋文：**臺北市辦理徵收土地農林作物及魚類補償遷移費查估基準，係臺北市政府基於主管機關之職權，為

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\* Translated by Vincent C. Kuan.

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

ercise of Eminent Domain were prescribed by the Taipei City Government based on its power as the competent authority to enforce the provisions of Article 241 of the Land Act. The provisions thereof, which limit the quantities of flowers and plants grown per acre and make no compensation for those exceeding the quantities so set forth, are prescribed to limit those landowners who, in order to gain unfair advantage, purposely start planting or over-planting prior to the expropriation. Such provisions are necessary to achieve the objective of just compensation and thus are not in conflict with the Constitution. Nevertheless, if there is any valid evidence to prove that the actual or normal planting and growing conditions differ substantially from the prescribed standards, the competent authorities should still, as a matter of course, make adequate and careful determinations on a case-by-case basis according to its expertise and experience.

**REASONING:** The state may, in the interests of the public, expropriate land from the people by law and, accord-

執行土地法第二百四十一條之規定而訂定，其中有關限制每公畝種植花木數量，對超出部分不予補償之規定，乃為防止土地所有人於徵收前故為搶植或濫種，以取得不當利益而設，為達公平補償目的所必要，與憲法並無牴觸。但如有確切事證，證明其真實正常種植狀況與基準相差懸殊時，仍應由主管機關依據專業知識與經驗，就個案妥慎認定之，乃屬當然，併此說明。

**解釋理由書：**國家為公益之目的，依法徵收人民之土地，其土地改良物被一併徵收時，依土地法第二百四十

ing to Article 241 of the Land Act, the relevant supervising land administration authorities of the city or county government shall, jointly with the other relevant authorities concerned, appraise the value of the compensation for any land ameliorants to be expropriated together with such land. Since appraisal is required, naturally the actual conditions of the land ameliorants to be expropriated should be examined. However, Article 215, Paragraph 1, Subparagraph 4, and Article 215, Paragraph 3, of the Land Act provide that “those land ameliorants whose species or quantities are planted and grown under substantially different from normal conditions” will not be expropriated together with the land. From time to time, land-owners or other people using the land, with the intent to gain unfair advantage, purposely start planting or over-planting when they know the land ameliorants will be expropriated. The Taipei City Government, according to its power as the competent authority, has enacted the Appraisal Standards of Compensation for Crops, Lumber and Fish in the Case of Taipei City’s Exercise of Eminent Do-

一條規定，應受之補償費，由該管市、縣地政機關會同有關機關估定之。既須估定，自應就被徵收之土地改良物實際具體狀況為之。但因土地法第二百十五條第一項第四款及第三項有「農作改良物之種類、數量顯與正常種植情形不相當者」，不予一併徵收之規定，而土地所有人或其他使用土地之人，間有於知悉其土地改良物將被徵收時，故為搶植或濫種，意圖取得不當利益之情事，臺北市政府基於主管機關之職權，為執行上述法律規定，訂定臺北市辦理徵收土地農林作物及魚類補償遷移費查估基準，其中關於限制每公畝種植花木數量，對超出部分不予補償之規定，乃為防止上述情事，以達公平補償目的所必要，與憲法並無牴觸。惟該基準限制之數量，乃係斟酌一般情形而為規定，在個別案件，如有確切事證，證明其與真實正常種植狀況相差懸殊時，仍應由主管機關依據專業知識與經驗，審究其有無搶植或濫種之情形，妥慎認定，乃屬當然，併此說明。

main to enforce the aforesaid provisions of the law. The provisions thereof, which limit the quantities of flowers and plants grown per acre and make no compensation for those exceeding the quantities so set forth, are prescribed to prevent the situations mentioned above. Such provisions are necessary to achieve the objective of just compensation and thus are not in conflict with the Constitution. Nevertheless, the quantities prescribed thereunder have been set forth by taking into consideration the general conditions. And, if there is any valid evidence in a particular case to prove that the actual or normal planting and growing conditions differ substantially from such standards, the competent authorities should still, as a matter of course, make adequate and careful determinations as to whether purposeful planting or over-planting indeed exists according to its expertise and experience.