

J. Y. Interpretation No.110 (December 29, 1965) *

- ISSUE:** (1) In the eminent domain proceedings, may a reassessment of the land be initiated by the land administration office if neither the condemnor nor the landowner object to the amount of compensation originally assessed?
- (2) What is the effect of delay in payment of compensation?
- (3) When must the payment of compensation be made if there is a delay caused by reassessment of the land?

RELEVANT LAWS:

Article 233 and 247 of the Land Act (土地法第二百三十三條、第二百四十七條) .

KEYWORDS:

eminent domain proceedings (徵收), compensation (補償), condemnor (需用土地人), landowner (土地所有人), land administration office (主管地政機關), the Standard Land Value Determination Committee (標準地價評議委員會) .**

HOLDING: (1) When neither the condemnor nor the landowner in an eminent domain proceeding object to the amount of compensation assessed, the land administration office may not invoke

解釋文：一、需用土地人及土地所有人對於被征收土地之應補償費額，均未表示異議者，主管地政機關不得援用土地法第二百四十七條逕自廢棄原公告之估定地價，而提交標準地價評

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Article 247 of the Land Act to annul the government published land value and refer the case to the Standard Land Value Determination Committee for reassessment.

(2) If the condemnor does not pay the land value and other compensatory expenses to the land administration office within fifteen days of publication of the proceeding, the condemnation shall lose effect in accordance with Interpretation Yuan-tze No. 2704. However, exceptions shall be made when the delay is caused by a dispute over the amount of compensation and the case was lawfully referred to the Standard Land Value Determination Committee for reassessment, or when the landowner consents to the deferral of payment.

(3) When the amount of compensation has been determined by the Standard Land Value Determination Committee, the land administration office shall promptly notify the condemnor of the decision of the Committee and order payment be made to the landowner within a specified

議委員會評定之。

二、需用土地人不於公告完畢後十五日內將應補償地價及其他補償費額繳交主管地政機關發給完竣者，依照本院院字第二七〇四號解釋，其征收土地核准案固應從此失其效力。但於上開期間內，因對補償之估定有異議，而由該管市縣地政機關依法提交標準地價評議委員會評定，或經土地所有人同意延期繳交有案者，不在此限。

三、征收土地補償費額經標準地價評議委員會評定後，應由主管地政機關即行通知需用土地人，並限期繳交轉發土地所有人，其限期酌量實際情形定之，但不得超過土地法第二百三十三條所規定十五日之期限。

period. The period set for payment may vary from case to case but in no event shall exceed fifteen days as prescribed by Article 233 of the Land Act.

REASONING:(1) The amount of compensation in an eminent domain proceeding shall be the land value determined by law, if the law has prescribed the land value by an assessment process. If there was a government published land value but ownership of the land had since been transferred, the amount of compensation shall be the cost of the last transaction. If there has never been an assessment or a transaction record, the amount of compensation shall be determined by the land administration office. If there was a dispute over the land value so decided, the land administration office should refer the case to the Standard Land Value Determination Committee for reassessment, according to Articles 239, 247 of the Land Act. Accordingly, if neither the condemnor nor the landowner object to the amount of compensation, the land administration office has no authority to annul the government published land value and

解釋理由書：一、查被征收土地補償費額，其地價已依法規定者，應依其法定地價補償之。但雖有法定地價，而其所有權經過移轉者，依其最後移轉時之地價。其未經依法規定地價者，其補償費額，由該管地政機關估定之。如對於估定地價有異議時，該管地政機關應提交標準地價評議委員會評定之，此為土地法第二百三十九條及第二百四十七條所明定。依此規定，如需用土地人及土地所有人對於估定價額均未表示異議，則主管地政機關自無權逕行廢棄原公告地價，而提交標準地價評議委員會另行評定之。

refers the case to the Standard Land Value Determination Committee for reassessment.

(2) According to Interpretation Yuan-tze No. 2704 of this Court, if the condemnor does not pay compensation to the land administration office within fifteen days of publication of the proceeding, the condemnation shall lose effect. However, if within the above-prescribed period there is a dispute over the amount of compensation, and the case was referred to the Standard Land Value Determination Committee by the land administration office, the amount of compensation is still pending. Or, if the landowner agreed with the condemnor to delay the payment, the landowner's interest is not jeopardized. Therefore, the condemnation does not lose effect in these situations.

(3) The purpose of Article 233 of the Land Act prescribing the payment period is to protect private rights by preventing delay of payment in the eminent domain proceedings, and to minimize the damage of landowners. If the case were referred to

二、依照本院院字第二七〇四號解釋，需用土地人不於公告完畢後十五日內繳交補償費者，其征收土地核准案，固應失其效力，但在上開法定期間內，因對於補償之估定有異議，而由該管市縣地政機關依法提交標準地價評議委員會評定，則補償價額尚待評定，或於上開法定期間內，需用土地人經土地所有人同意延期繳交有案者，亦無害於土地所有人之利益，其征收土地核准案自不因之失其效力。

三、征收土地補償費之發給期限，土地法第二百三十三條特加規定者，其目的在防止征收土地核准案久懸不決，及減少土地所有人之損害，而保障其私權。至因公告之估定地價發生異議，由主管地政機關提交標準地價評議

the Standard Land Value Determination Committee for reassessment by the land administration office due to a dispute over the government published land value, although the Act does not specify a payment period after reassessment, nonetheless, for the reasons indicated above, the land administration office should promptly notify the condemnor of the decision of the Committee and order that payment be made to the landowner within a specified period. The period set for payment should not exceed fifteen days as prescribed by Article 233 of the Land Act.

Justice Cheng-Ming Huang filed dissenting opinion.

委員會另行評定時，同法對於其所評定之地價繳交發給期限，雖無規定，惟基於上開理由，主管征收機關於該委員會評定後，應即通知需用土地人並限期繳交轉發土地所有人，其期間亦不得超過土地法第二百三十三條所定之十五日。

本號解釋黃大法官正銘提出不同意見書。