

J. Y. Interpretation No.212 (January 16, 1987) *

ISSUE: Shall the community development fees be levied if that public work satisfies the requirements for a levy under Article 2 of the Act Governing the Collection of Community Development Fees by Construction Projects?

RELEVANT LAWS:

Article 2 of the Act Governing the Collection of Community Development Fees by Construction Projects (工程受益費徵收條例第二條); Articles 2 and 22, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures (財政收支劃分法第二條及第二十二條第一項).

KEYWORDS:

Community development fees (工程受益費), levy (徵收), revenue (歲入). **

HOLDING: It is in accordance with the principle of fairness that the expenditure of public works constructed by governments at every level is proportionally undertaken by the direct benefit-receivers. Based on this intention, Article 2 of the Act Governing the Collection of

解釋文：各級政府興辦公共工程，由直接受益者分擔費用，始符公平之原則，工程受益費徵收條例本此意旨，於第二條就符合徵收工程受益費要件之工程，明定其工程受益費為應徵收，並規定其徵收之最低限額，自係應徵收。惟各級地方民意機關依同條例

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Community Development Fees by Construction Projects prescribes that the community development fees shall be levied if that public works satisfies the requirements for a levy. It also defines the minimum amount of the levy which shall be imposed. However, when local representative institutions at every level examine levying proposals of community development fees by construction projects (hereinafter “community development fees”) under Article 5 of the same Act mentioned above, they could also review whether the levies of those community development fees satisfy the requirements for a levy. Article 22, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures prescribes that the public works benefit may be regarded as one of financial revenues; thus, the government can enact relating legislations for levying community development fees. However, it cannot be interpreted that the Act Governing the Collection of Community Development Fees by Construction Projects prescribes that community development fees may, but not shall, be levied.

第五條審定工程受益費徵收計畫書時，就該項工程受益費之徵收，是否符合徵收要件，得併予審查。至財政收支劃分法第二十二條第一項係指得以工程受益費作為一種財政收入，而為徵收工程受益費之相關立法，不能因此而解為上開條例規定之工程受益費係得徵收而非應徵收。

REASONING: It is in accordance with the principle of fairness that the expenditure of public works constructed by governments at every level is proportionally undertaken by the direct benefit-receivers. Based on this intention, Article 2 of the Act Governing the Collection of Community Development Fees by Construction Projects clearly prescribes that the community development fees by construction projects shall be levied. This provision regards directly receiving benefits from the government buildings or the improvements of specific public works as a requisite, and also clearly states the minimum amount of the levy. Therefore, if public works satisfy the requirements for a levy, its public works benefit shall be levied. However, local government at every level levying the public works benefit shall, under Article 5, Paragraph 1, of the same Act mentioned above, draft a levying proposal which includes a work plan, an expenditure budget, an overview of receiving benefit, and the amount of levy, submit it to the representative institution at every level for a resolution, and make a report to the higher level of

解釋理由書：各級政府興辦公共工程，由直接受益者分擔費用，始符公平之原則。工程受益費徵收條例本此意旨，於第二條就工程受益費明定為應徵收。此項規定，係以政府建築或改善特定公共工程而有直接受益者為要件，並明定其徵收之最低限額。則符合徵收工程受益費要件之工程，其工程受益費自係應徵收。惟各級地方政府徵收工程受益費，應依同條例第五條第一項規定，擬具徵收計畫書，包括工程計畫、經費預算、受益範圍及徵收費率等，送經各該級民意機關決議後，報請上級政府備案。各級地方民意機關依同條第二項規定，審定該項工程受益費徵收計畫書時，就該項工程受益費之徵收，是否符合徵收要件，得併予審查。將工程受益費徵收案予以延擱或否決，該工程經費收支預算應併同延緩或註銷之。至財政收支劃分法乃關於各級政府財政收支如何劃分、調劑及分類之立法。其第二十二條第一項規定得徵收工程受益費，係指得以工程受益者費作為一種財政收入，而為徵收工程受益費之相關立法。不能因此而解為上開條例規定之工程受益費係得徵收，而非應徵收。

government for a reference. When the local representative institution at every level examines the levying proposal of the public works benefit as stated under Paragraph 2 of the same Article mentioned above, it could also review whether the levy of that public works benefit satisfies the requirements for a levy. If the levy of the public works benefit has been postponed or rejected, the budget for work expenditure shall also be postponed or withdrawn. The Act Governing the Allocation of Government Revenues and Expenditures is an enactment regarding how to allocate, adjust, and classify the financial expenditure of the government at every level. Article 22, Paragraph 1, of the above Act states that the work profit may be levied. It means that the public works benefit may be regarded as one of financial revenue; thus, the government can enact relating legislations for levying community development fees. However, it cannot be interpreted that the Act Governing the Collection of Community Development Fees by Construction Projects prescribes that community development fees may, but not shall, be levied.

Justice Geng Wu filed dissenting opinion.

本號解釋吳大法官庚提出不同意
見書。