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**J.Y. Interpretation No. 440 (November 14, 1997)\***

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**Taking Without Compensation of  
the Underground Strata of Private Lands Case**

**Issue**

Does Article 15 of the Ordinance on the Management of Taipei City Roads, which authorizes the government to use the underground strata of private lands without having to purchase the lands or giving compensation, infringe upon the people's property rights as guaranteed by Article 15 of the Constitution?

**Holding**

Article 15 of the Constitution provides that the people's right to property shall be guaranteed. When government authorities exercise their powers according to law and cause harms to the property of the people, such harms are considered special sacrifices of individuals if they exceed the bearable extent of the property's social responsibility. In such cases, the State shall make reasonable compensation to those affected people. If the competent authorities install underground utilities within privately-owned existing roads or private lands designated by urban plans to be used as future roads without taking or purchasing these private lands, such installations will constitute special sacrifices of individuals for infringement of the exercise of rights by the land-right owners and harm caused thereto. Those affected individuals shall have the right to adequate compensation. Article 15 of the Ordinance on the Management of Taipei City Roads, issued by the Taipei City Government on August 22, 1975, provides:

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\* Translation and Note by Tze-Shiou CHIEN

When not interfering with the original uses of and not creating safety concerns to privately-owned existing roads or private lands designated by urban plans to be used as future roads, the competent authorities may install underground utilities without taking or purchasing such lands, except that compensation must be paid for any harm to the surface facilities.

To the extent that it provides for neither purchase of nor compensation for the use of underground strata, the said provision is incompatible with the above requirements and shall cease to apply immediately. Additionally, it is noted that any taking or purchase of privately-owned existing roads or private lands designated by urban plans to be used as future roads shall be made in accordance with J.Y. Interpretation No. 400 and Article 48 of the Urban Planning Act.

## **Reasoning**

Article 15 of the Constitution provides that the people's right to property shall be guaranteed. When government authorities exercise their powers according to law and cause harms to the property of the people, such harms are considered special sacrifices of individuals if they exceed the bearable extent of the property's social responsibility. In this case, the State shall pay reasonable compensation to those affected people. When public easements, after meeting certain requirements, are established on privately-owned existing roads, the land owners would thus be deprived of their freedoms to use and make profits from their lands. Since they suffer special sacrifices on their property interests for the sake of public interests, the State shall take the lands and pay compensation according to law. If the central or local governments, due to financial difficulties, are unable to take all such lands and make compensation accordingly, the authorities concerned shall set a deadline for making compensation to be paid by

annual installments or other means. The above are already stated in J.Y. Interpretation No. 400. With regard to the expropriation or purchase of lands designated by urban plans to be used as future roads, Article 48 of the Urban Planning Act provides that privately-owned lands designated to be used for public facilities in the future pursuant to the Act shall be taken or purchased by the public facilities concerned. Other privately-owned lands similarly designated shall be taken or purchased by the competent authorities or town-level government authorities through the following approaches: (1) expropriation, (2) zone expropriation, or (3) urban land readjustment. To protect land-right holders' rights to use and profit from their lands as much as possible, Article 30 of the Urban Planning Act and Article 4 and Article 11, Appendix A of the Multi-Purpose Plans for Lands Designated for Public Facilities under Urban Plans, as modified by the Executive Yuan Letter Tai-86-Nei-38181 of October 6, 1997, have allowed the land-right holders to apply for construction of parking lots or markets under their lands before the competent authorities expropriate or purchase the lands. Therefore, it is obvious that there exist relevant laws conferring on the competent authorities the power to expropriate or purchase those designated lands within the scope of urban plans. Indeed, if necessary for advancing public interests, the competent authorities may take lands designated for road use within the scope of urban plans according to law. However, such decisions to expropriate or purchase must be made after taking into account the severity of the harm caused thereby, such as whether it has interfered with the property's original uses or created safety concerns. Accordingly, prior to exercising their powers to expropriate or purchase, the competent authorities may legally use those privately-owned existing roads or designated lands within the scope of urban planning to install underground facilities for electricity distribution, water supply, or sewage systems. However, under the principle of proportionality, this can only be done in the least harmful places and by the least harmful means. Furthermore, the land-right holders in question must be appropriately compensated so as to preserve their benefits from

property ownership. Article 15 of the Ordinance on the Management of Taipei City Roads, issued by the Taipei City Government on August 22, 1975, provides:

When not interfering with the original uses of and not creating safety concerns to privately-owned existing roads or private lands designated by urban plans to be used as future roads, the competent authorities may install underground utilities without taking or purchasing such lands, except that compensation must be paid for any harm to the surface facilities.

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### **Background Note** by the Translator

The petitioners alleged that their jointly-owned lands were classified as “private lands to be used as public roads” under an urban plan of the government. The Maintenance Office of the Public Works Department under the Taipei City Government installed an underground concrete pipeline paved by asphalt road for public passage on their lands without taking and compensation. Their request to the above-mentioned office for taking and compensation was rejected. After exhausting ordinary judicial remedies, they filed a petition to the Constitutional Court, alleging that Article 15 of Ordinance on the Management of Taipei City Roads was in breach of Articles 15 and 143 of the Constitution.