

Rec'd Ops:

ADM-1 CB 8/27

Asst. ADM-TO

Board Sec. jg

Spl. Asst. Mr. Tech-Ly dfr

Mgt. dfr

Administrative dfr

Personnel - dfr

Records - dfr

Mr. Service dfr

Operations dfr

Eng'g Dept. dfr

Proc. - dfr

Design - dfr

Budget - dfr

Auditing - dfr

Acctg. - dfr

Cashier - dfr

Treasury - dfr

Property - dfr

Reg. 3 - dfr

UPRP - dfr

Angst. Magat

UNDP - dfr

Read for

Mailing - dfr

8/27

MEMORANDUM CIRCULAR

ALL CHIEFS OF DEPARTMENTS, STAFFS AND DIVISIONS; HEADS OF SPECIAL PROJECTS; REGIONAL, PROVINCIAL, AND PROJECT IRRIGATION ENGINEERS; IRRIGATION SUPERINTENDENTS AND/OR OFFICERS-IN-CHARGE OF SYSTEMS/OFFICES AND OTHERS CONCERNED National Irrigation Administration

SUBJECT: Opinion No. 33, dated February 22, 1973, of the Department of Justice

Requoted hereunder for your information and guidance are pertinent portions of Opinion No. 33, s. 1973, of the Department of Justice, explaining the effect of Presidential Decree No. 76 on the acquisition of lots needed for road rights-of-way in various public works projects.

Presidential Decree No. 76 provides that "for purposes of just compensation in cases of private property acquired by the government for public use, the basis shall be the current and fair market value declared by the owner, or such market value as determined by the Assessor, whichever is lower."

Draft agreements or contracts involving road rights-of-way fall under three (3) principal categories, to wit:

"(1) those wherein the appraisal was made by the Appraisal Committee long before the proclamation of Martial Law but the agreement prepared on the basis thereof was signed by landowner after the proclamation of Martial Law and is still unsigned up to the present time by the Commissioner of Public Highways or his duly authorized representative;

"(2) those wherein the appraisal was made by the Appraisal Committee after the proclamation of Martial Law but the agreement or contract was signed by the landowner as well as the Commissioner of Public Highways or his duly authorized representative and notarized after the promulgation on December 6, 1972 of Presidential Decree No. 76; and

"(3) those wherein such appraisal was made by the Appraisal Committee and the agreement or contract was signed or executed and duly notarized before Presidential Decree No. 76, and even prior to the proclamation of Martial Law, but such agreement still has to be transmitted to the Secretary of Public Works, Transportation and Communications for approval."

The Opinion further provides:

xxx "In all the cases referred to, your

Office may properly advise the parties concerned that due to the issuance of Presidential Decree No. 76, which now governs the payment of just compensation for private properties to be acquired for public use, the signing of the agreement or its transmittal to the Secretary of Public Works, Transportation and Communications for approval would be contrary to the letter and spirit of the said decree. A re-evaluation and re-determination of the fair market value of the property sought to be acquired for public use in accordance with the decree would seem to be in order.

To avoid undue delay, in cases of urgent or priority projects, your Office might find it more expedient to initiate immediately expropriation proceedings so that you can deposit with the Philippine National Bank an amount equivalent to the assessed value of the property for taxation purposes and enter upon the possession of the property, after due notice to the owner, in accordance with Presidential Decree No. 42. The determination of the just compensation to be paid for the property may be left to the judgment of the court in the expropriation proceedings.

Very truly yours,

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice"

For the guidance of all concerned, Opinion No. 33 of the Secretary of Justice is applicable to all acquisition of right-of-ways by the government. Hence, the same be made the basis and guideline in the execution of all canal and other right-of-way agreements entered into by this Agency. Henceforth, properties subject of right-of-way agreements, whether previously assessed by an Appraisal Committee before or after the proclamation of Martial Law but the agreement upon which they are based have not been duly approved by this Office, although signed by the respective Regional Irrigation Engineers, have to be re-evaluated and re-determined as to its fair market value in accordance with the letter and spirit of said Presidential Decree No. 76. Henceforth, all payments for right of ways be executed in deeds of sale if based on the fair market values and in canal agreements if based on the assessed values thereof.

However, in cases of urgent or priority projects, immediate expropriation proceedings may be initiated wherein an amount equivalent to the assessed value of the property for taxation purposes may be deposited with the Philippine National Bank in order to enter upon the possession of the property, after due notice to the owner thereof pursuant to Presidential Decree No. 42.

Strict compliance herewith is enjoined.

(sgd.)
ALFREDO L. JUINIO
Administrator

Encl.: Annex "A" - Opinion # 33,
S. 1973, Secretary of Justice

August 8, 1973
AMM/tcg