

# The Legal System for Transferring the Ownership of Lands on which School Buildings are Built to the Ministry of Education without Compensation: An Analytical Study<sup>1</sup>

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## ABSTRACT

Obviously saying that with science and knowledge homelands are built is the slogan that the Iraqi society has utilized and immortalized by the legislation in the laws which has granted the privacy to school buildings through its application of a legal basis. The private law restricts the general law and made the transfer of its ownership to the Ministry of Education without compensation restricted by the applicable sale and lease of state funds and the expropriation law. Based on a legal article in the law of the Ministry of Education in force, it enjoyed a wide judicial and ministerial follow-up that leads to the accountability of employees who refrain from applying it legally. An article that the judiciary and the State Council excelled in their interpretations and set conditions for their application. A legal paragraph that clarified the legislative defect and its failure to keep pace with legal development. It is Article 38 of Ministry of Education Law No. 22 of 2011.

**Keywords:** *Ownership, School Buildings, Compensation.*

## INTRODUCTION

It is no secret that Iraq needs school buildings, after the increase in population density under a constitution that guarantees free education to the individual, and that the most prominent requirements for education is the presence of schools that accommodate the numbers of students. The emergence of schools was within what is known as the new organization of cities according to what was stated in the Municipal Administration Law No. 165 of 1964 (the Municipal Administration Law of 1964) (), and the repealed Governorates Law No. (59 of 1969) Chapter Six (the repealed Governorates Law of 1969) where the lands belonging to the ministries were under the ownership of the local administration in the governorates. After 2003, the matter became different, as those ministries began to go to court to demand the return of those

properties to their disposal, and to demand the same wages for the previous periods, and the school buildings were considered encroaching on their properties, despite the provision of the latter as a public benefit and without pay.

## RESEARCH ESSENCE

The issue of lands not owned by the Ministry of Education on which school buildings are built is considered a thorny issue. On the one hand, it serves a general benefit to the public, and on the other hand, the owner of the neck considers that these schools constitute an obstacle to their exploitation, not their owners (such as the case).

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### Research Significance

The importance of this research stems from the privacy that school buildings enjoy and how the Iraqi legislator viewed that privacy, as there is importance to searching for a legal system that authorizes the Ministry of Education to transfer ownership of lands on which school buildings are built without compensation, to be demolished and rebuilt in modern ways that keep pace with urban development, no Especially since the majority of those schools have been tight for more than fifty years.

### Research Problem

The Iraqi legislator mentioned an inadequate treatment of the issue of school buildings built on lands not owned by the Ministry of Education through approving the Ministry of Education Law No. 22 of 2011 and including Article 38 in it, but the article was contradictory and subject to interpretation and interpretation so that the problem of those lands remains that needs solutions, in addition to the fact that the rebuilding of schools It is required to provide original approvals that are not granted by the bare owner. Among the aforementioned problems, this study has a central question that revolves around it: What are the ways to organize the transfer of ownership of lands on which school buildings are built to the Ministry of Education without compensation?

### Subsidiary Questions

1. What is the classification of Article 38 of the Ministry of Education Law and what is its ruling in comparison with the articles of the Expropriation Law?
2. Was the Iraqi legislator successful in drafting Article 38 of the Ministry of Education Law in force?
3. What is the position of the Iraqi judiciary on Article 38?
4. Was the executive power independent of the interpretation of Article 38?

### Research Hypothesis

This study assumes that the legislator has created a special law that deals with the issue of lands not belonging to the Ministry of Education and built for school buildings, different from the procedures of the expropriation law in force, through which ownership of school buildings can be transferred without compensation, and without applying the law of selling and renting state funds.

### Research Methodology

In order to prove the research hypothesis, we will adopt the analytical research method, by analyzing Article 38 of the Ministry of Education Law No. 22 of 2011 in force, and the relevant judicial decisions and decisions of the State Council.

### Research structure

This research has been detailed in order to understand the subject on three demands. The first is entitled Theoretical Framework of Article 38 of the Ministry of Education Law. It is divided into two branches. The first is the historical development of Article 38. The second section is the conditions for applying the article. As for the second requirement, it was to distinguish Article (38) from what is suspected of it, and it was in two branches, the first distinguishing it from the expropriation law, and the second distinguishing it from the Cooperation Law No. 15 of 1992. The third requirement came for the interpretation of Article 38 of the Law of the Ministry of Education, which is based on three branches: the first is the legislative interpretation, the second is the judicial interpretation of the article, and the second is the interpretation of the executive authority (the administrative interpretation) of the article, followed by its conclusion.

### THE FIRST REQUIREMENT: THEORETICAL FRAMEWORK OF ARTICLE 38 OF THE MINISTRY OF EDUCATION LAW

Before entering into the depths of our scientific research, we must first know the theoretical framework of Article 38 of the Ministry of Education Law, and what is the historical origin, from which it came, in addition to the most important conditions for its application, which we will discuss in this requirement.

### First Branch: Historical Development of Article 38

The legislation of laws is the product of the historical development that the country is going through. A law may be enacted at some point in time as a result of the individual's need for it, which is noted in Article 38 of the Ministry of Education Law in force, as the previous laws did not provide for a similar article, because the Ministry of Education is the one who creates and the management of schools on the lands belonging to them (the Ministry of Education Law of 1971). While the matter evolved to give the legislator the local administration the right to construct

school buildings in the Ministry of Education Law No. 34 of 1998 repealed (the Ministry of Education Law of 1998), as the vision of the legislator at the time was to authorize the governorates a kind of decentralization in their administration (Muhammad Omar Mouloud, 2009, and others). Thus, the school buildings were transferred to the local administration to facilitate the process of construction and maintenance. On 22/2/2011, Cabinet Resolution No. 60 of 2011 was issued to authorize the Minister of Education to dispose of the land on which school buildings are built in terms of demolition and construction, based on the completion of procedures with the ministries later (Cabinet Resolution No. 60 of 2011). It is noted on the Council of Ministers' decision that it has authorized the minister to dispose of the land on which school buildings are built, as this right is one of the original rights of the owner of the neck, in addition to that the decision did not specify a time period for transferring the ownership of those lands. And as soon as the Ministry of Education law was issued on 9/19/2011, it came with Article 38, which stipulates: (The Ministry of Education has the right to dispose of lands belonging to the state and on which school buildings are built that have been allocated for educational purposes in terms of construction, demolition, or supportive restoration according to the plans of the Urban Planning Authority In accordance with the fundamental procedures, the ownership of these lands will be transferred to the Ministry of Education ((Ministry of Education Law of 2011).Based on what has just been mentioned , we conclude that the origin of Article 38 of the Ministry of Education Law is Cabinet Resolution No. 60 of 2011.

### Second Branch: Conditions for Applying Article 38

Returning to the text of Article 38 of the Ministry of Education Law in force, there are a number of conditions that must be met in order for the article to be applied, namely:

1. The school building should be constructed, so the article cannot be applied to lands intended for the establishment of schools and not intended for construction.
2. That the land belong to the state, as private property is safeguarded, and this is what Article 23 of the Iraqi Constitution for the year 2005 stated by saying (First: Private property is inviolable. Secondly, it is not permissible to expropriate property except for the purposes of public benefit in exchange for fair compensation, and this is regulated by law). The enforceable civil law included the provisions related to private

property, as stated in Article 1050 (No one may be deprived of his property except in the cases decided by the law and in the manner it delineates, and this is in exchange for a fair compensation paid to him in advance) (The Iraqi Civil Code of 1951). The legislator did well when he limited the right to transfer ownership of school buildings to public property, as he regulated ways to extinguish disposal rights in accordance with special laws, the expropriation law 12 of 1981.

3. The land should be allocated for educational purposes in accordance with the plans of the Urban Planning Authority.
4. After that, the Real Estate Registration Directorate is approached with the location of the property whose ownership is to be transferred in accordance with Article 38.
5. The Directorate of Real Estate Registration approaches the owner of the neck (the concerned department) to authorize one of its employees to complete the procedures for transferring ownership (Book of the Ministry of Education No. 11796 on 3/23/2019) ().
6. In the event that the department objects to the owner of the property, it will be referred to the civil courts to file a lawsuit to prevent the objection.

### THE SECOND REQUIREMENT: DISTINGUISHING ARTICLE 38 FROM WHAT IS SUSPECTED OF IT

There are many laws whose purpose was to transfer ownership between state departments, and perhaps the most important of them is the Expropriation Law and the Cooperation Law No. 15 of 1992. As far as the matter is concerned with the article in question, we will try to address the similarities and differences between the two laws and Article 38 of the Ministry of Education Law in force, and on two branches:

#### First Branch: Distinguishing Article 38 From the Expropriation Law in Force

The expropriation law is one of the laws that the administration is accustomed to in transferring lands to the public property, and since Article 38 of the Ministry of Education law came with a similar purpose to the expropriation law, we decided to distinguish between them. The Iraqi legislator did not want a specific definition of expropriation in his law in force, but he did define it in the repealed Law No. 54 of 1970, as it came in Article (1-..... expropriation is the expropriation of real estate and the rights related to it

for a public benefit and in exchange for fair compensation to be determined under this law...) (The Expropriation Act of 1981).

Appropriation was defined as a procedure taken by the administration to expropriate individuals from their property in order to achieve public benefit and in exchange for fair compensation (Abdul Basset Al-Jahshi, 2008), (Suleiman Al-Tamawy et al, 1996) defined it as (depriving the owner of his possession forcibly for the benefit public in exchange for compensation for the damage sustained. Expropriation has been mentioned in three types:

**First. Consensual Appropriation:** it is defined as the management agreement with the owner of the property or the real right related to it to appropriate it with consent in exchange for money or in kind) (The Expropriation Law of 1981), and the decree of this type of Expropriation is the agreement between the appropriator and the appropriator of it to expropriate in exchange for in-kind or cash compensation, and the management in this type of expropriation is by choice, since the project to be constructed has more than one option in terms of location, and that project can be established in any place other than the place subject of expropriation (Hussein Muhammad Salih, 2020). This type of appropriation is suspected, along with Article 38 of the Ministry of Education Law, that the purpose of both is public benefit, but it differs from it in several matters:

1. The owner of it is an individual and has private ownership over the real estate or right in kind, while Article 38 responds to real estate belonging to the state.
2. The site of the real estate to be expropriated for the purpose of establishing a project is not necessary, as it can be replaced by another site, and this cannot be in the school buildings, as they are already built, and the site cannot be replaced. Urban planning.
3. Consensual expropriation requires that there be a monetary or in-kind compensation provided by the expropriator to the expropriated, while Article 38, the subject of the discussion, stipulates that the transfer of ownership of the land be without consideration.

**Second. Administrative Appropriation:** It is the expropriation of real estate or a real right belonging to the state or the socialist sector, except for endowments, in favor of another department in return for an agreed-upon compensation (the expropriation law).

In this type of expropriation, it is required that both the expropriated and the expropriated from it be from the state's departments, in addition to that the land's returnees belong to the expropriation's department, and the price is determined by the agreement of the two parties. But in the event of disagreement, it is placed before the competent minister, if both the appropriator and the appropriator belong to the same ministry, and the Council of Ministers has the right to adjudicate the dispute in case they belong to the two different ministries, and its decision is binding on them (the appropriation law).

Administrative appropriation is close to Article 38 of the Ministry of Education Law, in that both of them are related to state departments, as the owner of the land on which school buildings are built and the Ministry of Education are people of public law, in addition to that the land belongs to state departments, and there is no private property, but they are They differ in several ways, including:

1. That there be an agreement compensation, as for administrative expropriation it is required that the two parties agree to compensate for the transfer of ownership from the expropriated to the expropriated, and in the event of disagreement, it is transferred to the higher administrative authority (the minister or the Council of Ministers) in detail that we passed earlier. As for Article (38), it stipulated that the transfer of ownership be without consideration.
2. Administrative expropriation did not require the approval of the Urban Planning Commission, while this was an essential condition for the application of Article 38.
3. Administrative expropriation is often in relation to land on which buildings have not been built, while Article 38 came to deal with lands on which buildings were built as a school.
4. The amount agreed upon shall be deposited with the department from which it is expropriated or with the Real Estate Registration Directorate the place of the real estate (the expropriation law), and this is not in Article 38, as the Real Estate Registration Directorate suffices with a letter addressed to it from the owner of the land on which the school buildings are built with an authority to transfer ownership and without compensation.

**Third. Judicial Appropriation:** It is the last procedure taken by the administration to expropriate a property or part of it or the original in-kind rights related to it, which it is legally entitled to expropriate,

by submitting a request to civil courts, to implement its projects and achieve public benefit.

From the above definition, the administration requesting judicial expropriation is required to have a legal right to expropriate, and that there is no planning or legal objection to expropriation, meaning that it has exhausted the consensual path in case the ownership is private and administrative in case the land belongs to one of the state's departments, so the expropriation Judicial is the last way taken by the administration to obtain the real estate or part of it or the original rights in rem related to it. Judicial expropriation procedures are suspected with some of the conditions imposed by Article 38, such as the absence of a planning objector, as well as the legal right to expropriate, and the condition of submitting the application because the civil judiciary is a required judiciary, but they differ in other matters, including:

1. The court verifies that the Ministry of Education reviews the real estate registration departments where the property is located to complete the real estate registration transaction, based on the provisions of Article 38, while it does not verify this in the judicial appropriation of lands other than lands on which school buildings are built.
2. The lawsuit filed in the event that the third person (the owner of the land on which school buildings are built) objected is a non-objection lawsuit, while the lawsuit that is filed in other than what was mentioned above is appropriation and is considered urgently because it is one of the lawsuits covered by the urgent judiciary.
3. Litigation in the lawsuit filed in accordance with Article 38 takes place in three stages, and the stage of correcting the discriminatory decision can be added, while judicial appropriation takes place in two stages only.
4. The court elects a commission to estimate (the expropriation law in force) ,the value of the expropriated property, and this is not in Article 38, as it is transferred without consideration.

#### **Second Branch: Cooperation Law No. 15 Of 1992**

The concept of cooperation and the cooperative movement has evolved throughout history for more than three centuries as a result of the conditions experienced by workers in those periods, and it is a product of the industrial revolution. Achieving their social, economic and cultural aspirations through an association they own and supervise. Iraq was not isolated from the adoption of cooperation laws, as its first law was No. 73 of 1959,

which was repealed, and the last of which was Law No. 15 of 1992 (Cooperative Societies Law of 1959 from the Law of 1970, the Cooperation Law of 1982, Law of 1992). The depth in the law of cooperation deviates from our research as far as we know the similarities and differences with the law of the Ministry of Education, as the purpose of the law of cooperation is what came in Article (1) of the law in force by saying (Cooperation is a mass social and economic organization whose goal is the development of economic relations in society from the individual style to the group pattern in line with state policy and to achieve the best performance of cooperative movements. One of the most important aspects of the similarity is what came in Article 34/1 of the Cooperation Law with Article 38 of the Ministry of Education Law in that the ownership of real estate is for cooperative organizations that need it without consideration (Cooperation Law).

The State Council went to approve a legal principle for the application of Article 34/1 by saying (1- that the ownership of real estate is for cooperative organizations without compensation or with an incentive allowance by a decision of the Council of Ministers, provided that a headquarters is taken to practice its activity and that there is no real estate for the entity requesting ownership that is suitable for the intended purpose and that the government does not need that Real estate 2- ....3- It is not permissible for cooperative organizations to dispose of real estate that they own from the state without a consideration or an incentive fee other than the purpose for which it was owned, and otherwise the Minister of Finance may request its recovery in accordance with the law) (State Council Resolution 94/2022). As for the aspects of disagreement between the two laws, they have a number of them:

1. The Ministry of Education is one of the people of public law and within the formations of the government, but the cooperative sector is a socialist activity (the Ministry of Education Law and the Cooperation Law).
2. The decision to own cooperative organizations is within the jurisdiction of the Council of Ministers, and this matter does not apply to the Ministry of Education due to the legislator's text on Article 38.
3. The best decision of the State Council is that the ownership of cooperative organizations be with an incentive allowance or without an allowance, while the ownership of school buildings without an allowance.

4. Article 38 of the Ministry of Education Law granted the freedom to dispose of land on which school buildings are built, and this right was not granted to cooperative organizations according to the text of Paragraph 3 of the aforementioned State Council decision.
5. The principle stipulated by the State Council stipulated that there is no real estate for the entity requesting ownership, and that the government does not need the owned real estate, while Article 38 granted a broader right to own school buildings.
6. In the event that the cooperative organizations do not use the property owned by them according to Article 34/1, the Ministry of Finance has the right to recover by legal means, while we find that Article 38 has granted the Minister of Education the right to build, demolish or restore.
7. The school buildings are built in advance on the lands to be owned, while Article 34/1 provides lands for the establishment of a headquarters for the cooperative organization.

### **THE THIRD REQUIREMENT: INTERPRETATIONS OF ARTICLE 38 OF THE MINISTRY OF EDUCATION LAW**

The legislative text mentioned in Article 38 of the Law of the Ministry of Education in force did not come out of nowhere. The expressions mentioned by the legislator have indications that require interpretation and interpretation. Therefore, we address in this requirement a statement of interpretation from the jurisprudential, judicial and administrative aspects, and that is on three branches.

#### **First Branch: Legislative Interpretation (Jurisprudence)**

The text of Article 38 of the Ministry of Education Law came as follows (the Minister of Education has the right to dispose of lands belonging to the state on which school buildings are built, or lands that have been allocated for educational purposes in terms of construction, demolition, reconstruction or supportive restoration according to the plans of the Urban Planning Authority in accordance with the fundamental procedures, and ownership is transferred These lands are for the Ministry of Education.

The above-mentioned article granted the Minister of Education the right to dispose of, which is known as one of the original rights granted to the owner of the neck, as stated in Article (68) of the Iraqi

Civil Code (1- The original real rights are the right of ownership, the right to dispose of, and the right to ...). If the right to act. It is an original right in kind, authorizing its owner to benefit from the land and exploit it with the aim of investing it to achieve the public benefit (Muhammad Taha Al-Bashir, Dr. Ghani Hassoun Taha, without year) (), and the question that was answered here is there a specific type of land for the application of the subject matter of the research? The real estate registration law in force referred to four types of lands. They are either owned lands, which are owned and whose title and rights belong to their owner, or my lands are endowed, which are lands whose beneficiaries have been confined to the judgment of God and whose yields are in a way that benefits the servants. As for the third type, it is the princely lands that Its neck belongs to the state, and finally the fourth type, which is abandoned lands, which are lands belonging to the state and allocated for the public benefit or for the benefit of the people of a particular village or kasbah (Real Estate Registration of 1971). When referring to the text of Article 38, the right of the Minister of Education to dispose of lands belonging to the state, which is focused on the last two types of lands. While the legislator returned to allocate the subject to the lands on which school buildings were built, here a question *arises that all educational establishments are school buildings, or does the subject include schools only? Does the article include the right to dispose of lands allocated for educational purposes?*

The researchers assert that the answer to this question is related to the goals set by the Ministry of Education. The purpose of Article 38 is to facilitate the work of the Ministry, as Article 2 of the same law sets several goals, including (Fourth: Developing students' creative abilities to ensure the integration of their personality physically, mentally, socially and spiritually). The school building does not provide enough space to develop these capabilities, so the Ministry of Education has established many centers and institutions that are concerned with this, including the scout camp (instructions of the Scouts and Guides Council for the year 2004), and sports halls. It is necessary that Article 38 include those buildings because it achieves the goal envisaged by the Ministry of Education Act.

The legislator moved to add another condition, in restricting the right of disposal, which he granted to the Minister of Education, as the legislator has limited the right to demolition, construction, reconstruction and restoration works, and may he ask why this right was granted? The answer is limited to

the laws related to management work, as the demolition and sale of demolished buildings are not the same as in private funds, as they are subject to the Law of Sale and Lease of State Funds No. (21 of 2013), in addition to that construction is subject to the instructions for implementing government contracts.

The article stipulated the approval or support of the Urban Planning Authority, which was the thorn in the application of the article for several reasons. The Planning Authority often creates the basic design of the city, and tries to ignore the presence of school buildings, by taking into account commercial activities at the expense of educational activity, just as the canceled provincial law stipulated the approval of the country council, and in light of the governorates' law in force, approval is the prerogative of the provincial council, which is currently suspended. Therefore, there is no administrative control over the Urban Planning Authority. In addition to that, another reason is that the design, upon its construction, includes in its structural plans the provision of one school, and does not take into account the size of the population increases and the movement of students to another stage, which requires the establishment of new schools in the same area. The researchers believe that the Urban Planning Authority should provide space for the establishment of more than one school when preparing the structural plan for the city and informing the Directorate about changing the design and providing alternative places. Finally, the legislator moved to the phrase (transfer) (in the name of Zaidan, 2002) , land ownership of the Ministry of Education, the word that introduced the article into interpretations and interpretations, and the legislator did not explain how the transfer is, is it following the expropriation law? Or by direct transfer without obtaining the owner's consent. This is what we will answer in our research, the administrative interpretation of Article 38.

We deduce from the foregoing that the right of disposition granted to the Minister of Education in the lands on which buildings are built and the allocated lands, which is all that relates to the objectives of the Ministry of Education law in terms of demolition, construction, reconstruction and restoration ,but in a condition that the Urban Planning Authority endorses the Ministry to complete all procedures for transferring ownership from the Registration Directorate real estate for the designated site.

### **Second Branch: Judicial Interpretation**

After the meaning of the words is established in Article 38 of the Ministry of Education

Law, we come to the statement of the judicial interpretation of the article, as the judiciary issued a set of decisions referring to two conditions for the application of the article in question. The form of this disposal is constructive, demolishing, rebuilding, or repairing, provided that this is supported by plans from the Urban Planning Authority, and when the two conditions are met, it will be transferred to the Ministry of Education without compensation (Court of Cassation Decision No. 307 / Expanded Civil Authority / 2019).

We have an objection to the two conditions referred to above, that the Ministry of Education demolishing the school built on land belonging to the state may not grant the owner the establishment of a new school, especially since the referral of projects for construction requires original approvals, including the approval of the owner Also, the basic design of cities is subject to permanent change due to the expansion or development of cities, and these two matters must be seconded by the trial court when observing the two conditions for the application of Article 38 of the Ministry of Education Law.

### **Third Branch: Administrative Interpretation**

The agency took into account the implementation represented by the executive authority, applying Article 38 of the Ministry of Education Law, as it urged the ministries to transfer the ownership of lands on which school buildings are built to the Ministry of Education, and the matter has developed into holding the employee who refuses to transfer ownership to legal accountability (letter of the General Secretariat of the Council of Ministers).

While the State Council, in the Ministry of Commerce's response, regarding the transfer of ownership of a land on which a school is built to the Ministry of Education without compensation, did not apply Article 1/First of the Law of Sale and Lease of State Funds No. (21 of 2013), which states (the provisions of this law apply to the state's movable and immovable property when sold or leased unless the law stipulates otherwise) for several reasons, including:

1. Article 38 of the Ministry of Education Law did not provide for the transfer of ownership for a fee.
2. The legislative purpose of the text of the article is to address the legal conditions that prevent the transfer of ownership of buildings on which school buildings are built to the Ministry of

Education without compensation, in order to achieve the public interest.

3. The aforementioned text is related to the sale and lease of state funds, and what is clarified about it is related to the transfer of ownership.

Among these reasons was the opinion of the State Council to transfer the ownership of the land on which the school is built to the Ministry of Education without compensation (State Council Decision No. 95/2017).

The question remains (raised in the first subsection): *Is the devolution of the land belonging to the state to the Ministry of Education from the date of enforcement of the law, or from the date of disposal of demolition, construction, reconstruction or restoration, to become a transfer of ownership?*

The State Council held that the text of the article had granted the Ministry of Education a license to carry out construction, demolition, restoration and rebuilding works on the lands covered by the provisions of the article, in addition to including the text an explicit provision for the transfer of ownership by virtue of the law, and that the text of Article (43) of the Ministry of Education law came With the adoption of the law from the date of its publication in the Official Gazette, according to the Council, the transfer of ownership of land on which school buildings are built or that has been allocated for educational purposes from the date of entry into force of the law, which is (19/9/2011), without the need to carry out construction, demolition, reconstruction and restoration works (decision State Shura Council No. 72/2022. Whereas, the article was interpreted by the General Secretariat of the Council of Ministers, as it was stated in Paragraph (2) of Book No. (S/2/1/15/00044802 on 11/12/2022), considering the text of Article 38 of the Ministry of Education Law as a special text that restricts the text of the provision of Article (62) (Municipalities Law) of the Ministry of Municipalities Law in force.

## CONCLUSION

After we were close to completing the research on (the legal system for transferring ownership of school buildings to the Ministry of Education without compensation), we have reached a number of results and suggestions.

**First. The results of the research reveal the following:**

1. There is a legal article, to which the provisions of the Expropriation Law do not apply, that authorizes the Ministry of Education to transfer lands on which school buildings or lands allocated to the Ministry of Education are built without compensation.
2. The lands whose ownership is to be transferred to the Ministry of Education and on which school buildings are built or allocated for educational purposes are not subject to the Sale and Lease of State Funds Law No. 21 of 2013, as the matter is related to the transfer of ownership.
3. Also, those lands in question are excluded from Article 62 of the Municipal Law No. 165 of 1964, which is an application of the legal rule (private law restricts public law).
4. The date of devolution of the lands in question from the state departments to the Ministry of Education on 9/19/2011, which is the date of entry into force of the Ministry of Education law.
5. The judiciary stipulated two conditions for the transfer of ownership of the buildings, that the land belong to the state and school buildings were built on it, and the other condition is that the Ministry of Education dispose of it with the support of the Urban Planning Authority.
6. The legislative purpose of Article 38 of the Ministry of Education Law is to address the legal conditions that prevent the transfer of ownership.

## SUGGESTIONS

1. Calling on the Iraqi legislator to choose explicit words, because interpretation and interpretation lose the spirit of the text and open the door to interpretation.
2. Calling on the legislator to amend Municipal Law No. 165 of 1964 regarding the announcement of the updated design and to add the phrase (informing the beneficiaries of the updated design of their approval of the modernization).
3. Calling on the judicial authority to delve into the application of the above two conditions and to follow up on the basic design of the city at the time of the establishment of the school until the time of filing the lawsuit (the previous design).
4. Demanding the head of the administrative authority in the governorate to implement the text of Article 38 of the Ministry of Education Law, given that most of the school buildings have transferred their ownership to the local



administration according to the Governorates Law No. 159 of 1960.

5. Calling on Mr. Governor to provide vacant lands to build schools so that the Ministry of Education can implement its goals.

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**Conflict of Interest:** None

## MARGINS

1. Municipal Administration Law No. 165 of 1964 in Article (43) The council, as empowered to report and monitor the following functions: Of all kinds, including streets, gardens, and schools....) Published in the Iraqi Gazette, Issue No. 1033 on 11/22/1964.
2. What has been quoted from The repealed Law of the Provinces No. (59 of 1969) Chapter Six, specifically Article (86), saying that the provincial council is concerned with the following local jobs and services, and it must practice them upon the entry into force of this law, in accordance with the regulations and rules in force before its entry into force..... G- Establishing and managing primary schools and kindergartens And basic education centers ... k- Establishing middle and preparatory school buildings and boarding departments) and Article 91 in education affairs 1-Opening, establishing and managing middle and preparatory schools). Revoked by the Law of the Governorates that are not organized in a region No. 21 of 2008, amended, which was timid regarding the establishment of school buildings, as Article (8 / Seventh) came to grant approval of the basic design and make a recommendation regarding it. While the aforementioned law abolished the municipal councils referred to in Municipal Law No. 165 of 1964 in Article 53/Third, published in Al-Waqa'iyah newspaper 4070 on 3/31/2008.
3. Article 3 of the repealed Ministry of Education Law No. (124 of 1971) says that the Ministry of Education is responsible for achieving its objectives: - 6- Ensure the establishment and management of government schools of all grades and types, taking into account the provisions of the provincial law.
4. Article 36 of the repealed Ministry of Education Law No. 34 of 1996 states: "The local administration shall provide and maintain the buildings of kindergartens, primary and secondary schools, and institutes." Administrative decentralization is defined as the

distribution of administrative functions between the central government in the capital and local bodies or elected stakeholders, so that these bodies, in the exercise of their administrative functions, are under the supervision and control of the central government. Muhammad Omar Mawlood considers federalism and the possibility of its application as a political system - Iraq as a model, University Foundation for Studies, Publishing and Distribution, Beirut, Lebanon, 2009, p. 31. Dr. Hussein Othman Muhammad Othman, Fundamentals of Administrative Law, Al-Halabi Human Rights Publications, Beirut, 2010, p. 355. Dr. Muhammad Refaat Abdel-Wahhab, Principles and Provisions of Administrative Law, Al-Halabi Human Rights Publications, Beirut, 2005, p. 133.

5. Cabinet Decision No. 60 of 2011 reads: (First: Authorizing the Minister of Education the right to dispose of the land on which school buildings are built in terms of demolition and construction, according to which the procedures will be completed duly with the ministries later. Secondly, this also includes all ministries and institutions with regard to government projects established on land belonging to the state. According to the plans of the Urban Planning Authority (circulated in the letter of the Ministry of Education No. 9062 on 6/27/2011).
6. The Law of the Ministry of Education in force and published in the Iraqi Gazette No. 4209 on 9/19/2011.
7. The Law of the Ministry of Education in force and published in the Iraqi Gazette No. 4209 on 9/19/2011.
8. The Constitution of the Republic of Iraq 2005, which was published in the Official Gazette on June 20, 2006
9. Iraqi Civil Code No. 40 of 195. The Ministry of Education clarified, in its book No. 11796 on 3/23/2019, that there is no need for a decision from the owner, based on Article (272 of the Real Estate Registration Law No. 43 of 1971), which says: "Ownership or authorization of state real estate shall be registered in the name of whomever it owned or delegated to base on the decision issued by the legally authorized body without the need for other procedures.
10. The Expropriation Law No. 54 of 1970 was repealed according to Article 63 of the Expropriation Law No. 12 of 1981.
11. Dr. Abdul Basit Ali Jassim Al-Jahshi, Exemptions from Income Tax, Dar Al-Hamid for Publishing and Distribution, 2008, p. 71.

12. Suleiman Al-Tamawy, Al-Wajeez in Administrative Law, Dar Al-Fikr Al-Jami', Cairo, 1996, p. 602. Dr.. Majid Al-Helou, Administrative Law, University Press, Cairo, 1999, p. 627. Fouad Al-Attar, Administrative Law, Third Edition, Arab Renaissance House, Cairo, 1976, pg. 599. Taima Al-Jarf, Administrative Law, Third Edition, Arab Renaissance House, Cairo, 1985, p.636.
13. Article 4 of the Expropriation Law No. 12 of 1981
14. Dr.. Hussein Muhammad Salih, Provisions of Expropriation for the Public Benefit, first edition, The Arab Center for Academic Publishing, Yemen, 2020, pg. 75.
15. Article 22 of the expropriation law in force.
16. Articles 23 and 24 of the Expropriation Law
17. Article 25 of the Expropriation Law.
18. Article 9 of the Expropriation Law.
19. Article 13 of the Expropriation Law.
20. Habib Matanios, Cooperative Economy, The New Press, Damascus 1975, p. 16. Carl Bernice, Socialist Studies in Cooperative Theory, translated by Majid Masoud, Dar Al Jamahir Al Arabiya, Damascus, 1975, p. 32. Abdullah Abbawi, Principles of Economics, Part One, Salma Modern Press, Baghdad 1979, p. Manuscript and unprinted book, Baghdad, 2002, p. 25. International Labor Office, Enhancing Cooperation, first edition, Geneva, 2001, p. 3.
21. The Cooperative Societies Law No. 73 of 1959 was repealed by virtue of Article (2/76) of Law No. 202 of 1970, which was in turn repealed by virtue of Article (41/First) of Cooperation Law No. 58 of 1982 repealed by Article (44) of Law No. 15 of 1992 as amended published In the Iraqi Gazette, Issue 3412, on 6/29/1992.
22. Article 34 (1- Owning or renting to cooperative organizations real estate that they need for their purposes without consideration or an incentive fee).
23. State Council Resolution No. (94/2022 on 10/16/2022) unpublished.
24. Article (1) of the Ministry of Education Law and Article (1/2) of the Cooperation Law in force.
25. Muhammad Taha Al-Bashir, Dr. Ghani Hassoun Taha, in-kind rights, part one, Al-Atak for the book industry, Cairo, without a printing year, p. 269.
26. Articles (5,6,7,8) of the Real Estate Registration Law No. 43 of 1971.
27. Instructions of the Council of Scouts and Guides No. 4 for the year 2004 published in the Iraqi Al-Waqa'iyah newspaper, Issue 3987 on 9/1/2004.
28. The linguistic meaning of the word "tawl" is (interpretation in speech, interpret it, and interpret in so-and-so, the matter is characterized and investigated) in the name of Zaidan, the comprehensive dictionary, first edition, An-Najah National University, Palestine, 2002, without a page.
29. Court of Cassation Decision No. 307 / Expanded Civil Commission / 2019. Publication with the link <https://www.sirwanlawyer.com/index.php/342/01212/11/1944-m1441> Date of visit 12/24/2022 at 8:00 pm. And the decision of the Afak Court of First Instance No. 523/b/2022 on 9/28/2022 is unpublished. The decision of the Diwaniyah Court of First Instance No. 1426 / b / 2021 on 11/22/2021 is unpublished. The decision of the Federal Court of Appeal of Al-Qadisiyah No. 88 / s / 2022 on 6/26/2022 is unpublished.
30. Books of the General Secretariat of the Council of Ministers, numbered (S / 01/15549 on 4/27/2022 and S / 01/28736 on 8/25/2019).
31. State Council Decision No. 95/2017 on 6/8/2017 is not published.
32. The question that was asked in the first section, pg. 16.
33. State Shura Council Decision No. 72/2022 of 8/23/2022 is not published.
34. Article 62 quotes )It is not permissible for the Capital Municipality or the municipality to assign any money or right for less than its real value upon assignment) The Ministry of Municipalities has worked to transfer ownership of the lands to which it belongs according to Law No. 80 of 1970 without compensation to the Ministry of Education according to book number (b / k / s /3607 on 28/8/2013).

## REFERENCES

1. Bassem Zaidan, The Complete Dictionary, first edition, An-Najah National University, Palestine, 2002.
2. Suleiman Al-Tamawy, Al-Wajeez in Administrative Law, University Thought House, Cairo, 1996.
3. Habib Matanios, Cooperative Economy, The New Press, Damascus 1975.
4. Dr.. Hussein Othman Muhammad Othman, Principles of Administrative Law, Al-Halabi Human Rights Publications, Beirut, 2010.
5. Dr.. Hussein Muhammad Salih, the provisions of expropriation for the public benefit, first edition, the Arab Center for Academic Publishing, Yemen, 2020.

6. Taima Al-Jarf, Administrative Law, third edition, Arab Renaissance House, Cairo, 1985.
7. Dr. Abdul Basit Ali Jassim Al-Jahshi, Exemptions from Income Tax, Dar Al-Hamid for Publishing and Distribution, 2008.
8. Abdullah Abbawi, Principles of Economics, Part One, Salma Modern Press, Baghdad, 1979.
9. Muhammad Taha Al-Bashir, Dr. Ghani Hassoun Taha, in-kind rights, part one, Al-Atak for the Book Industry, Cairo, without a year of printing.
10. Muhammad Omar Mawloud, Federalism and the possibility of its application as a political system - Iraq as a model, University Institute for Studies, Publishing and Distribution, Beirut, Lebanon, 2009.
11. Dr. Muhammad Refaat Abdel-Wahhab, Principles and Provisions of Administrative Law, Al-Halabi Human Rights Publications, Beirut, 2005.
12. Dr. Mahmoud Al-Lami, Principles of Cooperation, a manuscript and unprinted book, Baghdad, 2002.
13. International Labor Office, Enhancing Cooperation, First Edition, Geneva, 2001
14. Dr.. Majid Al-Helou, Administrative Law, University Press, Cairo, 1999.
15. Dr.. Fouad Al-Attar, Administrative Law, third edition, Arab Renaissance House, Cairo, 1976.
16. Carl Bernice, Socialist Studies in Cooperative Theory, translated by Majid Masoud, Dar Al Jamahir Al Arabiya, Damascus, 1975.
17. The Constitution of the Republic of Iraq for the year 2005.
18. Iraqi Civil Code No. 40 of 1951
19. Cooperative Societies Law No. 73 of 1959
20. Municipal Administration Law No. 165 of 1964
21. Governorates Law No. 59 of 1969
22. Cooperation Law No. 202 of 1970
23. Expropriation Law No. 54 of 1970
24. Ministry of Education Law No. (124 of 1971)
25. Real Estate Registration Law No. 43 of 1971
26. Expropriation Law No. 12 of 1981
27. Cooperation Law No. 58 of 1982.
28. Amended Cooperation Law No. 15 of 1992
29. Ministry of Education Law No. 34 of 1996
30. Law No. 21 of 2008 amending the governorates that are not organized into a region
31. Ministry of Education Law No. 11 of 2011.
32. Court of Cassation Decision No. 307 / Expanded Civil Commission / 2019. Publication with the link <https://www.sirwanlawyer.com/index.php/342/01212/11/1944-m1441> Date of visit 12/24/2022 at 8:00 pm.
33. Decision of the Federal Court of Appeal of Al-Qadisiyah, No. 88/S/2022 on 6/26/2022, unpublished.
34. Afak Court of First Instance decision No. 523/b/2022 on 9/28/2022, unpublished
35. Decision of the Diwaniyah Court of First Instance No. 1426/b/2021 on 11/22/2021, unpublished
36. Cabinet Resolution No. 60 of 2011.
37. State Council Decision No. (94/2022 on 10/16/2022) is not published.
38. State Council Decision No. 95/2017 on 6/8/2017 is not published.
39. State Shura Council Decision No. 72/2022 on 8/23/2022 is not published.
40. Instructions of the Council of Scouts and Guides No. 4 of 2004.