

## **MAJOR ADMINISTRATIVE DECISIONS EXIST PROBLEMS IN PRACTICE AND OPEN AND TRANSPARENT MEASURES**

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*On the basis of the self-regulation of Chinese government system, the issue of “major administrative decision” tries to clarify the supervision of the pulse of the main administrative decision process, in order to further expand the discipline and practice system of Chinese administrative law, and to build the basic platform of disciplinary dialogue.*

First, the prominent problems existing in the legal regulation practice of major administrative decisions

In recent years, the establishment and improvement of scientific and democratic decision-making mechanism has become one of the main objectives of the institute’s own construction and management system reform. The construction of major administrative decision-making procedure system in China has been paid more and more attention by local governments at all levels. Around everywhere in formulating the related legislative and regulatory documents, and the specific implementation measures are also constantly explore and perfect, at present, the major administrative decision-making procedure rules has become the consensus of from central to local levels, but objectively speaking, the current major administrative decision-making laws and regulations in practice there are many problems need to solve important experience and achievements, More and more by the theoretical circle and practice of the department of attention. How to bring major administrative decisions into the track of rule of law is the inevitable requirement of promoting the rule of law and building a government ruled by law. In this paper, through the investigation of major administrative decisions related to the legal norms of the theory of basic problems, on the practice of a comprehensive summary and combing China’s major administrative decisions.

1. Lack of unified national legislative norms. National major administrative decision-making requirements specification is mainly the all-round government in accordance with the implementation summary

“on strengthening the construction of the rule of law government opinion” “on strengthening the construction of the rule of law government opinion” and so on some, however, the legal documents of major administrative decision-making procedure in China is still lack of necessary laws and administrative regulations, rules and regulations, and has not been involved in the legislation of administrative decision, of course, The legislative path of general administrative procedure law is similar, that is, “local priority, central priority”. Local explorations have laid a foundation for unified legislation of major administrative decision-making procedures.

2. Insufficient academic attention. Administrative decision-making belongs to the cross area of administrative science and law. For a long time, the academic circle of administrative law in China has paid less attention to administrative science and administrative organization, and paid less attention to the major administrative decision-making problems commonly practiced by the government. This situation is no doubt not conducive to the in-depth development of the basic theory of administrative law research, but also seriously behind the reality of China’s administrative rule of law.

3. The real world is messy. Major administrative decision-making has undoubtedly become a prominent practical problem in the practice of administrative law, with less theoretical attention and unclear norms of legislative texts, leading to a serious tendency of empiricism in government decision-making.

Both the “major administrative decision” in the theoretical circle and the legislative text have obvious semantic ambiguity and conceptual ambiguity, which belong to the typical “uncertain legal concept”. Uncertain legal concept is a special type of legal concept, specifically refers to “ambiguous but not fixed legal concept, including a clear concept core and a more or less broad concept periphery”. This kind of ambiguous concept will inevitably cause a lot of controversy and confusion in the practice of administrative law. This is where transparency comes in.

Openness and transparency are inherent requirements for major administrative decision-making procedures. Without open and unimpeded information, major administrative decisions cannot be called “public concerns”. At the same time, information disclosure is the premise of democratic participation in major administrative decisions. Timely disclosure of decision-making processes and procedures and soliciting opinions and suggestions from experts and the general public will help reduce mistakes in decision-making. Third, only by bringing the entire decision-making process into the open can there be substantial oversight and policy makers be encouraged to think better in the eyes of the public. In 2004, the Comprehensive

Implementation of Administration in Accordance with the Law clearly stated that, except for matters that should be kept secret according to law, decisions, bases and results must be made public, and the public has the right to consult. The Measures for the Work of The State Council, revised in 2008, made it more clear that opinions should be solicited from the public on issues concerning major public interests and the vital interests of the people, and hearings should be held if necessary. Because major administrative decisions should be made public, it involves the implementation of the Regulations on the disclosure of Government Information. In the author's opinion, in the whole process of major administrative decision-making, information disclosure should pay attention to the following problems:

1. Openness is the principle and non-openness is the exception. According to the Regulations on the Disclosure of Government Information, all government information must be disclosed, including information on major administrative decisions, except those involving state secrets, trade secrets and personal privacy. Disclosure of decision items and results. The former refers to information disclosure as a major administrative decision. In principle, disclosure must be public, except in cases where it is not. Of course, in internal management, in the case of non-disclosure, reasons should be explained and recorded, which contributes to the accountability and supervision of information disclosure of major administrative decisions.

2. Disclosure of the decision-making process. According to the "Opinions of The General Office of the State Council on Doing a Good job in government Information Disclosure according to the Application", "internal management information generated or obtained by administrative organs in their daily work and information processed for discussion, research and examination generally do not belong to the" government " , and the "Regulations on Information Disclosure" refers to government information that should be disclosed. In practice, there is controversy about whether the major administrative decision-making process is open. In this regard, the author believes that information in the decision-making process should be appropriately deleted. The Decision of The State Council on Strengthening the administration of Municipal and County Governments in accordance with the law clearly stipulates that "hearings should be held in public, except for those involving state secrets, trade secrets and personal privacy." Therefore, the author believes that the non-disclosure of information expressed in the process of public participation must meet three conditions: for example, premature disclosure may lead to social disorder; Openness may prevent participants from expressing their opinions impartially; Premature disclosure

may cause some people's legitimate rights and interests to be damaged or gain illegal benefits; Third, process information related to other major administrative decision-making procedures. For the information in the procedures such as expert demonstration, risk assessment, legality review, collective discussion and decision making, the information is immature and uncertain due to the situation in a certain part of the investigation, discussion, research or review process. If it is disclosed in the process of decision-making demonstration, it may cause social disorder, so it is generally not disclosed.

3. The relationship between the legitimacy evaluation of major administrative decisions and the legitimacy review of major government administrative decisions

Since the major administrative decisions of the government often involve public institutions, the division of labor between the government and public institutions is inevitably involved in the major administrative decision procedure. Major government administrative decisions are made in a wide range of areas, and government departments often have more industrial and professional advantages. Therefore, in practice, most local governments entrust demonstration procedures such as public participation and expert demonstration to relevant government departments. Similarly, in the major administrative decisions of the municipal government, it is considered that the departmental legal institutions are more familiar with the departmental laws, so it is relatively advantageous to do the legal work in the professional field well.