

The Innovation of Administrative License under the Background of Governance Modernization

Jiacheng Liu*

Law School, Hunan Normal University, Changsha, 410006, China

**Corresponding author: 474355646@qq.com*

Keywords: Administrative License, Governance Modernization, Rights Guarantee, Limited Government

Abstract: With the appearance of payment administration, administrative license, as a means of government regulation, comes into being. It is rooted in the market economy, resulting from benefit distribution and accompanied by economic effect. In the process of administrative licensing, the change path of the licensee's right is the process of "unlimited - restriction - removal of restriction". Relying only on the instrumental rationality of regulatory means will have the risk of damaging individual transcendental freedom. It is necessary not to regard administrative licensing as a "gift" of the state to citizens. Therefore, it is necessary to clarify the value connotation of the modernization of national governance and establish a new concept of administrative licensing. In the context of promoting the modernization of the national governance system and governance capacity, it is necessary to take the people as the center, establish the concept of rights-based and limited government, transform the management government into a service-oriented government, promote social joint governance, and establish an efficient and concise concept.

1. Introduction

With the establishment and improvement of the socialist market economy, in order to further clarify the relationship between the government and the market, and at the same time to prevent the abnormality of the approval power, the administrative license law and administrative license system came into being in China. From the point of view of Western economics, administrative license seems to be a regulatory means with both benefits and risks. Through such regulatory means, the government sets up a pre-regulation mechanism for the areas that may cause damage to the public interest and prevents the occurrence of risks at the source. From this perspective, it can be said that preventing risks is the most basic and main function of administrative license.^[1] At the same time, the implementation of administrative licensing as a means of regulation is accompanied by risks such as competition restriction, high cost and power abuse.^[2] Therefore, how to deal with the risks and challenges brought by the license system is a problem that all countries need to face. If only from the perspective of regulatory economics, in the dimension of the "cost-benefit" model to define the effectiveness of licensing, then the administrative license system is easily alienated into a runaway horse that infringes on individual freedom. The English poet Alexander Pope said that only a fool would disagree with the form of government.^[3] This extreme view of one-sided

emphasis on the effectiveness of regulation is incompatible with the spirit of modern democracy and the rule of law. So, what kind of ideas should China, which is deepening the reform of the administrative approval system, adopt to deal with the risks and challenges? Therefore, in the context of promoting the modernization of the national governance system and governance capacity, this paper will deconstruct and reflect on the concept of permission as a means of regulation, take the interests of the people as the touchstone of the effectiveness of the reform of the administrative approval system, and further propose the direction of reform on this basis.

2. Administrative License As a Means Of Regulation

2.1. Administrative License Is Rooted In The Market Economy

Administrative license is a means for the state to manage social and economic affairs, and it exists widely in many administrative fields. The decision relation and linkage between market economy and administrative license law constitute the mechanism of administrative license law, and the symbiotic relationship between them is also the basic principle of the construction and development of administrative license system.^[4] The degree of development of the market economy determines the strength of government functions and strictly regulates the scope of government management so that the government can maintain "appropriate" functions. Therefore, the government must act by the legal rules that meet the requirements of the development of the market economy, and give full play to and coordinate the role of the "visible hand" of the government and the "invisible hand" of the market.

2.2. Administrative License Arises From The Distribution Of Benefits

Human needs are the nature of human beings, and the relationship between them is actually the relationship of needs, namely the relationship of interests. People's interest pursuit is manifested as individual interest pursuit, which results in various individual behaviours. It should be pointed out that not all conflicts of interest lead to rights. Only the interests recognized by the social legal system after the interest subject's choice can become rights. Like rights, power is also the product of social and historical development to a certain stage, and human individual interests through a certain form of external transformation. Administrative license is the absorption and transplantation of the license in the private sphere, usually, the property owner grants all or part of his property rights to others so that others can engage in specific activities based on this, such as obtaining the consent of the land owner to cultivate, and obtaining the authorization of the copyright owner to perform. In other words, there is an inevitable requirement for a licensee to perform a certain act - approval or authorization. Administrative license is a regulation from the government, which has the function of controlling the specific scope of activities and is widely adopted by governments as an administrative means.^[5] It can be seen that the basic logical premise of licensing is the limitation of rights caused by the distribution of benefits.

2.3. Administrative License Is Accompanied By Economic Effect

In the operation of any legal system in the world, there are problems of inputs and benefits. In the process of the arrangement and operation of the legal system, it is also necessary to use the method of economic analysis to study and solve the problems of investment, income and efficiency. Usually, the ratio of benefits to costs constitutes the efficiency of the system. The efficiency of the system is affected and restricted by the cost and the benefit, while the benefit of the system is affected and restricted by the transaction cost. These internal links in the operation of the system are

the operation mechanism that should be followed in the arrangement and operation of the legal system to save costs economically and reasonably, without losing the function and role of the legal system, and achieve efficiency and transaction cost constraints. Therefore, the Western European bourgeois countries, which emphasize individual freedom, passively accept the introduction of the license system. Following the idea that "the government with the least control is the best government", Western countries suffered a serious economic crisis at the end of the 19th century, the market mechanism failed, and the government had to use the "visible hand" to make up for the imbalance caused by the "invisible hand", and administrative permission was one of the effective regulatory means in the "visible hand". In other words, the administrative license system is only one way. A scholar believes that if the license system is considered to be both costly and market-intrusive in an economic system, the government must consider other alternative tools that can achieve the same system goals before adopting the license system.^[6]

3. Power-Based Or Rights-Based: Administrative License And Individual Freedom

By analyzing the process of the administrative license system, we can see that the administrative license system grows from nothing to existence, and the change path of the licensee's rights is as follows: unlimited - restricted - unrestricted. From the point of view of the principle of administrative act, administrative act can be divided into benefit-granting administrative act and burden-bearing administrative act according to whether the result of the act is beneficial to or pursued by the relative person. If only from the second step of the above change path, combined with the benefit of administrative licensing, it is easy to form the wrong concept of power. Based on the concept of power standards, some theories about the nature of administrative licensing have been formed. The "privilege theory" holds that administrative licensing is the grant of a concession, and since the state can grant the privilege, it can also change or cancel the privilege at any time.^[7] The "privilege theory" directly enlarges the granting of permission infinitely, so that the act of permission forms a gift to citizens. "Empowerment theory" holds that administrative licensing is an act that the administrative organ that allows the counterpart to engage in a certain activity and grants it certain rights and qualifications, that is, the act of empowerment. The counterpart does not have a right, but it is only by the promise and grant of the administrative authority that he obtains the right that the ordinary person cannot enjoy.^[8] The difference between the two doctrines is that privilege is completely free from the bondage of law, and the process of empowerment should be in the track of law.

Although from the perspective of the legal consequences of administrative licensing, the administrative process effectively creates the constitutive fact of the licensee's rights, these two theories ignore the logical process of the licensee's rights from the original unlimited to the restriction and then to the removal of the restriction, not knowing that the licensee's rights are a priori rights. The inaccuracy of "empowerment theory" lies in that it only reflects the appearance of administrative licensing, and granting permission to the relative person seems to be a "green light" for him to exercise his rights, but in fact, administrative licensing only validates the qualifications and conditions of the relative person to exercise his rights and provides proof of legitimacy.^[9] Therefore, considering that the right exists before the license system, the nature of the administrative licensing can be understood as the release of the obligation of inaction of those who meet the conditions.^[10]

What, then, is the moral justification for such a restriction of transcendental personal freedom? The answer, of course, is not the recklessness of authority, but personal compromise for the sake of public order and the common good. In real society, the actual operators of power often regard power as right. This article holds that administrative license law is a legal system in which power

intervenes in the right implementation. The construction of administrative license law respects the legal system, rights, powers and their interest relations. Its function is to restrict the incompatible interest pursuit between the subject and the social public interest and establish an effective intervention mechanism to restrict the subject's capricious behaviour in the course of interest pursuit.

4. The Value Connotation Of The Modernization Of National Governance And Administrative License

"Cooperation 'is not only the core value goal of national governance but also the basic value goal of administrative law."^[11] The administrative license system as a modern way of national governance should be different from the administrative license system as a regulatory tool or management means. The administrative license system should follow the value pursuit of governance and absorb the spiritual core of good governance. What is the value connotation of the modernization of national governance? The academic community has different views. From the political point of view, the modernization of national governance has the value of publicity, multi-center governance and political legitimacy. The public value is the foundation of constructing political modernization, the multi-center governance value is the path of constructing political modernization, and the legitimacy value is the guarantee of constructing political modernization. From the perspective of society, the modernization of national governance has the value of democracy, justice and the rule of law. The value of democracy is the key to the construction of social modernization, the value of justice is the core of the construction of social modernization, and the value of the rule of law is the internal need of the construction of social modernization. From the perspective of economy, the economic value dimension of national governance modernization is mainly manifested in efficiency and market economy development.^[12] Specifically for China, the value system that reflects Chinese characteristics, national characteristics and times characteristics is the cornerstone of promoting the modernization of the national governance system and governance capacity. Therefore, based on China's reality, a scholar believes that "social justice is not only the value connotation of the modernization of national governance, but also the goal that the modernization of national governance should pursue, and it is also the embodiment of the socialist nature of China's modernization of national governance."^[13]

Different perspectives interpret the value of modernization of the national governance system and governance capacity differently. As a legal system, the administrative license system cannot exist in isolation from politics, society and economy, but should be based on national conditions to build a harmonious and unified multi-value system. Of course, the administrative license system formulated by China should be based on China's politics, economy, society and culture, combined with the value system of China's national governance system and governance capacity modernization, and shape the concept of modern administrative licensing. Therefore, the modernization of the concept of administrative licensing is not a single pursuit of a certain value but should establish a multiple value system. The pluralistic value system must be guided by the constitutional values established in the Chinese Constitution to respond to the requirements of good governance. The administrative license system must comprehensively refine the pluralistic values of protecting human rights, rule of law, democracy and limited government as required by the Constitution. The administrative license system should pursue efficiency, order, justice and human rights based on administrative democracy through due legal procedures in the process of national governance to maximize public interests.^[14]

5. Concept Innovation Of Administrative License

In response to the failure of the market mechanism, administrative licensing as a means of

regulation came into being. It is precisely because of the operation of administrative approval power that makes economic life run healthily. The intervention of administrative approval power has adjusted the market imbalance and produced good economic benefits, so how to explain the concept of "streamlining administration, delegating power and combining delegating control" in the reform of "delegating control and service" in our country? In terms of its rationality, "The drastic reduction of administrative power and expansion of the market and individual freedom in the administrative license law should not only be regarded as the affirmation of market effectiveness and the suspicion of government intervention ability, or only as the recognition of the instrumental value of freedom (mainly economic freedom) but should also be understood as the pursuit of the intrinsic value of freedom and the worship of free will." ^[15] In November 2013, the Third Plenary Session of the 18th CPC Central Committee put forward the major proposition of "modernization of the national governance system and governance capacity". Under the background of promoting the modernization reform of the national governance system and governance capacity, the reform of the administrative examination and approval system will once again significantly reduce the items of administrative examination and approval, innovate management methods, and further transform government functions, and the principle behind these measures is respect for the will of the people. Therefore, in the context of promoting the modernization of the national governance system, the administrative license system as a means of governance should fully cover the connotation of democracy and the rule of law.

5.1. The Interests Of The People Come First

We must establish the concept that the interests of the people come first. "The ultimate goal of the right logic of the modernization of national governance is that the operation of power always revolves around the protection and realization of civil rights." ^[16] The reform of the administrative examination and approval system is an important part of the modernization of the national governance system and governance capacity. Therefore, the criterion to measure the effectiveness of the reform of the administrative examination and approval system or the implementation of the Administrative License Law is whether it conforms to the interests of the people. Therefore, Article 1 of the Administrative License Law of the People's Republic of China defines the protection of people's interests as the legislative purpose of "protecting the legitimate rights and interests of citizens, legal persons and other organizations." "Where the people's rights needs are placed is the judgment of how and whether administrative license can be realized and whether 'good laws and good governance' can be realized, and it is also the inevitable requirement of the construction of the rule of law government to respond to the current needs of the Chinese people for a better life." ^[17] From this point of view, we can say that the function of our country's administrative license is to protect and realize rights. This is not to say that the technical analysis of "cost-benefit" of government supervision is not important, but to emphasize that the regulatory mechanism of administrative license operates under the framework of "good governance", and its value of existence is not only to prevent and control risks and allocate resources reasonably, its connotation is joint governance rather than hegemonic rule, and the ultimate goal is to protect the interests of the people. "From the perspective of the historical evolution of human society, the relationship between human self-development and technology is a mutual promotion, technology from its initial form is belonging to and being human, the logic of humanitarianism and technology identity lies in the value pursuit of human's free and conscious activities and comprehensive physical and mental development, and the nature of humanitarianism promotes the development of technology. The development of technology has promoted the sublimation of humanism, and this logical attribute between them is the fundamental of the continuous progress of human society, and it is also the

internal motive mechanism for the continuous development and improvement of the national governance system."^[18]

5.2. Transform Government Functions And Build a Limited Government

We must transform government functions and build a limited government. "The government-led structure with the attributes of modern governance is different from the all-inclusive state in the period, but it is a rules-based government-led system that changes government functions and breaks the government-led system based on centralized power and lack of constraints."^[19] Therefore, in the field of administrative licensing, it is necessary to implement the concept of "limited government" and implement the reform measures of the Government Reform. On the one hand, since the logical premise of the establishment of administrative licensing is accompanied by the restriction of citizens' rights, the areas that can be adjusted by social governance are handed over to social co-governance as far as possible. "An important area of the reform of the administrative examination and approval system is that the government should delegate power to the public on a large scale, and better leverage social forces to solve economic and social development problems that the government cannot control. By strengthening basic institutional construction, formulating service standards and competition rules for relevant industries, social organizations should improve their self-development capacity and management level."^[20] On the other hand, it is necessary to make it clear that administrative licensing is the lifting of the non-action obligation of the relative person, and it is the legal interest of the relative person rather than the gift of the government. Therefore, the exercise of the discretionary power of administrative licensing should be strictly controlled.

5.3. Create a Pattern Of Co-Governance Of Diverse Social Entities

It is necessary to create a pattern of co-governance of diverse social entities. To strengthen and make innovations in social governance and build a new era of social governance featuring joint contribution, joint governance and shared benefits, we must uphold the principal position of the people. A modern governance system is a multi-tiered governance system that gives play to the common wisdom of the people and embodies full democracy. Governance is only one part of the governance system. The subject of governance is not only limited to state administrative organs but also involves various non-government organisations besides government subjects. Generally speaking, these non-government subjects have a wide range, including social organizations, enterprises and institutions, media, the general public, etc. These subjects constitute the stakeholders of governance. The process of interest coordination may be a process of mutual benefit of all stakeholders or a process of loss of interests of some stakeholders. But in general, based on the basic theory of realizing public interests by regulation, the overall interests of society can be improved. Stakeholders formed based on rights or interests are more likely to reach agreements or concerted actions on key issues that take into account the interests of all parties. The diversification of regulatory governance entities can aggregate the joint efforts of the government, the market and the society, stimulate the self-regulatory motivation and enthusiasm of market entities through the macro-guidance of government entities, mobilize the desire of social entities to participate in regulation, and to a certain extent solve the doubts caused by the administrative regulation of a single entity, such as the inefficiency, fragmentation and injustice of regulation.^[21]

5.4. Establish The Concept Of Efficiency And Simplicity

It is necessary to establish the concept of efficiency and simplicity. Law is a tool to protect people's rights and interests, and the law should reflect the unity of democracy and science. In the

past, some of our government organs did not provide convenient and fast services to their counterparts as much as possible due to various reasons such as concepts, systems and specific work systems, but set up various cumbersome procedures and procedures, so that the relative people often had to go to several or even dozens of government departments to obtain a permit, spending several months or even longer. Given this situation, the staff of the administrative organs must attach great importance to the establishment of an efficient law enforcement concept as a strategic task. The establishment of an efficient law enforcement concept depends on the following three aspects: First, the responsibilities and powers of the internal departments must be clear, specific and in line with the actual law enforcement work. Second, all departments should have a sense of the overall situation in their specific work and should not affect the overall situation because of specific effects. Third, all departments should make full use of advanced technical means and realize voluntary sharing as far as possible.

6. Conclusions

With the appearance of payment administration, administrative law enforcement can no longer be simply explained by the "conveyor belt" theory. How to find the rational operation of administrative discretion under the background of the administrative license system based on the obligation of imposing inaction on citizens is the problem that the whole process of administrative licensing operation needs to face. "Contemporary administrative law focuses on the coordination of diverse interests, that is, service and cooperation, trust and communication, consultation and dialogue, so that the administration gets rid of the role bondage and identity fetters of human rights opposition, and realizes the harmonious coexistence and win-win cooperation between the government and the public, reflecting the spirit of humanism in administrative law."^[22] The modernization of the national governance system and governance capacity requires us to transcend the instrumental rationality of administrative licensing, take the interests of the people as the ultimate value goal, and pay attention to the people's will to implement the governance process of administrative licensing and build a limited government and a service government.

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