

Theoretical Analysis and System Improvement of Administrative Interviews in the Field of Internet Information Supervision

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Abstract

With the implementation of the "Ten Articles of Interviewing", the implementation of administrative interviews in the field of Internet information supervision has become more and more common, and many problems have also been exposed, such as the difficulty of defining the nature, the inconsistent legal provisions of various departments, and the alienation into compulsory, etc. Therefore, it is necessary to further research and improvement of administrative interviews in the field of Internet information supervision. This paper proposes to jump out of the framework of the theory of administrative behavior, view the nature of administrative interviews from the perspective of the theory of administrative process, and put forward some improvement suggestions such as clarifying the jurisdiction of each department, revising the ten articles of interviews, and clarifying the starting procedures of interviews.

Keywords

Internet Information; Administrative Interview; Administrative Process Theory; Administrative Behavior.

1. Introduction

With the widespread application of the Internet in all aspects of society, the supervision of information on Internet platforms has gradually become a major issue that administrative agencies have to pay attention to. Although relevant legal systems are constantly improving and law enforcement methods are constantly being scientific, information supervision is still a difficult problem. In addition to adopting rigid law enforcement means to deal with consequences, adding flexible law enforcement means such as administrative interviews can effectively improve administrative efficiency and reduce social conflicts. At present, due to the existence of various problems such as the lack of detailed procedures and the lack of related supporting measures, the application of my country's administrative interview system in the field of Internet information supervision is not perfect, and it is difficult to achieve the expected results. Therefore, by analyzing the theoretical nature of administrative interviews in the field of Internet information, the author will provide some ideas for the improvement of the legislation of administrative interviews and the better practical effects of law enforcement.

2. Current Legislation

In China, administrative interviews have become a common method for law enforcement departments [1], and are widely used in practice in various fields. According to the author's incomplete statistics, among the current laws and regulations, 18 laws refer to interviews, 118 administrative regulations involve interviews, and there are more than 40 judicial interpretations and 1,636 related departmental regulations. Among them, more than 30 administrative regulations involve the special regulation of administrative interviews, most of which are concentrated in 2019; in the epidemic prevention and control work in early 2020, law enforcement departments have also made full use of interviews to regulate unfair

competition in the prices of masks and other medical supplies . The above situation shows that the flexible law enforcement method of interview has been adopted by more and more industries and departments, and the field of Internet information supervision is no exception . facilitate further research .

2.1. Relevant Provisions of Administrative Interviews in Laws and Regulations

Judging from the existing legislation in the field of Internet information supervision , the " Internet Security Law of the People's Republic of China " is a law formulated by the National People's Congress. Articles 40 to 50 stipulate that individuals or operators using the Internet should abide by relevant laws and regulations are regulated by the competent authorities . Before the implementation of the Cybersecurity Law of the People's Republic of China , the State Council formulated and promulgated the Measures for the Administration of Internet Information Services in 2011 , which are administrative regulations . more detailed provisions , but no mention of interviews and their effects . In 2014 , the State Council issued the " Notice of the State Council on Authorizing the Cyberspace Administration of China to be responsible for the management of Internet information content " to fully delegate the statutory supervision power to the Cyberspace Administration of China .

2.2. Relevant Regulations on Administrative Interviews in Other Normative Documents

After the Cyberspace Administration of China obtained the statutory supervision power , in 2015 , in accordance with the above-mentioned laws and regulations and departmental rules , it formulated the " Regulations on the Work of Interviews with Internet News Information Service Units " , which are departmental normative documents . , effectiveness, etc. , which is an important symbol of the normal application of administrative interviews in the field of Internet information supervision . At the same time, due to the development of Internet information , some new problems have arisen in the field of supervision. In 2017 , the Cyberspace Administration of China revised the " Regulations on the Administration of Internet News Information Services " in accordance with the above-mentioned laws, regulations and departmental rules . Specific provisions are made on the subject qualifications, operation methods and legal responsibilities of users. Article 21 mentions that the national and local Internet information offices should establish a system of interviews.

3. Characteristics of Administrative Interviews in the Field of Internet Information Supervision

The particularity of the Internet information field determines that the administrative interview in this administrative supervision field has the following characteristics: First, the interviewee is mainly the information platform rather than the information publisher. Although individuals who publish Internet information and platforms that provide information are both subject to administrative supervision, in practice, due to the anonymous nature of Internet information, there are high enforcement costs and difficulties in conducting interviews for individuals who publish illegal information. The problem is contrary to the function of administrative interviews to save law enforcement costs, so most administrative subjects conduct interviews on platforms where illegal information appears. Or urge the platform to fulfill its self-monitoring responsibilities, delete illegal information posted by individual users and ban their accounts; or criticize and educate the platform's own illegal behavior, so that it can be corrected in a timely manner. Second, interviews are mostly used to communicate the direction of rectification afterwards. According to Article 2 of the "Ten Rules for Interviews" issued by the Cyberspace Administration of the People's Republic of China, only when there are serious violations of laws and regulations on the Internet information platform , can the relevant

person in charge be interviewed. In practice, in order to distinguish it from administrative punishment, the content of the interview is mostly to communicate the direction of rectification. For example, on June 23, 2020, the Cyberspace Administration of the People's Republic of China interviewed more than ten major domestic live broadcast platforms in response to issues such as the dissemination of vulgar and vulgar content. Depending on the circumstances, some platforms were required to stop updating the content of major channels or suspend the registration of new users. method to modify. Third, interviews are mandatory to a certain extent. According to Article 6 of the Ten Articles of Interview, the Internet information platform shall implement the rectification requirements in a timely manner, and stipulates the obligation of the counterparty to implement the rectification requirements. Article 7 stipulates that if the rectification is refused or the rectification fails to meet the requirements, it will directly lead to the occurrence of compulsory administrative actions such as warning, fine, revocation of license, order to suspend business. Repeated interviews can be severely punished. At the same time, its compulsion is not only reflected in the laws and regulations, but also because of its high-speed dissemination characteristics, the authority of the government is magnified on the Internet. Even if it is just an interview without any punishment, the rapid spread of news can still cause substantial damage to the parties involved. Negative impact.

4. Legal Nature of Administrative Interviews in the Field of Internet Information Supervision

At present, the academic circles have the following views on the nature of administrative interviews in the field of Internet information supervision:

4.1. Analysis of Administrative Behavior Theory

Quasi-administrative behavior : Some scholars believe that, from the perspective of the practical application of administrative interviews in the field of Internet information supervision, they are more inclined to quasi-administrative behaviors. Quasi-administrative behavior is an administrative behavior that indirectly produces administrative legal effects [2] . It is mainly made by the administrative subject in the form of conceptual expression by using administrative powers and powers, and will not directly change the rights and obligations of the counterparty; it needs to be combined with subsequent facts, And with reference to the relevant legal provisions, the rights and obligations of the counterparty will be changed and legal effects will be produced. In the administrative interview in the field of Internet information supervision, the rectification requirements put forward by the administrative subject on the counterparty are similar to those. The rectification requirements themselves do not change the rights and obligations of the counterparty, do not directly produce legal effects, and are not mandatory; Only when the new fact of "qualified" appears, can the rights and obligations of the counterparty be changed by making new administrative penalties and other administrative actions in combination with other relevant laws and regulations.

It is an administrative act : in the practical application of Internet information supervision, administrative interview is generally regarded as an administrative act. Conclusions can easily lead to research debates. From a subjective point of view, the administrative organ does try to use the interview as a tool to achieve the purpose of state administration, and subjectively has the meaning of having a legal effect on the conduct of the interview. However, it cannot be arbitrarily identified as an administrative legal act, because from an objective point of view, the legal education or policy explanation through administrative interviews, as well as the communication of rectification methods and methods, will not directly change the rights and obligations of the parties involved. It has the characteristics of administrative factual behavior [3] .

The author believes that although it is reasonable to classify administrative interviews in the field of Internet information supervision as quasi-administrative acts, there are still some unreasonable points to be resolved. However, the administrative interview itself is a complete administrative act and has its own independent value. The interview is not the stage of punishment. At the same time, quasi-administrative act, as an academic term, has not been adopted by the current legal system in our country, and various studies have showing thinness, the administrative interviews that have entered the practical stage in the field of Internet information supervision are simply classified as thin academic concepts, which are of little help in improving the administrative interviewing system in the field of Internet information supervision.

To sum up, the administrative interview behavior in the field of Internet information supervision has both the attributes of administrative legal acts and some features of administrative factual acts, and cannot be arbitrarily classified as administrative legal acts or administrative factual acts. From the perspective of administrative behavior theory, it is difficult to make a breakthrough in the classification of administrative interviews, and proposing a new administrative behavior faces the complexity of the theoretical system and greater research costs. The introduction of a new theoretical perspective may be possible. Solve the current dilemma.

4.2. Exploration of Administrative Process Theory

The administrative process theory believes that administrative behavior is procedural, and it is a continuous, dynamic and staged combination [4]. A single administrative act has different procedures and different links at different stages, and each link has its own process significance, so each link can be independently qualitatively researched. Generally, administrative behavior is divided into pre-event process, inter-event process and feedback process, each process has different stages, and each stage has different links.

If studied from the perspective of administrative process theory, the application of administrative interview in the field of Internet information supervision is also a process, which is a series of behavior collections for the administrative subject to achieve the purpose of national administrative management, and it also consists of different stages. Based on the "Ten Articles of Interviews" and related supplementary regulations, and referring to the practice of interviews in other relatively mature fields, the author believes that the administrative interviews in the field of Internet information supervision can be divided into the following stages from the perspective of the administrative process theory: First, The pre-event stage refers to the administrative organ issuing a "Notice of Interview" to the counterparty before the interview takes place. The second is the inter-event stage, which refers to the fact that during the interview, the administrative organ will truthfully make the "Interview Record" according to the situation and have it signed and confirmed by the counterparty. The last stage is the feedback stage, which means that after the interview is over, a "requirement for rectification" is made, a rectification inspection is conducted, and an "administrative punishment decision" is made according to the rectification situation.

Through the research method of the administrative process theory, after the administrative interview in the field of Internet information supervision is divided into stages, each behavior in each stage can be characterized separately. Before the interview, the purpose of making a "Notice of Interview" is to inform the administrative relative The reason, time, place and participants of the interview, etc., the "Interview Record" produced during the interview aims to objectively record the process and content of the interview. These two acts do not change the rights and obligations of the counterparty, and are generally considered to be preparatory acts and belong to administrative factual acts. According to the "Administrative Litigation Law" and related interpretations, the above-mentioned preparatory actions are generally not

actionable, and only the final administrative decision caused by such preparatory actions can be litigated. If the content of the document has a certain coercive force, the document will be transformed into an administrative legal act, thus being actionable.

According to the current laws and regulations, in the field of Internet information supervision, the administrative interview procedure is initiated after the counterparty has violated the law seriously, and it can be concluded that the Rectification Request issued by the interview is an administrative order rather than a warning. The rights and obligations of people can have a direct impact, and it is an administrative legal act.

To sum up, the author believes that in the field of Internet information supervision, from the perspective of administrative behavior theory, the classification methods proposed by academic circles have their own shortcomings, but proposing a new type of administrative behavior is easy to complicate simple problems. change. From the perspective of administrative process theory, dismantling in stages, it can be clearly seen that some stages of behavior are administrative legal actions and are actionable, while some stages are administrative factual actions, which are generally not actionable. To a certain extent, it solves the problems of the qualitative nature of administrative interviews and whether they are actionable in the field of Internet information supervision.

5. Problems

5.1. The Regulations of Various Fields and Departments are not Uniform

From the work scope of computer information management technology, the capture and processing of information are the two most basic tasks, which are also the basic conditions to ensure efficient office work in various fields. For this reason, in the update road of computer information management technology from the perspective of security, the continuous deepening of the functionality of information capture and processing should be given top priority. During this period, the main operations should include two aspects:

First, integrate radio frequency identification (RFID) technology into the development and application of computer information management technology. Since RFID technology is a cutting-edge technology for information capture and processing, by using wireless communication combined with data access, information can be effectively captured and processed, thereby ensuring that complex information systems can be effectively classified and stored. Therefore, in computer information In the information capture and processing of management technology, radio frequency identification (RFID) technology should be scientifically and reasonably integrated, so as to ensure that various information capture and processing work can always be carried out efficiently and in a standardized manner, thereby improving the efficiency of computer information management. Security lays a solid foundation. Second, the information capture and processing functions of graphics and images are used as an important supplement. Undoubtedly, the information office of all walks of life and various fields will involve capturing information from graphics or images and processing the information effectively. The emergence of loopholes is obviously not conducive to the security in the process of information use. Therefore, in the road of computer information management technology update, the function of deepening information capture and processing must be taken as an important entry point, and the information capture and processing functions of graphics and images must be continuously supplemented.

5.2. Alienation into Coercion

Generally speaking, the traditional administrative legal acts have the characteristics of unilateral will and coercion [6]. The administrative interview is under the guidance of the concept of serving the administration, in order to make up for the insufficiency of the traditional

administrative means. In the tax field where administrative interviews first appeared, the Circular of Beijing Local Taxation Bureau on Tax Interview Matters, promulgated and implemented in 2003, clearly stated that if the counterparty believes that the interview procedures do not meet the regulations, they will be interviewed. The person has the right to refuse to participate in the interview; although the right of the counterparty to refuse to participate in the interview is limited [7], it is still the embodiment of the "non-mandatory" of the interview. However, in the current laws and regulations in the field of Internet information supervision, that is, the "Ten Articles for Interviews", it is clearly stipulated that "When the State Internet Information Office and local Internet Information Offices perform their interview duties, Internet news information service units shall cooperate with them. It must not be rejected or obstructed." Administrative interview should be a process of equal communication and communication between the two parties, but forcing the counterparty to participate in the interview by means of the threat of punishment deprives the counterparty of the right to freely choose and restricts the free will of the interviewee. The reason is still the embodiment of the "government-based" administrative concept, which runs counter to the concept of service administration [8]. As a flexible method of law enforcement, administrative interviews will only make the conversation before the result meaningless, and will inevitably lead to the alienation of administrative interviews into administrative orders, thus making administrative interviews a form of formality. Executive orders, a layer of fig leaf "serving the administration", are far from fulfilling the role that interviews should have.

6. Suggestions for Improvement

6.1. Establish a Joint Interview System Involving Professional Fields

Analyzing the normative documents of administrative interviews in various fields in my country, we can see that there is an obvious situation of "cold up and down" in administrative interviews. Each field has its own normative documents issued by relevant departments to regulate the conduct of interviews in their fields, and to communicate with Internet information. The "Ten Rules for Interviews" in the regulatory field are on the same level, which means that interviews involving Internet information platforms in various fields do not have to respect the powers and powers of the Internet Information Office and the particularity of Internet information platforms. This leads to excessive interpretation of public opinion, and solves a series of problems arising from the particularity of Internet information, such as solving the platform but not the actors. To this end, there is an urgent need to improve the level of legislation related to Internet information supervision, unify the legislation in various fields involving Internet information, and establish a joint jurisdiction system involving professional fields. The State Council shall revise the "Administrative Measures for Internet Information Services", adding that administrative acts involving supervision in the field of Internet information shall be jointly implemented by the Internet Information Office [9]. On the one hand, administrative interviews are only one of the means of law enforcement, and should not be positioned at an excessively high level; on the other hand, this issue is not just an issue of administrative interviews, but a common problem involving all administrative means of Internet information supervision. Therefore, the author believes that it is more appropriate to revise the existing administrative regulations, confirm the joint interview, and then gradually explore the formation of more complete administrative regulations and departmental normative documents in practice.

6.2. Return to the Legal Orientation of Administrative Interviews

After the previous discussion, administrative interview is a flexible means of law enforcement. However, in the provisions of the "Ten Articles of Interview", it is given a rigid feature, that is, the law enforcement agency shall not refuse the interview, and the results of the interview

should also be performed, so that the function of the administrative interview is alienated into an order and punishment. To this end, it is urgent to remove the part with mandatory obligations in the "Ten Articles of Interview", and to give the counterparty the right to refuse at the level of laws and regulations. The author believes that in order to make the administrative interview in the field of Internet information supervision return to its proper legal position, it is first necessary to revise the "Ten Articles of Interview", delete its ninth article, and remove the obligations directly conferred on the counterparty by laws and regulations. At the same time, you can refer to the "Notice of the Beijing Local Taxation Bureau on Tax Interview Matters", adding that when the counterparty believes that the Internet Information Office's implementation of the interview does not meet the requirements, it can refuse to accept the interview, and reconsider or appeal the decision of the interview. At the same time, amend the second subsection of Article 6 to make the Rectification Requirements no longer have mandatory force, and return its function to the administrative penalty and administrative orders, so that the administrative interview will return to its legal position of communication and coordination.

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