

论文

行政责令行为法律规范分析及立法规范

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摘要:

责令行为规范普遍存在于现行法律中,责令行为规范可分为司法责令规范和行政责令规范。行政责令规范可进一步分为内部行政责令规范和外部行政责令规范。通过对行政责令行为内涵的考量,可以确立特定的界分基准,将外部责令行为中的处罚性责令行为与命令性责令行为进行明确区分。根据法律规范中“制裁”要素的结构,可将具有行政命令性的责令行为规范分为五种类型,不同结构类型体现出不同的法律规范功能。现行的行政责令行为规范存在词义界定不明确、结构选用不合理、行为配置不科学等诸多问题,有必要构建典型的行政责令行为规范模型,以推动行政责令法律规范的一致性、规范性和科学性。

关键词: 责令行为 规范结构 行政命令 行政处罚

An Analysis of the Legal Provisions and Legal Legislation on Administrative Orders

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Abstract:

Order provisions, a common part of the current law, can be divided into provisions of judicial order and those of administrative order. The provisions of administrative order can be further divided into inner order actions and external order actions. An examination of the connotation of the administrative order action may lead to the establishment of specific standards, with the help of which the external order actions can clearly be classified into penalty order actions and non-penalty order actions. It is necessary to classify order actions before their nature can be determined. The nature of "ordering for suspension" can be classified from the following three aspects. First, "ordering for suspension" with a penalty nature can only be made after legal qualification has been obtained. Secondly, the overall suspension of the party's business shall be classified as penalty order action, while the order to suspend illegal business shall be classified as non-penalty order action. Finally, ordering to suspend non-production and non-business activities is not equal to "ordering for suspension of production or business," nor does it have the attributes of administrative penalty. The nature of other order actions can be judged from the punitive features of the administrative penalty. Generally, the structure of legal legislation is composed of three elements: the assumed element, the processing element and the sanctionative element. According to the structure of the "sanctionative element" in the order provision, non-penalty order actions are categorized into five types, namely, unconstrained single order structure, constrained single order structure, selecting punishment structure, conditioning punishment structure and punishment structure. Different types of structure reflect different functions of regulation. The current provisions of administrative order have some demerits, such as inaccurate term definition, unreasonable structure choice, and unscientific action establishment. Specifically speaking, the "order" in some provisions applies to the parties with no relationship of subordination or management, which goes against both the general meaning and specific meaning of "order." Some provisions do not take into account the structure function and applicable cases of the "sanctionative element," which results in the unfair legislation. Some provisions do not distinguish the function of administrative order from that of administrative penalty, and do not take into account the sanction strength of specific administrative orders and administrative penalties. It is necessary to construct a typical model for administrative order to make the administrative legal provisions more unified, normative and scientific. The typical model for administrative order should obey two principles: fully embodying the remedial function of order actions and ensuring the execution of administrative order. In the combined order provisions, administrative orders become the assistant measures of other administrative actions, and are absorbed by other administrative actions in procedures and relief-granting. The provision of "unconstrained single command structure" does not include the legal consequence of failing to perform the administrative

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order, which greatly weakens its authority and executive effect . Therefore, " the constrained single command structure " should be taken as the typical model of administrative order, that is, " a administrative order + ' refused to... ' + sanctions ." The key parts of typical model are " administrative order " and " sanctions ." The major function of the " sanctions " is ensuring the performance of administrative orders . Thus, the " sanctions " should normally contain the executive measures as well as the corresponding punitive measures if necessary .

Keywords: order actions provision structure administrative order administrative penalty

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