

## **Administrative Law without Management Research**

**-- From the perspective of citizen's spontaneous business activities for the analysis**

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**Abstract:** Citizens' engagement in relevant activities for administrative organs are one of the reasons for the absence of administrative law in administrative management. Citizens, legal persons and other organizations, acting as administrative entities in the absence of statutory or agreed administrative obligations and in emergencies, manage public affairs activities. The reason that administrative law is not justified by management is that it is devised for the public interest. In the legal relationship with the administrative subject, citizens and other non-consensual obligations necessarily correspond to the administrative authority's power of reason. No administrative law is recognized, rewarded or compensated as a result of proper conduct of administration; an improper result is compensation or punishment. Citizens and other administrative laws will not be affected by the administrative system, so the impact on the administrative legal system will be very positive and obvious.

### **1. The question is raised**

On November 24, 2017, Zhu Zhenbiao, a young man from Tangshan, was informed that he was the defendant, after receiving a notice from the People's Court of Luanan County, Hebei Province. In January, his father, Zhang Yonghuan, was killed by a train and demanded compensation of more than 600,000 yuan, the plaintiff said in the complaint. The family of the deceased, Zhang Yonghuan, said that "it is impossible to kill people to kill people". Zhu Zhenbiao's pursuit was a leading cause of Zhang's death. Legal evening news reporter from Zhu Zhenbiao's hometown of Tangshan City of the Liuzan Town of the Liuzan Town of Liuzan, the village of Yushou, the villagers all said Zhu Zhenbiao "has a sense of justice". According to reports, on January 9, 2017, Zhang Yonghuan ran into a motorcycle hit-and-run, Zhu Zhenbiao cycling to follow, in the process of holding cell phone recording video. According to video, Mr. Zhang fled in a village after abandoning his car, heading toward the nearby South Railway Area, turning over the net and continuing to walk on the tracks. Mr. Zhu said his phone was out of power about five minutes after he was removed from the network. He saw Zhang Yonghuan wandered the tracks, after about 20 minutes, coming from a distance a train, "he went up to between two rail stood there motionless, I stood on the track, shaking, took off his jacket, want the train to stop. Then the staff on the train told me that it was not going to stop. Mr. Zhang was later killed. Why does the perpetrator pursue the perpetrator? "To see the perpetrators escape, I don't think I can turn a blind eye," Zhu said. For now, Zhu has hired a lawyer who believes the judge will have a fair sentence on the day of the court session. For this case, the author has the following questions: Zhu Zhenbiao's behavior was originally police officer's authority behavior, but the police is not present, can he exercise the power of the police? If Zhu Zhenbiao was a people's policeman in this case, what kind of responsibility would he take? Is Zhu Zhenbiao's tracking legal? Is it justified?

### **2. The administrative law no definition of management**

Of administrative law no definition of management. The so-called non-management, that is not entrusted, there is no statutory or contractual obligations and management of affairs for others. Among them, the management of people who are called "managers", "others" is called "managed" or

"I". No reason refers to "no legal obligation". Generally speaking, there are three elements that make up a no-cause management: first, managing affairs for others. This is a subjective element that constitutes a cause-free management. According to Article 93 of the General Principles of Civil Law, the meaning of "for others" means "to avoid the loss of the interests of others." Second, "management" of other people's affairs. This constitutes an objective element of no-cause management. This element emphasizes that managers must implement management actions. This act of management can be either a de facto act or a legal act, but a simple omission does not belong to "management." Third, there is no legal obligation. That means there is no statutory obligations, nor the agreed obligations. At the same time, their actions must also be non-performance of their moral, religious and public welfare obligations. The so-called administrative law without management refers to the citizens, legal persons or other organizations in the absence of statutory or agreed administrative obligations under the premise of an emergency in the case, on behalf of the administrative body to manage public affairs activities. The specific understanding is as follows: First, from the main point of view, the main body is in addition to the executive authorities or laws and regulations authorized organizations, including civil servants other than citizens, legal persons or other organizations. The author does not have administrative organs or laws and regulations authorized organizations to exercise their own authority has nothing to do with administrative activities identified as non-management, the main reason is that this article is about the public law without cause management, that is, all the public authority as a whole or from the perspective of administrative power, the administrative body is regarded as one. In addition, because the constituent members currently exercising public power are collectively referred to as civil servants in our country, they are obliged to act first as civil servants. Second, judging from the content, administrative law is free from the administrative obligations that managers can not agree or agree on. Obviously, the obligations here include both statutory and contractual obligations. In other words, administrative law is free from both types of obligations as a manager. Thirdly, from the perspective of scope, administrative law can manage public affairs for the administrative body without management. That is, the administrative body manages the public affairs so as to protect the interests of others or the public interest or even the interests of the administrative organs from their losses. It should be said that on the surface of administration-law-free administration, it must be that it objectively manages the public affairs that should be governed by the executive authorities and civil servants, that is, belongs to the field of public administration. In fact, such administration may directly involve the interests. However, this kind of interest may not be entirely public interests, and may include private interests of citizens, and may even include the interests of the executive authorities themselves. Fourthly, from an objective point of view, administrative law does not in fact manage public affairs because of its management and objectively protects the interests of others or the public interest from being lost. Fifthly, from the point of view of time, administrative law is free from administrative management of public affairs in the event of emergencies. That is, administrative law is not randomly generated by management, rather than fully prepared or deliberate.

Administrative law without management and administrative commissioned. Administrative entrustment refers to the system that the administrative organ entrusts the social public power organizations or private rights organizations other than the administrative organ system to exercise some kind of administrative function and handle certain administrative affairs in the name of the administrative organ and bear the corresponding legal responsibility by the administrative organ. Obviously, social public authority organizations or private rights organizations other than the administrative organ system are entrusted with administrative power because the delegated executive power is "due to management" and the main form of "cause" lies in the administrative organ. Therefore, the administrative law without any difference between the management and administration is very obvious, the administrative commission in the final analysis is a due agency.

Administrative law without reasoning and presumption of power. The presumption of rights means that, except for the rights expressly prescribed by the law, as long as the law is not prohibited, the subject can be presumed as a right and then enjoy or exercise the right. "Law does not prohibit, it can be done" is the manifestation of this principle. Conversely, unpredictable power is a principle that

is monopolized by the state. With the progress of democracy and the rule of law, the concept of the inalienable assumption of power also changes and develops along with the administrative mode and makes some breakthroughs. For ordinary citizens, it becomes natural to exercise administrative power without emergency in the absence of the executive.

Administrative law without courage and courageous management. Courageous is literally well understood: "to do something bravely when you see what is right." But the question is what is just something? How to do justice? This in turn makes courageous a vague concept. However, no matter how ambitious or pluralistic those courageous people are, it is clear that some courageous people do not belong to administrative law because of their management. The main reason is: Some courageous factors for the sake of no reason, but there are no management factors, especially the absence of administrative factors in administrative law, and may be civil law management or without management.

Administrative law without administrative and administrative omissions. One of the reasons or the reason why citizens and the like have implemented administrationless law in administrative law lies in the absence of the executive authorities while the situation is in a state of emergency. In this way, there is no relationship between administration and administration as the inaction or omission. That is to say, under many circumstances, administrative agencies will not act on the premise that citizens, some do not act as administrative agencies in fact can not, so narrowly understood that "as can not" does not belong to administrative omission, because the administrative omission usually means that the administrative organs with obligations can not be procedural instead of, and not Including the negative result of the result is not.

### **3. The legitimacy of administrative law has nothing to do with management**

Public interest is able to meet the needs of all people within a certain range, namely with the object of public utility, or that can satisfy all the people living within a certain range, enjoyment and development, has the resources and conditions of public utility. Although there have been various forms of state change since ancient times, there are different explanations for the reasons for the existence of the state, but there is no doubt that the public interest is the legitimate reason for the existence of the state. According to Rousseau and others, the government originates from the delegation of citizens, and the power of the government originates from the "natural human rights" of the citizens. That is to say, the power of the people's will of its own talent entrusted to a specific person to form a government, let the "agent" as a citizen power, ACTS as a communication tool between the state and citizen, so the government only citizens of the "sovereignty" administrative execution. As far as the administration itself is concerned, its origin lies in the public interest. In other words, the government is the intermediary between the people and the sovereign body, so that they can communicate with each other. So, similar to the form of a contract, citizens have sacrificed this part or all of their own power, in return for certain rights, such not only explains the source of the power of the government, but also the exercise of state power to the concept of public service. In addition, in an emergency situation, because the government and civil servants is not present or is present but it is unable to act alone to complete the task, such as citizens in cannot or the agreement under the premise of administrative compulsory management of public affairs, and on behalf of the administrative subject of negotiorum gestio must also is for the sake of public interests. Because, in many cases, the management may or expression is directly to a person's interests, even on the formation of negotiorum gestio can also be civil, rather than on the public law or administrative law, therefore, only from the implication of the administrative or public administration for objective criteria, this is in the public interest. In short, there is no public interest, and no administrative law is not subject to management.

## **4. No administrative law as a result of management**

### **4.1 No administrative law due to the legitimate act of management results**

Administrative ratification. Citizens and other non-implementation of the management, the administration of the alternative management if the behavior should indeed be borne by their own, the behavior should be ratified. There is a view that there is a lack of evidence for the post-confirmation of the acts made by the organs without the authority with the authority in our country's legislation and law-enforcement practice. The confirmation of the post-confirmation of the organs without authority by the competent authorities runs counter to the principle of statutory authority, And the protection of the rights and interests of the counterparty are all unfavorable, which can not be adopted under the current legal system. I believe that the implementation of non-citizens due to behavior management should establish an administrative system of ratification to be protected, that is, the executive authorities of citizens and other non-management of the affair after the affirmation, making it a legal and effective administrative system of conduct. Obviously, the behavior of Zhu Zhenbiao belongs to no cause management. It is justified. Although the result is unexpected, it is feasible if the public security organ that is empowered afterwards recognizes or ratifies the act. Because there is no cause for management, even if the public security organs or the police have the right to implement the act, there will be the same possibility of the result. Therefore, it should be recognized by the competent public security organ as an effective administrative act that is not effective because of the administrative act, Illegal, to achieve administrative efficiency.

Administrative rewards. Citizens and other alternative government-administered non-management behavior is a praiseworthy act, because such behavior is not part of the matter, through the recognition of the perpetrator is a recognition of the community as a guide. The traditional administrative rewards refer to the specific administrative actions that the administrative body gives material and spiritual encouragement to the units and individuals that have made significant contributions to the country and society in accordance with the legal conditions and procedures. Its purpose is to recognize advanced and spur backward. Administrative awards, although issued for specific individuals and organizations, have a general incentive to the general public. Obviously, this way of management has weakened the color of power, compared with the way of administrative order, administrative compulsion and administrative punishment. It not only reflects the respect of the relatives but also reflects the democracy more. Of course, administrative rewards can not replace traditional administrative measures such as administrative orders, compulsions and penalties. As a new management measure, administrative rewards can only supplement the traditional management methods. Reward and punishment are a category of social management. However, in the traditional administrative law, discipline as the primary objective means that rewards seem dispensable. The administrative reward achieves the administrative goal because of the incentive effect. Establishing the administrative reward system is an important content to improve the management mode and improve the administrative efficiency.

Administrative compensation. Citizens and other non-executive management for the loss caused to themselves, the executive authorities should be compensated to make up for the loss has been formed. The 2004 Constitutional Amendment amended Article 10, paragraph 3, of the Constitution to read as follows: "In order to meet the needs of the public interest, the state may impose or requisition land and impose compensation according to the law." Therefore, there is a basis for compensation. Of course, this is an expansive explanation. At the same time, administrative compensation procedures must also be improved and strengthened. The compensation procedures for administrative organs should include the following procedures: One is to take the initiative to compensate for the procedure and the other is to apply for the compensation procedure. If the compensation agreement can not be reached, the administrative organ shall make a ruling according to law. The verdict shall state the reasons and reasons for the compensation, the compensation method, the compensation standard and the period of compensation, and shall inform the applicant of the right of administrative reconsideration and administrative suit and the limitation of time. If the counterparty has any

objection to the amount of compensation of the administrative organ or the administrative organ fails to make a decision on compensation within the time limit, it may seek settlement through administrative review and administrative litigation.

Administrative compensation. As mentioned above, because some administrative lawless administration is caused by inaction of administrative organs, as well as causing damage to both the former citizen and the latter citizen, it involves administrative compensation and administrative compensation. The current administrative compensation is based on the definition and scope of the basic meaning of the relevant provisions of the "Administrative Procedure Law" and "State Compensation Law", usually refers to the compensation for damage caused by the specific administrative act and factual act of infringement, and mainly refers to As the administrative behavior and the usual mode meaning of the administrative actions, such as administrative compulsory behavior, the behavior of administrative penalties and almost does not involve not as administrative acts and non-mode administrative acts, such as non-management behavior. Therefore, it is undoubtedly important to find a breakthrough for such situations at a time when the scope of administrative compensation has been expanded and legislation has been aroused. However, the recognition of non-administrative acts as well as the non-consensual damage caused by administrative law is Easier to find reasonable grounds and proper operation. Of course, if so, it is also the progress and development of the theory of administrative law.

#### **4.2 No administrative law as a result of improper management practices**

Citizens, legal persons or other organizations should bear the corresponding responsibility if they are unfair or do not constitute an administrative law without any administrative reasons such as non-management due to ill-treatment such as civil law, the legal consequences, if caused losses, the need to bear the liability for compensation for civil infringement; if constituted a crime, but also need to bear the criminal responsibility. Obviously, this is beyond the scope of administrative law and belongs to the civil law or criminal law fields. In the second example cited in this article, Lao Bo's behavior has gone beyond the scope of administrative law, or not at all, because of the absence of administrative law because police officers are present and the police are absent or unable to attend in time. Is to constitute a condition of administrative law without cause; Secondly, the police are taking measures to implement their powers, such as police misconduct caused damage to it should bear the responsibility of administrative law. Therefore, the behavior of the old man does not have legitimacy.

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