

Typing Analysis and Normalization Construction of Administrative Rating

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Abstract: Administrative rating is widely used in administrative management activities as a means of classifying supervision, which not only investigates the previous performance or status of rating objects in established fields, but also provides a reference basis for subsequent regulatory behaviors, resulting in the risk of abuse. Administrative rating should have its legality and legitimacy if it is to operate under the framework of administrative rule of law. Therefore, it is necessary to introduce principle of legality, principle of proportionality and principle of remedies to construct the scope of application areas of administrative rating, information collection and processing system in rating and right relief based on the lack of administrative rating norms in application, procedure and relief.

Keywords: Administrative rating, Administrative management, Administrative verification, Administrative fact action.

1. Meaning of Administrative Rating

In recent years, administrative rating has been widely used in administrative management, and administrative rating has begun to enter the vision of administrative law scholars. The so-called administrative rating refers to administrative activities in which the administrative subject evaluates the previous performance of the counterpart in the relevant field according to certain standards and procedures, and marks and publishes them with concise symbols. [1] Administrative rating is widely used because it simplifies complex administrative supervision, improves administrative efficiency, increases administrative transparency, and realizes law enforcement optimization. On the one hand, administrative rating, as a means of classified supervision, corresponds and simplifies the administrative scheme to symbols, and plays an irreplaceable role in the field of administrative supervision; On the other hand, the widespread use and abuse of rating activities may also trigger problems such as unwarranted rating and abuse of administrative discretion, which raises questions about the legality and rationality of administrative rating. Whether the act of an administrative organ can bring administrative relief depends on whether it has the attribute of administrative decision. [2] Whether an act is "subject to legality review" mainly depends on the judgement of the nature of the act. Therefore, it is crucial to clarify the nature of administrative rating in administrative law. At the same time, to solve the legal problems arising in administrative rating, we must first return to the origin of the problem to explore the own legal attributes of administrative rating. Only by distinguishing different types of administrative rating according to legal attribute differences can we explore the applicable boundaries of administrative rating, implement procedures and remedies for rights in rating behaviors. From the point of view of rating process, for administrative rating, through the formulated or recognized standards set by administrative organs, the administrative counterpart is evaluated and assigned a certain value, so there is no doubt that rating activities have administrative attributes. From the applicable areas of rating and the rating results, administrative rating can be legally

attributed to administrative verification behavior or administrative fact action.

2. Verification Rating

Through relevant evaluation criteria set by the administrative organ and in combination with the information of the counterpart or previous behavior, qualitative evaluation is made in the established fields, on this basis, administrative rating behavior of corresponding classified supervision carried out confirms the extent to which the counterparts complies with the legal norms for a certain period of time, and the behavior shall be attributed to administrative verification behavior. The so-called administrative verification refers to the administrative act that the administrative subject examines and confirms the legal status, specific legal relationship or relevant legal fact of the administrative counterpart in accordance with the law, and declares them in a legal manner. [3] Although administrative verification does not directly create or change the status of rights and obligations of administrative counterparts as administrative acts such as administrative penalty, licensing, and compulsory expropriation, it only confirms the existing legal relationship, legal status, and legal facts. Administrative verification confirms social relationships and facts of legal significance, and it is an administrative act made by administrative subjects enjoying administrative verification power in accordance with legal authority, procedures, standards, forms, etc.. It has public law effectiveness, and is the basis for administrative counterparts to claim rights against third parties.

Taking the credit rating of tax payment as an example, administrative rating attributed to administrative verification acts (hereinafter referred to as verification rating) is to improve the administrative efficiency of tax administration, improve taxpayers' awareness of tax payment in good faith according to law and compliance with tax law, and tax authorities evaluate the credit status of enterprise taxpayers according to four dimensions (subjective attitude, compliance ability, actual results and dishonesty) and nearly 100 evaluation indicators. According to the evaluation results, it is divided into five levels: A, B, M, C and D. The result of

this verification rating is a recognition evaluation of the law-abiding status of the tax payer over a period of time.

3. Fact Rating

The decision-making basis of traditional social risk response is mostly established facts or realistic state. At this time, although the behavior basis is sufficient, it is easy to appear ineffective governance or regulation failure caused by delayed decision-making. As public decision makers, administrative subjects tend to rely on big data to make real-time judgments or make certain predictions in the face of emergencies, thereby accelerating the speed of response and controlling possible losses to a minimum. In this context, one of the tasks of administrative subjects lies in how to collect all kinds of information related to citizens in time or in real time through various forms to provide intuitive and objective basis for scientific and reasonable decision-making. In face of emergencies or other special circumstances, in order to make scientific and reasonable decisions and responses, administrative authorities have set or recognized certain rating criteria, and obtain rating results through certain data tools based on the collection and handling of relevant information of administrative counterparts, and administrative rating of administrative counterparts to distinguish and control administrative counterparts based on this result, which conforms to the characteristics of administrative fact action and should be attributed to administrative fact action. The so-called administrative fact action refers to administrative subjects acts implemented by authority that cannot directly produce, change or eliminate administrative legal relationships. administrative fact action is only a content uncertainty about the rights and obligations of the parties, and is not a consequence that does not affect the rights and obligations of the parties. At present administrative fact action not means that it dose not produce legal effects, however, it does not directly produce legal effects. That is, administrative fact action may affect the rights and obligations of the parties, but this is not the intention of the administrative authorities. Direct fact effects are characteristic of administrative fact action.

For administrative rating (hereinafter referred to as fact rating) attributed to administrative fact action, taking accompany code as an example. accompany code is a response plan made by administrative authorities in a timely manner in face of the realistic dilemma of accurately preventing and controlling the COVID-19 epidemic and timely promoting the resumption of work and production nationwide and restoring the socio-economic order, combining personal health information of citizens, personal identification information of citizens, personal interpersonal relationship information of citizens, and personal trajectory information of citizens to make a personal health risk rating judgment on citizens. Unlike verification rating, the rating of the accompany code is not associated with whether the administrative counterpart adheres to legal norms, but rather is a physical health dimension of legal development. Moreover, the color conversion of accompany QR code is a real-time and dynamic process, no matter whether the result of this fact rating is positive or negative, the generation of accompany code itself has not directly caused the generation, change or elimination of administrative legal relations.

4. Normalization Deficiency of Administrative Rating

First, the scope of application is not clear. As one of the governance tools, with the wide application and continuous development of digital technology, administrative rating is often implemented by making certain evaluation and assignment of governance objects after integrating and processing data according to certain rules or criteria, and further perform differential governance based on it. Specific to the application of administrative rating, on the one hand, it is confirmed that verification rating shall take relevant laws and regulations or regulatory documents as the legitimacy basis for rating acts; on the other hand, although the framed order set by the Constitution justifies the transfer of individual rights for public interests under fact rating, it does not mean that excessive restrictions or even infringement of citizens' relevant rights are imposed. Accordingly, not all fact ratings are justifiable. Administrative rating is the boundary of the scope of application and is actually the boundary of social governance. Admittedly administrative rating plays an irreplaceable role in the process of differential governance, but if administrative rating is applied beyond the boundaries of social governance, it will lead to illegality and irrationality of rating behavior. The applicable expansion of administrative rating is essentially the expansion of public power, which can bring direct and indirect, objective and subjective benefits of control and support, with natural expansion. The expansion of public power also means the transfer of private rights, and the excessive expansion of public power will certainly lead to the restriction or even violation of private rights. For "code governance", as a large-scale exercise of big data governance by administrative organs, it evaluates and assigns the governance objects through different colors or different forms of "code", which is not only a typical form of data governance, but also a typical form of administrative rating and belongs to the fact rating in administrative rating. Typical code governance is to prevent and control the emergence of the COVID-19 epidemic "accompany code." That is, after the "code", some regions have launched similar "civilization code" and "color change code" that eager to play the value of data and cross the boundary of social governance - a governance form that unilateral pursuit governance efficiency and excessively restrict private rights. As a form of fact rating, "civilization code" and "discoloration code" map out a series of problems applicable to rating. It also shows that not all fields are suitable for "evaluation", and the scope of administrative rating should be standardized.

Second, information collection and processing are opaque. No matter what legal nature administrative rating, it is inseparable from the collection and processing of information. Collection and processing of information is the basis for administrative rating. In order to avoid the risks existing in the collection and processing of information in the rating, it is necessary to unify the formal standards and content standards for the collected information with the help of the effectiveness of relevant normative documents, construct a safe information data transmission and sharing path, and reasonably handle the information after using the information. In the information collection stage of rating, administrative counterparts certainly enjoy the right to know and inquire based on administrative rating, which is an inevitable requirement of proper administration. However, in actual operation, the information collection in rating has lower transparency. [4]

For administrative counterparts, on the one hand, the types and scope of information collected have not been fully informed; on the other hand, if information leakage occurs during the process of information collection, there is also a lack of relevant mechanisms to clearly inform administrative counterparts of how to produce evidence and how to relieve them. In addition, in the information processing stage of rating, the processing of information includes identification, convergence, coding, encryption, storage, transmission, mining, application, management and control, deletion of information, so the processing of information in administrative rating is usually realized in the form of algorithm administration. Although the neutrality of the technology itself can ensure the objectivity and impartiality of rating results to a certain extent, due to opaque or difficult transparent decision-making algorithms with trade secret attributes, there may exist problems such as the design of the algorithm does not fully reflect the spirit of legal fairness and justice or the purpose of the rating, the lack of supervision of the algorithm in terms of scientific rationality.

Third, rights relief is not perfect. Administrative counterparts refusing to accept administrative rating results shall enjoy the right to relief. Given the different legal attributes of verification ratings and fact ratings in administrative rating, there should be different remedies for different types of rating counterparts. Because the mechanism of right relief is not perfect and the subject of responsibility is not clear, the right relief of administrative counterpart is often difficult to be guaranteed. As a verification rating, the rating as administrative verification act is an independent administrative act and shall belong to the category of "believing that an administrative organ infringes upon other lawful rights and interests such as personal rights and property rights" listed in Item 12 of Article 12 of the Administrative Procedure Law, and the administrative counterpart has the right to seek relief through administrative litigation. In judicial practice, administrative rating has ruled that administrative rating has not increased the rights or obligations of its counterparts, thus dismissing the plaintiff's prosecution. In fact rating, the application of fact rating is usually government-led automation rating under special circumstances. In the face of emergencies, the government must respond promptly and assume responsibility. Because the government department's basic technical ability and data operation ability are limited, the government is relatively inferior in technology. It is difficult to realize from scratch to develop intelligent and digital rating tools in a short time because it requires manpower, material resources and time costs. Therefore, governments at all levels have to rely on the resources and platforms of large enterprises as well as technical capacity and data operation capacity to achieve the implementation of fact rating. However, because of profit-seeking quality, enterprises may rely on their technical advantages and capital advantages, causing infringement on the basic rights of citizens. In the case of impaired rights, there is no clear right relief mechanism to remedy citizens' rights.

5. Normalization Construction of Administrative Rating

First, the applicable boundaries of administrative rating should be determined by principle of legality. Administrative rating shall be conducted within the framework of the administrative rule of law. The administrative subject shall

grade the counterpart within the scope of legal authority, in accordance with legal standards and legal procedures and in legal form. The primary concern about the legality of an act is whether there is a basis for relevant laws and regulations as a support. "It is prohibited without authorization by the law." When administrative rating is implemented, administrative authorities shall clarify the applicable fields of administrative rating in strict accordance with the provisions of relevant laws and regulations. Where administrative rating is required under special circumstances without relevant legal basis, the scope of administrative rating shall be set in strict accordance with the legal procedures for administrative decision-making. In terms of specific procedures, the decision-making process of whether administrative rating is applicable in a certain field shall include decision-making initiation, social investigation, protocol drafting, public participation, expert demonstration, risk assessment, legality review, collective discussion, public release and other links. For administrative rating, digital technology governance should not only control social problems, but also govern administrative power itself to prevent the expansion of administrative power. The application of new technologies merely changes specific governance modalities and governance tools and does not compromise the rights that citizens should enjoy. Therefore, we should adhere to and implement the clear requirements of existing laws and regulations. Administrative rating process only uses technology to achieve certain administrative purposes, and does not newly set restrictions on the rights of administrative counterparts, nor exempts the obligation requirements for administrative authorities.

Second, principle of proportionality should be used to standardize information collection and processing in administrative rating. Principle of proportionality is one of the basic principles of restricting public power in the field of administrative law, which is initially manifested as the necessary restriction of Germany on the exercise of police power. Principle of proportionality is set based on the restriction of state power, following the modern public law concept of human rights protection, justice and rationality, and has become the basic principle of rationality review of public power exercise. Restrictions on private rights for the purpose of protecting the public interest are legally justified only if they are in line with principle of proportionality. [5] Therefore, the justification of information collection and processing in administrative rating also requires that the exercise of public power behind it should be highly restrained, and restrictions on the relevant rights and interests of administrative counterparts must be in line with principle of proportionality. In administrative rating's information collection and processing process, one side is the public value of public power and the other side is the relevant right of private rights. For the way and content of information collection, the external system and internal algorithm of information processing, it is necessary to introduce principle of proportionality to select and choose. There is little doubt that, information collection and processing systems should be open and transparent. In particular, the public disclosure of information in the verification rating, or the hidden protection of information in the fact rating, should achieve public value, but also as far as possible to minimize the losses caused by personal rights.

Third, we should rely on principle of remedies to improve the rights relief mechanism in administrative rating. "No remedy means no right". From the point of protecting the

lawful rights and interests of the people, citizens or organizations must be granted the right to enjoy adequate relief in the event that their lawful rights and interests are violated by administrative violations or undue violations. First, we should establish the error correction mechanism of administrative rating. During the implementation of administrative rating, administrative organs should not only clearly inform the rating criteria, contents and procedures, but also inform administrative counterparts of the ways and means of rights relief. For verification rating, it shall be clearly confirmed that it is an independent administrative act, which is neither an internal administrative act nor a procedural administrative act, and does not belong to the acts listed in Article 1 of the Interpretation of the Supreme People's Court on the Application of the "Administrative Procedure Law of the People's Republic of China" that do not have external legal effect, procedural acts and acts that do not have actual impact on the rights and obligations of the counterparts, so they are litigable that explicating the review and litigation system for verification rating. For fact rating, the complaint system and state compensation system of fact rating should be established. Although the complaint system of fact rating is also partially provided for in some regions of

China, in general, the complaints of fact rating in most regions have not been put in place. Where any damage of fact rating act is caused by breach of law, the specific compensation standards for damages may be compensated by referring to the provisions on the compensation methods and calculation standards in Chapter IV of the State Compensation Law.

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