Fire Administrative Penalty Hearing Procedure in the Deficiencies and Defect

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Abstract. Fire administrative penalty hearing system refers to the firefighting administrative subject before to influence the decision of the administrative relative person legitimate rights and interests, to listen to the statements of the parties, plea, cross-examination system of administrative procedure. Hearing procedure is the special phase in general procedure, not all according to the general procedure to deal with the case must pass a hearing procedure, at the same time to adapt to the hearing procedure of administrative cases have certain limit. Along with the increase of firefighting administrative law enforcement and civil legal consciousness enhancement, hearing procedure to expose more and more problems in practical application

The Introduction

In today's world, affected by the gradual spread of the trend of modern democratic idea, the hearing system has developed into many countries or regions in judicial, legislative and administrative operation, a very effective and influential form of procedural democracy. Our country also slowly introduced this system in the fire administrative punishment. Fire administrative penalty hearing system refers to the firefighting administrative subject before to influence the decision of the administrative relative person legitimate rights and interests, to listen to the statements of the parties, plea, cross-examination system of administrative procedure aims to find out the truth, find the truth, give important fact parties the opportunity to express my views, its essence is to apply legal civil rights, improper administrative action against an administrative organ may, narrowing the citizens of such "vulnerable groups" between administrative organs and contrast caused by the unequal position.

A Hearing of Administrative Penalties, Fire Range and Conditions

According to the law on administrative punishments "and" hereby "regulation, the use of the firefighting administrative penalty hearing procedure includes the following several aspects:

Order to Suspend Production or Business Operation.

According to the provisions of article seventy of the new "hereby: hereby stipulated by the administrative punishment, except as otherwise provided by this law, decided by the public security organ fire control institutions. Party fails to perform the suspension, stop using, decided to stop the construction, make a decision by the public security organ fire control institutions of compulsory execution. Order to suspend production or business operation, to a greater influence on the economic and social life, offer an opinion by the public security organ fire control institutions, and shall be submitted to the people's government at the corresponding level and the public security organs in accordance with the decision. The people's government at the corresponding level and organization departments such as public security organs. As order to suspend production or business operation of administrative punishment is the local people's government or the public security fire department for the administrative relative person in violation of the regulations of fire management shall be ordered to make the suspension for a rectification form of punishment. When administrative penalties to the suspension of some units, if the impact is bigger, the applicable hearing procedure.
License.
Referred to in the permit license refers to fire administrative licensing certificate, is the public security fire department according to the application of the parties, after examination according to law after giving them with some matters are generally prohibited by laws and regulations of behavior or the rights and qualification certificates. Once the holder in violation of the provisions of the corresponding fire management, there might be a fire department revoke its permit, thus lost in the chartered by some matters of qualification documents. Because the license is a kind of punishment involving major rights and interests of the parties, therefore, the law on administrative punishments to the formal hearing procedure as applicable one form of punishment.

The Large Amount of Fines.
For fines to what degree should be in order to be the problem of "large amount", "law on administrative punishments in China is not a unified standards. In the actual execution can only be determined by the local departments according to specific situation. According to the ministry of public security and pass word [1996] no. 1996 on the scope of administrative penalty hearing "large amount" in the amount of notice, impose a fine of 2000 yuan of above, for individuals to legal persons or other organizations face fines of more than 10000 yuan, is a large amount of fine, the parties have the right to demand to hold hearings.

The Value of the Fire Fighting Administrative Penalty Hearing Procedure
An American scholar, Rawls thinks justice is the basic requirement of justice and the rule of law depends on some form of due process under the rule of law, due process done by program. American constitutional amendment "due process of law" clause requires federal and state administrative organs "without due process of law, shall not be deprived of anyone's life, liberty and property." Procedural justice is the premise and foundation of substantive justice.

Protect the Rights of Fire the Other Party in the Administrative Punishment
Fire administrative punishment subject in front of the unfavorable to the administrative relative person's decision, listen to the opinions of the relative person, and give the other party a chance to participate in the administrative process, let the administrative relative person state their opinions, hear your voice, it not only reflects the requirements of administration according to law, but also embodies the respect for the administrative relative person's personality, procedural protection of citizens' rights, for the administrative relative person directly and openly participate in the making process of the administrative penalty decision provides opportunities and possible, and to protect the legitimate rights and interests of administrative relative person play the positive role of directly. Hearing procedure set by a series of procedural rights of the parties and the safeguard, can make the opportunity, conditions of arbitrary and arbitrary, resist and guard against fire law enforcement so as to safeguard the legitimate rights and interests of the administrative party.

Supervision and Fire Administrative Punishment Body Punishment According To Law
Fire administrative penalty hearing procedure is a balanced fire administrative punishment administrative rights and obligations of the subject of the necessary procedures. Fire administrative punishment subject on behalf of the state and social public interests, and legislators tend to give it more superior substantive rights, such as can make unilateral administrative behavior, which makes as being manager of administrative opposite party in a relatively inferior position, therefore, is likely to fuel an administrative organ and its personnel to take advantage of its position and power, to seek improper interests to implement damage the legitimate rights and interests of administrative relative party of administration behavior. To make up for the deficiency of, in view of substantive law on the rights and obligations between administrative organ and the administrative relative person clearly unequal phenomenon, the law gives the administrative relative person more initiative and superior procedural rights, and supervise the fire administrative punishment body
punishment according to law. "All powerful people are easy to abuse of power, this is not an experience of all ages. People with power using power didn't rest until meet bounded place." [1] effective supervision of power is the inevitable requirement of power control. There are three kinds of power control way, in the aggregate: power restricting power and right restricting power and restricting power to society. Start the hearing procedure, administrative counterpart's hearing right restricting power by the administrative relative person.

The Efficiency of Fire Fighting Administrative Enforcement of Law

Both the administrative hearing system is the pursuit of efficiency of deeper value. In terms of its case, applicable hearing procedure, administrative efficiency seems to be influenced by a certain. But from the point of the whole process of administrative decision-making, the use of hearing procedure, does not necessarily affect the administrative efficiency. Under the condition of the client have any questions on the administrative behavior, if it’s before administrative behavior does not reflect its intention and reason, so after the administrative behavior, he will pass the administrative reconsideration of their objection, administrative remedy procedure the amount of energy and money will obviously far more than the effect of hearing procedure of administrative efficiency and administrative costs. The fire law enforcement work has its own characteristics. Is generally in the administrative relative person's behavior seriously endanger public security cases, public security fire control institutions or local government to have a significant influence on the interests of the administrative relative administrative punishment. If the hearing procedure is too time consuming, it is bound to cause greater security hidden danger, jeopardize public interests. Fire administrative penalty hearing procedure, therefore, must take into account of the establishment of efficiency.

Administrative Penalty Hearing System Has a Problem

The Hearing, Administrative Organ Organization Rules of Fuzzy

According to the law on administrative punishments prescribed in article 42: "before the administrative punishment decision, the administrative organ shall inform the parties have the power to demand a hearing, the request of the hearing, the administrative organ shall organize a hearing." This regulation is not able to complete reflect the nature of the hearing procedure, and the particular stage in the hearing procedure as the general procedure, it is the duty of administrative organs, but in each other's rights. The fuzzy regulation, make this if we do not take the initiative to give up you should enjoy the rights of the deviation, administrative organs are not take the initiative to fulfill, and no positive about the requirement of the parties.

The Body of the Hearing Scope Too Narrow

The law on administrative punishments stipulated hearing procedure is put forward by the parties in accordance with the law. But in accordance with the law stipulated in article 3, party refers to the behavior of violating administrative order, the administrative organ shall give punishment according to law of the citizens, legal persons or other organizations." In the general case, the administrative organs of the corresponding penalty decision will usually cause bad impression to the benefit of a third person, and this kind of adverse effects, the third person failed to get the corresponding protection and compensation. And this kind of phenomenon and the "administrative procedural law", "administrative reconsideration law of the relevant stakeholders can bring the provisions of the administrative review and administrative litigation cannot obtain the effective connection.

The Hearing Procedure Applicable Scope is Too Narrow

Fire in the administrative penalty hearing cases including order to suspend production or business operation and to the large amount of fines of up to two, but according to "hereby" and other laws and regulations, a
total of five fire administrative punishment, and the punishment to the interests of the other larger damage, such as restricting the personal freedom and other rules, is having a serious effect on the parties, and can direct intervention to the life of the parties. But rules and regulations, "the parties to the restriction of personal freedom have objections to the administrative punishment, in accordance with the relevant regulations of the regulations on administrative penalties for public security." According to the provisions in the law of punishing public security management, normal results should have four links, respectively is summoned, ask, forensics, ruling. And these links impartiality and cannot be compared with the hearing procedure, even compared with the ordinary procedure of administrative penalty, is slightly insufficient.

To The Presiders to Lack the Necessary Specifications

The current host to its own functions and powers of hearing procedure, the position is not clear. In accordance with the law on administrative punishments, article 42 (1) the fourth paragraph: "hearing hosted by investigators designated by the administrative authority of the case; if a party considers that the host with a direct interest in the case, have the right to apply for withdrawal." In this rule, not the presiders, status of their statutory functions and powers of regulation, and also no corresponding proposed some specific requirements. But this rule is the only regulation, the law about the presiders is fuzzy, leading to some lack of application of knowledge, quality and ability of the host, hearing into decoration, and become a mere formality, can't play a proper role.

On The Role of Hearing Record in Administrative Penalty Decision without Clear Rules

"Administrative penalty law" of our country with paragraph 1 of article 42 of the seventh paragraph "hearing shall make a written record. Record payable after the audit and correct signature or seal of the parties". From the content point of view, hearing record is a written record of the hearing process, no specific provision in terms of content, very fuzzy, the operational definition and the role of the hearing record also did not make clear a regulation, the role of the hearing record in hearing procedure, become dispensable.

Perfecting the Fire Administrative Penalty Hearing System

To Expand the Scope of the Hearing Procedure

Of penalties in the fire administrative punishment, detained belongs to one of the most serious one, the infringement of citizens' basic life liberty penalty, should be excluded from the scope of hearing procedure, the unfair or you will make the hearing process, and before the public security fire control institutions for the administrative punishment decision, should ask the parties concerned request fully, thus held to decide whether the hearing procedure, so that can better to avoid the happening of administrative compensation, and can make the parties know things wrong according to the hearing procedure, in order to show fairness.

Clear Administrative Organs of the Obligation, To Expand the Scope of the Hearing

For expanding the scope of hearing procedure in our country, should be in addition to the parties, the rights and interests indirectly affected the third person also can apply for or by the administrative organ informed to attend the hearing. And you can also in addition, through some rules, let the parties not offered, administrative organs in the case of the parties agreed to, also organize corresponding hearing procedure, so can according to the present situation of the fire administrative punishment in our country, to solve problems.

To Establish and Perfect the System of the Presiders

In the hearing procedure, the host has the very important role, a reasonable host, is the precondition of a fair hearing procedure. And for this kind of phenomenon, should vigorously establish and improve the system of the presiders, strictly control the presiders qualification and appointment, make the presiders to have to pass
strict examination, to obtain the corresponding qualifications, to ensure the presiders corresponding ability, in order to build a contingent of high-caliber presider team, to ensure the impartiality of the hearing procedure.

**Improve the System of Hearing Agent**

According to our country the present condition of the fire administrative punishment, most is no clear sense of hearing, the parties and the corresponding steps of hearing procedure, there is no corresponding models. So in this process, the administrative organ should inform the parties can hire lawyers agent or appoint lawyers acting for the parties concerned. Through the attorney appointed by the parties to the agent, so that we can better safeguard the interests of the parties, also can with the help of a lawyer, let the parties to have a reasonable understanding of itself, clear their illegal ACTS and legal consequences, thus increasing the self-consciousness and the initiative of the parties.

**Set of Emergency Shall Not Apply To the Formal Hearing Procedure of Exceptions**

Both the federal administrative procedural law in the United States, and Japan's "administrative procedural law", the rules must be applied the formal hearing procedure and at the same time, all provisions shall not apply to the formal hearing procedure of exceptions. The firefighting administrative penalty hearing procedure in the process of setting should also consider the particularity of fire control work, shall not apply to the formal hearing procedure of emergency circumstances. Fire administrative penalty object, especially in the public security fire control institutions to make the object of severe punishment, or harm no specific most often endangered people's life and property safety; Often threatened the interests of the major public security. If you don't immediately in an emergency order to suspend production, out of business, is likely to lead to greater catastrophic consequences. In this case, the formal hearing procedure start not only failed to reveal its application value, but delayed more the interests of the entity, therefore, to involve significant rights and interests of administrative relative person, but belong to national political, economic, military, etc., due to an emergency even made significant administrative punishment, according to the emergency principles of administrative law, is not a formal hearing procedure should be taken. Such as the bottom of the "German administrative procedural law" in paragraph 3 of article 23: the hearing held such as hinder the necessary of public welfare, may.

**References**


