

An Analysis of the Problems in the Law Enforcement of Urban Management Department and Suggested Counter Measures

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Abstract

The success of building an urban management officer team to comprehensively manage the work in urban areas should only be achieved by taking into consideration the status quo of China's urban management and by learning from international advanced experience. The complexity of China's urban management as well as the slowness in formulating laws and regulations determine that the existence of urban management department and the way of its law enforcement should be in a progressive manner but not be achieved overnight. On the basis of conducting an objective analysis of the development of China's urban management officer team, the paper draws on the advanced experience of urban management in foreign countries and absorb scientific management methods to explore the approaches to developing China's future urban management department.

Key words: Urban management department; Law enforcement of urban management department

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INTRODUCTION

Urban management department is the inevitable social phenomenon when cities develop to a certain stage. Every country has to take effective methods to manage urban cities in the process of social development, so as to maintain normal city order and regulate their development. China is now in a critical period of deepening reform and social transformation when complex and diverse social contradictions could be seen. To some degree, the social contradictions are even more evident in cities. Therefore, urban management department is facing increasingly tremendous pressure, and more social attention should be paid on them.

1. THE STATUS QUO OF THE LAW ENFORCEMENT OF CHINA'S URBAN MANAGEMENT DEPARTMENT

Urban management department has the responsibilities of maintaining the basic function of cities, of managing the public space in cities, and of safeguarding the sound health and good order of cities. So it is an agency which has a unified and comprehensive right of enforcing laws in terms of managing cities. The law enforcement of urban management department is to punish any behavior disturbing the city order in accordance with the relevant laws and regulations. It was not existent before the early formation of cities, but it took shape when cities developed to a certain stage. So it has certain historical significance.

After the 1990s, China's economic development has achieved remarkable results, and the pace of the urban development began to accelerate. At that time, a large number of migrant workers flooded into cities, which posed immense pressure to the handling capacity of the cities. In specific, the urban sanitation, market order, city construction, and infrastructural construction of the city have showed an imbalanced and disorderly development.

This is in contradiction with the hope that cities would enjoy a rapid development, so each department is needed to deal with any behavior in violation of the laws and regulations under its jurisdiction. However, the city management affairs tend to be trivial and complicated, and the management of certain affairs often involve multiple departments which are separated from each other and have different roles to play. This leads to the result that several departments combined turn out to be unable to deal with the person violating the laws and regulations, which in turn has resulted in a remarkable increase in administrative costs and low efficiency. In order to deal with this situation, China promulgated the “Administrative Penalties Law” in 1996 whose Article XVI states, “The State Council, or the provinces, autonomous regions and municipalities directly under the Central Government authorized by the State Council may determine a certain administrative organ to exercise its right of administrative penalties, but the right in terms of restricting personal freedom should only be exercised by the public security organs”. It is at that time that the law enforcement agencies in urban management came into being. In 1997, the State Council approved Xuanwu District in Beijing as the pilot area to reform urban management by relatively centralizing the right of administrative penalties. Up until now, urban management department has existed for seventeen years, during which the urban management officer team has made some achievements, but there are many problems in themselves, and these problems have seriously affected the recognition from the society to the urban management department.

1.1 The Organizational Systems, Names and Personnel of Urban Management Department are not Unified

According to the Notice about Experiments on the Centralized Right to Administer Penalties (given by the General Office of the State Council [2000] No. 63), “the implementation of the relative centralized system of administrative penalties is significant for the establishment of a ‘simplified, unified and efficient’ administrative management system.” Besides, it also demanded that the department which had the centralized right to administer penalties should be the administrative organ of the local government, rather than the internal organs or subsidiary agencies of a certain governmental department. As revealed in the Decision on Further Promoting the Work of Relatively Centralizing the Right of Administrative Penalties published by the State Council (given by the State Council [2002] No. 17), “the administrative organ which has the relatively centralized right to administer penalties should not be the internal organs or subsidiary agencies of a certain governmental department, neither should the competent department responsible for dealing with the business for the upper level be assigned as the one to use its centralized right to administer penalties.

Instead, it should be an independent administrative law-enforcement department directly under the leadership of the local government, independently exercising its power in accordance with the law and bearing the corresponding legal responsibilities.” However, due to practical reasons such as finance status and authorized size, a lot of areas failed to establish urban management department as an independent governmental department in line with the provisions of the State Council, but set it as a subsidiary agency of the department of environmental protection, of the construction committee and of other departments. So it is only a “second-level department” in essence, not only under the leadership of the superior level but also guided by the governmental department. Hence a double-leadership takes shape, and there are no unified policies. All these have made urban management department feel at loss.

Aside from this, the names for the local urban management department are not the same. Some places call it as Comprehensive Law Enforcement Bureau on Urban Management or Administrative Law-Enforcement Bureau, while others call it as Urban Appearance Management Bureau. There are still a few places who name it as Urban Management and Law Enforcement Monitoring Team. Such confusion in the urban management department’s name objectively makes people become suspicious of the legality of the existence of urban management department. Since people are psychologically showing no recognition to the rationality of its law enforcement, the mass base needed for the urban management department is destroyed.

What is worse, the qualifications of the law enforcement officers are uneven. As revealed in the Notice about Experiments on the Centralized Right to Administer Penalties given by the General Office of the State Council in 2002, “the law enforcement officers exercising the relatively centralized right to administer penalties should be civil servants; however, the matter of urban management is complicated and needs a lot of staff members, hence the limited authorized size is unable to meet the needs of urban development. After all, China is always emphasizing the need to reduce the size of government and streamline staffing, which leads to the fact that urban management department cannot determine posts and authorized size in accordance with the provisions of the State Council. So in order to ensure the smooth progress of law enforcement, social workers are hired to supplement the urban management law-enforcement team. They are the so-called temporary workers. Since the hired staff does not have the law enforcement power, they are often with one or two formal law enforcement officers to manage city affairs. Besides, due to the fact that they are from different sources, and that they lack professional training, are poorly organized, and have deeply-rooted official mentality, they tend to have poor awareness of service; the way of their law enforcement is mechanical and rigid; and it is

easy for them to have a conflict with the objects of law enforcement. Moreover, people are born to show sympathy for the disadvantaged groups, so in violent incidents, the public opinion is inclined to give more support to street vendors. What is more, people are accustomed to regarding the violent behaviors of urban management officers as a manifestation of the national will, thus causing great damage to the image of the state organs, increasing social conflicts, and undermining social harmony. Therefore, it is highly urgent to regulate the urban management law-enforcement team and solve the authorized size in administrative departments without delay.

1.2 Justifications for the Law Enforcement of Urban Management Department are Limited, and its Responsibilities are Unclear

The Article XVI of Administrative Penalties Law only provides that the State Council or the provinces, autonomous regions and municipalities directly under the Central Government authorized by the State Council may decide one administrative organ to exercise the right to administer penalties, but the document fails to clarify its function scope. Besides, there are no specifications for the law enforcement of urban management officers. The establishment of urban management department is merely in accordance with the provision in this document but without any appropriate supporting legal provisions. So the local authorities have to formulate appropriate regulations for law enforcement according to the local conditions.

It is because of this point that the legal authority which should have been determined by regulations and laws are finally given by the superior leaders. Law enforcement standards, enforcement approaches and others have become administrative directives which lack authoritativeness. This has also led to the instability of the scope of enforcement. For example, the field which is beyond the enforcement scope of urban management department may be included in by giving a document next time.

In addition, the functions of urban management department and other administrative authorities are overlapping, and the scope of functions is not clear. Although the urban management department is entitled to exercise the relatively centralized right to administer penalties within the city, not all of the administrative penalties are given by it. That is because many units or departments only give difficult or unprofitable affairs to urban management department to handle, while for the things that are important to the units or departments, they will held tight at their hands. What is more, the administrative affairs are complex and are closely associated with each other, which needs the cooperation of several departments. Therefore, in many cases, urban management department is unable to solve such things individually.

Apart from what has been mentioned above, heavy workload and various work types are also the important factors affecting the improvement of urban management

quality. According to statistics, urban management department in cities basically has hundreds of functions and power. With the passage of time and the further development of the economy, its functions and power will increase, and the urban management team is also bound to be stronger. However, its expansion will in return directly contradict with the government's finances, authorized size, and reform, which requires the urban management department to handle more daily affairs with a limited number of staff members. Since most of the affairs within their control are those that other administrative organs are unwilling or unable to deal with, it gives urban management officers tremendous working pressure and also affects the quality of and enthusiasm for their work.

2. THE STATUS QUO OF THE LAW ENFORCEMENT OF URBAN MANAGEMENT DEPARTMENT IN FOREIGN COUNTRIES

All countries in around the world have encountered the problems similar to those in China during the process of urbanization, and there are some departments similar to China's urban management department aimed at maintaining the normal order of urban development.

The work of governing street vendors in South Korea once was a tricky and difficult problem to deal with. Law-enforcement violence turned out to be counterproductive. Nevertheless, this problem was ultimately solved through the mutual compromise between the vendors and the government. In specific, the vendors spontaneously established non-governmental business organizations and acquired the approval from the Ministry of Commerce. Out of the concern to disadvantaged groups, the government helped vendors to apply for business licenses, and allowed them to conduct commercial activities within a specified time and area. Moreover, the downtown areas were divided into "inducing zone", "absolute prohibition zone" and three types of "relative prohibition zone". In addition, the government assisted business owners improve the business environment, took good care of the interests of the vendors, so that the vendors of the former today finally became today's "road culture".

America has rather sound laws and regulations in terms of urban management. It has formulated strict laws to regulate any behavior against the urban management. According to the laws, vendors shall have the business qualifications and should be in strict compliance with the relevant regulations. Since what the vendors are facing is clarified laws and regulations, the authority of which is unquestionable, vendors will act in strict accordance with the laws and regulations; even if they violate the laws, they will still be willing to accept legal punishment. Meanwhile, the laws also give good legal basis for law

enforcement officers and set strict regulations to their law enforcement behaviors, thus avoiding the situation that the functions of urban management department and other departments are overlapping and also preventing the abuse of their discretionary power. Furthermore, the officers have fundamentally enhanced their qualifications, for each of their law-enforcement behavior is in accordance with the legal regulations, and conflicts between the objects of punishment and them rarely occur.

In regard to France, it has fully respected mobile vendors' human rights when conducting the management work. France did not establish a separate urban management department, the work of which was undertaken by the police and gendarmes. The mobile vendors must obtain a business license in accordance with the laws before being permitted to run their business. They should pay taxes and should not harm the traffic safety and urban sanitation. Since the police had the personal coercion right, France can directly educate or detain the concerned parties but do not confiscate vendors' goods and production tools in dealing with administrative violations. This also greatly reduces social conflicts. As for China, it only takes the confiscation of vendors' goods and production tools as the main way to deal with mobile vendors without giving education and counseling to them. This practice is only a temporary solution.

Apart from what has been done in America and France, the United Kingdom also took methods to manage the urban affairs which were similar to those in the South Korea. The zones that allowed free business activities are divided into "Business-prohibited streets", "Business-allowed streets" and "Business-permitted streets". Meanwhile, different ways of business operation had different management practices. Mobile business owners could do their business on weekends and holidays in open areas; market owner could operate business on a daily basis, but the time for operation is determined according to the nature of their business; Last but not least, all free business owners had to obtain a business license legally authorized by the government before getting engaged in business activities.

The urban management work is more complex in Thailand, for mobile vendors could be seen everywhere and the size of business activities are large and scattered. In Thailand, the urban management work in terms of law enforcement and supervision is borne by the municipal authorities. The street vendors have to register, then conduct business activities in specified area and at specified time. Considering the fact that mobile vendors belong to disadvantaged groups, it will seriously affect their source of livelihood if we completely put an end to their business activities. Besides, it will also increase social conflicts and bring some hidden trouble to social order. So the Thai government has actively given legality certification to the business of mobile vendors, standardize their business activities so as to form appropriate industry standards.

3. SUGGESTED COUNTERMEASURES FOR THE PROBLEMS IN THE LAW ENFORCEMENT OF CHINA'S URBAN MANAGEMENT DEPARTMENT

As can be seen from the above, many countries have designed distinctive urban management methods and systems, but there are also similarities between their methods and systems. The writers are firmly convinced that by summarizing these similarities and combing the experience with China's actual conditions will China find a suitable way to manage its urban affairs, which is also the most crucial matter at present.

3.1 Implementing a Flexible and People-Oriented Management Mode

The business activities of street vendors could certainly pose problems to and conflict with the maintenance of urban sanitation and city order. The one side is the subsistence of disadvantageous groups, while the other side is the path towards the civilization of modern cities. Urban management is to balance the interests of both sides. It should not make street vendors unemployed for the sake of the development of the city, neither should it make the city dirty and messy in order to take care of some groups. Only by achieving win-win situation can we make the society develop in a sound and rapid manner. To the end, we should make use of modern management thinking for law enforcement management, implant the service idea and people-oriented mindset into the minds of government officers and urban management officers, and resolutely eradicate official mentality, so that a variety of law enforcement modes could be achieved.

3.2 Carrying out Fine Management

During the law enforcement process of urban management department, the situation that big and small matters are dealt with at the same time should be altered. We should establish different standards for different areas of the city, and conduct classified management modes. For instance, the Law Enforcement Bureau on Urban Management in Tianhe District, Guangzhou Province, set strict rules for the business activities in main roads and important areas, while a relaxed management mode is given for the streets which are relatively remote from the downtown, so that a buffer zone is established between the street vendors and the urban management officers. Meanwhile, the government could designate appropriate areas as fixed places for the business activities of vendors. They could also formulate preferential policies such as low-rent and low-tax policies to actively guide the traders who are in good financial position to run business in the specified areas.

3.3 Enforcing the Law Through the Combination of Public Security Organ and Urban Management Department

Due to a lack of laws and regulations, the urban management department has little authoritativeness.

Besides, at the beginning of the establishment of itself, the urban management department did not have the personal coercive right. All these have brought difficulties to its law enforcement. With the combination of public security organ and urban management department, the latter's authoritativeness will remarkably increase; more importantly, it will change the traditional law enforcement mode that is mainly based on confiscating vendors' production tools; instead, when the normal law enforcement procedure is to no avail, public security officers will show up to take personal coercive measures, thus reducing the violent clashes between the vendors and urban management officers in terms of confiscating goods.

3.4 Strengthening the Building of Urban Management Officer Team

The law enforcement of urban management department belongs to the front-line law enforcement, so the law enforcement officers have great discretion power whose judgment towards the objects and scene will affect the quality of law enforcement. In this sense, law enforcement officers need to have a good ability to respond to changes and should have better negotiation skills. When strengthening the building of urban management officer team, we should thus proceed from the two aspects. First of all, we should raise the access threshold for law enforcement officers. At present, the education level of China's urban management and law enforcement officers is relatively low; and their legal awareness is weak, which is a far cry from the requirement for the law enforcement officers to deal with the complicated urban affairs. Second, we should regularly conduct business training for the urban management officers. The training should be centered on filtrating the service concept into their minds, on improving their professional standards, and on enhancing their professional qualifications.

3.5 Enhancing Citizens' Quality-Oriented Education

The law enforcement of urban management department could only regulate the behaviors of citizens from outside. In order to realize sound development of cities, we should strengthen citizens' quality-oriented education, and raise their awareness of self-discipline. With the media widely reporting the violence of urban management officers' law enforcement, people are accustomed to focusing on the law enforcement methods of urban management officers; little attention is paid on citizens' behaviors. Therefore, enhancing citizens' quality-oriented education can not only enhance their awareness of self-discipline, but also make them more objectively look at the problems in the law enforcement of urban management officers.

3.6 Improving the Public Image of Urban Management Department

As a government organ, urban management department's image will directly affect people's impression on the

government, so the government should improve the public image of urban management department, promote the publicity of its work, so that more people will understand the difficulties of urban management work and re-establish a good image of urban management department, thus get more public support.

The development of cities attracts a large number of migrant workers, while the jobs provided by cities are highly limited. In this sense, it is inevitable and understandable to see mobile vendors running their business in streets. Nevertheless, it is also unblamable that urban management departments give vendors penalties in order to fulfill their own responsibilities such as maintaining urban amenity and city order. The two sides constitute a contradiction when a country develops to a certain stage, during which the interests of one sides has to be sacrificed for the interests of the other. Nevertheless, such sacrifice of one side's interests cannot fundamentally resolve the conflict between the two sides. If it were not for subsistence, the street vendors would not take the risk of being punished and expelled to run businesses. Therefore, only by giving protection for disadvantaged groups, developing national economy, improving people's living standards, and creating jobs can we fundamentally resolve the conflict between vendors and urban management department.

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