

Study on the Legislative Power of Special Economic Zones

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Abstract: This research project aims to uncover and understand the challenges inherent in the legislative process of economic special zones, thereby drawing attention to the issues surrounding their legislative framework. It seeks to contribute to the refinement of economic special zone regulations and their accompanying systems. Currently, there exists limited scholarly inquiry into the problems that arise during the formulation of legislative powers for economic special zones.

Keywords: Economic Special Zone; Legislative Authority; Issues; Regulatory Improvement; Development.

1. Introduction

With the flourishing development of domestic economic special zones, the establishment and operation of legislative authority for these zones have become a crucial component of the country's economic progress. This paper aims to delve deep into the formulation and implementation of legislative authority for domestic economic special zones and its impact on the development of these zones. Various regions across the country have established economic special zones to drive regional economic growth, attract investments, foster innovation, and generate employment opportunities. However, legislative authority for these zones involves a plethora of legal and policy issues, including power allocation, the establishment of regulatory bodies, tax policies, and intellectual property protection, among others.

2. The Dual Legislative Authority of Economic Special Zones

Since the establishment of various economic special zones, they have always exercised delegated legislative authority [1]. Over the past 20 years, the delegated legislative powers granted by the central government have played a significant role in promoting the construction and development of economic special zones. However, the regulations and rules originating from central authorization can only be effective within the economic special zones, while the regulations and rules of the respective provinces continue to apply outside the special zones, leading to the unique legislative system of the special zones, known as the "one city, two systems" issue.

2.1. Key Distinctions of Dual Legislative Authority in Economic Special Zones

Economic special zone legislative authorization, as a unique form of local legislation, differs from general local legislation in that this legislative authority is specially granted by the National People's Congress and its Standing Committee, as opposed to the general local legislative authority, including jurisdictional legislative authority, explicitly stipulated in the Constitution and local organizational laws [2]. In the current context of local legislation in China, legislative authorization for economic special zones, which derives directly from the highest

legislative body, cannot be replaced by forms of local legislation, including local regulations, rules, ethnic autonomous regulations, and single-issue regulations, including legislative authority for economic special zone jurisdiction. Furthermore, this form of legislative authorization, granted through decisions of the National People's Congress and its Standing Committee, has often operated without explicit legal basis for a considerable period of time. With the introduction of the Legislation Law, this fact regarding legislative authority has gained stable legal safeguards.

2.2. The Distinction in Authority between Two Types of Legislative Powers

According to the authorization decisions made by the National People's Congress and its Standing Committee, economic special zones have the authority to create specific regulations that suit their unique circumstances and practical needs, as long as they adhere to the principles outlined in the Constitution and the fundamental legal and administrative regulations [3]. These regulations are designed to be implemented within the economic special zones. On the other hand, regular local legislative powers must strictly follow a non-conflict principle and do not possess the same flexibility as the legislative authority granted to special zones. Therefore, when exercising the authority granted by larger municipalities, economic special zones must not create regulations that contradict the Constitution, national laws, administrative regulations, or local regulations within their province. They are also not allowed to make exceptions to these laws and regulations.

2.3. The Distinction in the Effectiveness Registration and Applicability Scope of Two Types of Legislative Powers

When exercising legislative authority in economic special zones within larger municipalities, their regulations require approval from the provincial-level People's Congress Standing Committee before implementation. These regulations must also undergo a legality review by the standing committee of the provincial or autonomous region's People's Congress to ensure compliance with higher-level laws. If no conflicts are found, approval should be granted

within four months. In terms of autonomy, economic special zones face fewer constraints compared to strict legislative requirements [4]. They are not obligated to seek special authorities' approval or registration, except as explicitly required. Regulations created under delegated legislative authority can be directly registered with the National People's Congress Standing Committee and the State Council. Concerning jurisdiction, larger municipalities have legislative authority over their entire administrative region, while economic special zones are limited to their specific areas, typically below the level of a first-tier administrative division.

2.4. The Development Trends of Dual Legislative Authority in Economic Special Zones

The legislative authority of economic special zones like Shenzhen was initially granted by the national government. For instance, on July 1, 1992, the 26th session of the Standing Committee of the Seventh National People's Congress passed a special authorization titled "Decision on Authorizing the People's Congress of Shenzhen Municipality, Its Standing Committee, and the People's Government of Shenzhen Municipality to Formulate Regulations and Rules for Implementation in the Shenzhen Special Economic Zone." This special authorization, approved by the National People's Congress and its Standing Committee, has consistently served as a crucial legal basis for the legislative activities in economic special zones, effectively initiating and guiding the legislative process [5]. The "Legislation Law" introduced later in 2000 year does not fundamentally differ from the previous special authorizations in terms of its fundamental provisions regarding legislation in economic special zones.

3. Legislation in Economic Special Zones and Legal Flexibility

China's economic special zones, established for years, have seen substantial economic and social growth. Their legislative efforts have been instrumental in supporting their development. What sets special zone legislation apart is its exceptional flexibility, driven by the zones' unique local and exploratory nature. This flexibility serves as a potent tool to overcome constraints, drive reforms, and promote development. The practice of legislative flexibility in economic special zones is closely tied to their reform and development [6]. By harnessing this flexibility, these zones have made adjustments and adaptations to laws and administrative regulations, addressing development challenges and removing institutional barriers.

3.1. Legal Basis for Flexibility in Economic Zone Legislation

In the early stages of reform and opening up, China was still constrained by the planned economic system in various fields such as the economy and society. To break away from the old traditions, existing systems, and outdated models, multiple regions, including Shenzhen, were designated as special economic zones to serve as windows for reform. The goal was to explore reform and opening up experiences more proactively. As experimental fields for reform and development, economic zones presented many new issues that needed to be addressed [7]. The National People's Congress did not have laws applicable to economic zones, and legislation by provincial-level people's congresses couldn't

fully meet the needs of zone development. Therefore, the reform and development of these zones required urgent attention, special handling, and breaking away from traditional constraints in terms of institutional support. The practice of reform and opening up in economic zones required legislative authority and the unique legislative powers adapted to the roles and status of economic zones in the process of reform and opening up.

3.2. The Effects of Legislative Flexibility

From the perspective of the effects of legislative flexibility, legislative flexibility is characterized by rationality. Legislation aims for rationality, demanding that the laws created respect science, adhere to principles, and reflect the will and sentiments of the people. Legislative flexibility in economic special zones must adhere to standards of rationality.

3.3. The Role of Legislative Flexibility in Economic Special Zones

Economic special zones have made a significant contribution to China's reform, economic development, and social progress. Legislative flexibility in economic special zones serves as a crucial institutional support for the development of these zones. The role of legislative flexibility in economic special zones can be primarily seen in two aspects: first, it provides the most suitable institutional safeguards for the development of the respective economic special zones, and second, it offers valuable experience and insights for the revision of national laws.

4. An Example of Research on the Legislative Power of Shenzhen Special Economic Zone

Since 1992, more than three decades have passed since the legislative authority of the Shenzhen Special Economic Zone was established. Over these thirty-plus years, Shenzhen has taken the lead and made the most of its legislative power within the special economic zone. This not only provided a legal framework for Shenzhen's development but also accumulated valuable experience for national legislation [8]. However, in practice, due to the somewhat unclear scope of legislative authority specified in the authorization decision by the Standing Committee of the National People's Congress, some specific legislative actions have been a subject of controversy. Combined with a lack of comprehensive theoretical research on the foundation of special economic zone legislation, and in the face of significant social transformation, the legislative practices of the Shenzhen Special Economic Zone have been continuously challenged.

4.1. Innovation and Patterns in Legislative Practices in the Shenzhen Special Economic Zone

Since Shenzhen received legislative authority for the special economic zone in 1992, initial legislation mainly focused on economic matters. However, since 2010, there has been a shift towards legislation related to social development and livelihoods. Of the over two hundred regulations enacted in the Shenzhen Special Economic Zone, dozens have addressed gaps in national laws, creating a legal framework to support Shenzhen's development. In this section, we will categorize Shenzhen's innovative legislative efforts into three

parts: legislation related to the market economy, legislation related to societal issues, and regulations for overseeing and supervising national authorities. We will also summarize the observed patterns in Shenzhen's legislative practices. During the early stages of establishing a national market economy, when the national economic legislative framework was not fully developed, Shenzhen's legislative efforts pioneered market economy legislation. They introduced regulations and rules that standardized market practices, leading the way in regulating various business entities and activities nationwide. These efforts eliminated the concept of state ownership in corporate bankruptcy, provided legal safeguards for auction systems, real estate markets, and more.

4.2. Controversies in the Legislative Practices of the Shenzhen Special Economic Zone

The legislative practices in the Shenzhen Special Economic Zone have long been a subject of controversy, with disputes primarily focusing on its validity and authority.

4.2.1. The Controversy over the Validity of Legislative Authority in the Shenzhen Special Economic Zone

There is ongoing debate among scholars regarding the validity of legislative authority in the special economic zones. Some argue that the flexible legislative authority in the special economic zones lacks constitutional basis, disrupts the principle of legal uniformity, contradicts the principle of equality, and lacks necessary checks and balances. Given the current economic and social conditions in China, they contend that the legislative flexibility in economic special zones has lost its relevance and propose the abolition of this legislative authority.

4.2.2. The Controversy over the Authority of Legislative Power in the Shenzhen Special Economic Zone

Inspired by the management experience of advanced cities such as Hong Kong and Singapore, the Standing Committee of the Shenzhen Municipal People's Congress passed the 'Shenzhen Special Economic Zone Road Traffic Safety Violations Penalty Regulations' on January 19, 2010, which was referred to as the 'strictest ever' traffic penalty ordinance. This regulation, developed within the special administrative powers of the economic zone, was a bold and innovative step that emphasized strict enforcement and heavy penalties for serious traffic violations. It introduced measures such as cumulative fines, the option for pedestrians to voluntarily help maintain order to avoid fines, and community service orders, reflecting a balanced approach that combined strictness with humanity in law enforcement and management.

4.3. The Issues with Legislation in Shenzhen Special Economic Zone

Although the legislation in the Shenzhen Special Economic Zone has been innovative and ahead of the nation in many aspects, there remains a relative lack of flexibility and

innovation in legislation. Apart from the innovative economic zone regulations and provisions discussed earlier, most of the legislation lacks innovation and does not break non-principal provisions set by higher-level laws. Many of them are constrained by conventional thinking in terms of institutional design. Some of the legislation primarily serves as a summary of experiences in economic and social development, solidifying the outcomes of reforms.

5. Conclusion

While economic special zone legislation has provided legal support, filled gaps, and adapted to higher-level laws, its room for gap-filling legislation is shrinking due to the evolving national legal system. To ensure the healthy development of special zone legislative powers, it's crucial to utilize adaptive legislation more effectively. Defining and researching the scope of economic special zone legislative authority is vital. In the absence of specific national laws, adhering to the 'basic principles of laws and administrative regulations' is essential to set boundaries for this authority. These principles guide the extent of economic special zone legislative authority. These principles are broad, and to ensure compliance with the rule of law, China's legal oversight and regulatory review mechanisms should be activated. Entities with the right to request or suggest regulatory reviews should actively exercise their powers as granted by the Legislation Law.

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