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kozlova_l_s@mail.ru, std-tsu@yandex.ru

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LEGAL REGULATION OF REGIONAL GOVERNMENTAL AUTHORITY

SUMMARY. This article analyzes new laws in the area of regional governmental authority as well as its practical implementation that stem from the administrative legislation reform of February 1 2013. It is clear that the assigned powers as well as the delegated regional jurisdiction in the area of government are regulated by the Federal Statutes. The procedural regulation of regional government for the administrative subjects of the Russian Federation is implemented mostly through subordinate acts (including in the Tyumen Region). There are only five regions that conform to the Regional Statutes. Certain regional governmental bodies are allotted powers which constitute a conflict of laws when compared to the 2nd article of Federal Statute No. 294, paragraphs 1 and 4, and should be avoided. The authors suggest that the areas of the regional governmental authority as well as the executive bodies performing the associated functions should be defined entirely in the Regional Statutes, whereas subordinate acts, such as the administrative rules and regulations, should determine the requirements and types of regional governmental authority and the administrative procedures governing such authority. The defined conflicts of legislative regulation over regional authority indicate the need for legislative improvement. The authors propose that the following improvements be made in order to solve the current inconsistencies and remove the loopholes in the law: unified legal terminology should be adopted; areas of authority designated, governmental bodies and the powers delegated to them, should be wholly defined; requirements for the reviews performed should be spelled out; the duplicate powers assigned to the various regional executive bodies should be eliminated. These administrative regulations would improve the administrative legislature and procedure in the area of the regional governmental authority.

KEY WORDS. Regional authority, powers, subjects, administrative bylaws.

State authority is going through its next stage of development which is associated with the transformations under way in the framework of the implementation of the Concept of Administrative Reform in the Russian Federation in 2006-2010., the Concept of reduction of administrative barriers and increase of the availability of public and municipal services for 2011-2013 [1].

Regional state authority is a type of state authority and is carried out taking into account legislation updated exclusively by the executive authorities of the Russian Federation. Its concept and definition are legal, they were set down for the first time in Federal Law № 294-F3 “On the protection of the rights of legal persons and individual entrepreneurs in the implementation of state authority and municipal control” [2] (Act № 294-Ф3) adopted in 2008.

Law № 294-F3 has become a systematic legal act in the exercise of the functions of control and supervision agencies at all levels. In respect of the executive authorities

of the subjects of the Russian Federation, it secured the general powers of the executive authorities of the subjects of the Russian Federation exercising regional state authority, general procedures for the conducting and registration of enforcement activities, order of interaction between enforcement agencies at all levels, responsibility of their officials. In 2010, the Ministry of Economic Development prepared a report “On the state of the system of state authority and municipal control in the Russian Federation” [3], in which the first results of the application of Act № 294-F3 were summed up. For the Federal authorities, the task was to complete work on bringing the sectoral laws (more than 75) in line with the requirements of Act № 294-F3; to bring into commercial operation the “Monitoring and evaluation of the effectiveness of enforcement authorities” information system.

In 2011, the Ministry of Economical Development prepared a regular analytical report “Regional and municipal control in the Russian Federation” [4], dedicated to the question of authority. It notes that in 2010 regional government conducted 305,554 inspections, including 145,552 scheduled and 160,032 unscheduled. The total number of inspections carried out by the executive authority of a subject of the Russian Federation, as a rule, is between 2,000 and 8,000.

Theoretically, the total number of inspections in one subject of the Russian Federation should depend on the size of the population of the subject and its level of economic activity. In practice, it turned out that there is no direct relationship: the relative number of checks (i.e. 1,000 people and 1,000 small and medium-sized enterprises) differs by 2-3 times. In order to optimize the control and supervisory functions of the Ministry of Economic Development it was recommended to begin work on eliminating duplicate powers, with the transfer of functions under the authority and supervision of the subjects of the Russian Federation and local government. On July 18 2011 was passed Federal law № 242-F3 “On Amendments to Certain Legislative Acts of the Russian Federation on the implementation of state and municipal authority”. This law made amendments not only to all sectoral legislation, which had provisions for state control and supervision, not only to federal law № 184-F3 of Oct. 6, 1999 “On the general principles of organization of the legislative and executive bodies of state power of the subjects of the Russian Federation” [4] but also to the recently-adopted law № 294-F3.

Despite the importance of regional state authority, its legal regulation remains controversial and incomplete. A single list of regional authority in the legislation of the Russian Federation is missing.

In compliance with the existing federal model established by the Constitution and federal laws, the powers of a subject of the Russian Federation can be divided into two groups:

- 1) Powers specific to the subjects of the Russian Federation;
- 2) Federal powers, the implementation of which is passed on to the subjects of the Russian Federation, i.e. delegated powers.

Specific powers of the subjects of the Russian Federation are entirely a matter for the subjects of the Russian Federation and are undertaken by these subjects

independently at the expense of the regional budget. “Entirely a matter for the subjects of the Russian Federation” is formulated in article 73 of the Constitution of the Russian Federation on the residual principle: everything that is not related to a matter for the Federation (article 71) and the joint jurisdiction of the Federation (article 72) is the exclusive competence of the subjects. Since articles 71 and 72 of the constitution of the Russian Federation contain very extensive lists of terms of reference, the scope of exclusive jurisdiction of the subjects of the Russian Federation is lacking.

Thus, the list of their own regional powers is formed by the federal subjects of joint competence, implemented by these subjects alone at the expense of their regional budget and enshrined in paragraph 2 of article 26.3 of Law № 184-A3. 10 items out of 95 relate to authority. Certain types of regional authority are part of the other specific powers of the subjects of the Russian Federation, as provided for by federal law.

All proper control and supervisory powers of the subjects of the Russian Federation (as specified and not indicated in Law № 184-A3) can be divided into three groups.

The first group concerns supervisory powers which are fully covered by federal law № 294-f3. Most of the regional authority of the first group can also be for individuals, but in this case the provisions of Law № 294-A3 are not applied.

Monitoring of federal legislation has shown that there are 20 types of such powers (not including subtypes of regional authority). The relationship between authority and supervision is in favor of the latter: 10 – authority; 6 – supervision; and 4 – mixed powers (authority and supervision). Of the 20 types, 8 do not have a basis in Law № 184-A3.

The second group concerns supervisory powers which are not covered by law № 294-A3, but in respect of which specificities may be established by federal laws. The results of monitoring federal legislation show all kinds of powers (excluding subtypes) – 11; of which 6 – authority, 4 – supervisory and 1 – mixed power (control and supervision). Of the 11 powers 5 do not have a basis in Law 184-F3.

The third group concerns supervisory powers, which, despite being carried out for individual entrepreneurs and legal entities, are excluded from the scope of law № 294-F3 by a special clause in the law. This group may include types of authority not covered by law № 294-F3 because they are carried out in relation to other subjects: only to individuals or only to state and municipal agencies. As a result of monitoring federal legislation, three types of authority in this group are established – 1) regional financial authority, 2) regional monitoring in compliance with the legislation of the Russian Federation and other normative legal acts of the Russian Federation on placing orders and 3) monitoring of implementation of regional programs in the field of the social protection of disabled persons in order to ensure equal opportunities and social integration into society. All of these have a basis in law № 184-F3.

In practice, the list of ongoing regional authority is longer. According to the Ministry of Economic Development, 2 types of authority – over the operation of public passenger transport and technical inspection of means alerting the public – have not been enshrined in the laws or regulations of the Federal Government, but its

powers are part of the subjects of the Russian Federation. The legality of these types of regional authority is not questioned. Implementation of 7 kinds of regional authority carried out in practice in the subjects of the Russian Federation is illegal. These include:

1) State authority in the sphere of improvement of public services; 2) state authority in the sphere of burial and funeral business; 3) state monitoring compliance with the maintenance centers of cash registers / the rules of selling, maintenance and repair of cash registers; 4) supervision of the technical condition and compliance with the rules of operation of side-shows; 5) monitoring compliance with legislation in the field of retail markets, organization and implementation of activities for the sale of goods (work, services) on the retail markets; 6) state authority in the field of social protection of the population; 7) authority over water transport.

Of the 7 types of the illegal activities, there are some kinds of authority that it would be advisable to legalize, in our list 3, 4 and 6, since they are aimed at providing security. Concerning other activities it is necessary to use the prosecutor's response.

The federal powers of the Russian Federation transferred for implementation to executive bodies, that is delegated powers, are also divided into 3 groups. The first group concerns powers fully subject to law № 294-F3. Sectoral monitoring of federal legislation has revealed 11 such powers (including subtypes). The second group concerns powers partly subject to law № 294-F3. According to the results of monitoring, there are 3 such powers. The third group concerns 2 powers excluded from the scope of law № 294. Thus, 16 federal powers (including subtypes) are transferred for implementation to executive bodies of the subjects of the Russian Federation. Theoretically, in the legal regulation of the delegated powers of control, as, indeed, in respect of any delegated powers, the most important questions are about monitoring, funding, reporting and the quality of performance of the local authority.

On all these issues, the Federation has the right to pre-emptive regulation. More specifically, we will examine the two questions listed. The procedure, as a rule, in general terms, is set out in a federal sectoral law, and then instantiated in the relevant decision of the Government of the Russian Federation. The imperfection of the federal legal regulation of this issue manifests itself in various forms.

Firstly, in federal sectoral law there is no requirement to adopt a concretizing bylaw, and such an act is necessary because the law itself does not regulate the procedure for exercising authority. This is the situation with regard to the order of three types of delegated authority: over the conformity of the quality of medical care established by the federal standard of health care; over the recruitment of disabled people within the quota, and over the use of compulsory health insurance on the constituent territories of the Russian federation.

Secondly, federal law provides for the adoption of a government Act to regulate the procedure for monitoring, but a government resolution is still pending. This is the situation with regard to the procedure for organizing and conducting four types of

delegated authority: 1) over the use of investment resources including in state-regulated prices in electricity and heat supply (p. 3 art. 24, Federal law № 35-F3 of 26 March 2003 “About electricity”, p. 3 art.7, Federal law № 190-A3 of 27 July 2010 “About heat supply”); 2) control over the presentation of legal deposit (article 21, Federal law № 77-F3 of 29 December 1994 “About legal deposit of documents”); 3) public housing supervision (art. 20 of the Housing code of the Russian Federation of 29 December 2004 №188- F3); 4) hunting supervision (art.40, Federal law № 209-F3 of 24 July 2009 “On hunting and preserving hunting resources and on amendments to certain legislative acts of the Russian Federation”).

Control over the completeness and quality of performance is regulated by federal bylaws, often by orders of the relevant ministries, less often by government Acts of the Russian federation. Rapid analysis of these acts reveals that for the majority of the supervisory powers transmitted to the subjects of the Russian Federation, a procedure for supervision by the federal body of the statutory regulation of the subject of the Russian federation was established, and a procedure for the federal body to check the completeness and quality of the delegated powers was not. Thus, in the legal regulation of this issue, there is a complete disregard for the theoretical science of administrative law.

Pursuant to federal regulations, the subjects of the Russian federation are taking steps in the field of regional authority.

As to the form of legal acts by which the regulation of issues of regional organization of state authority is carried out, more often in this area by-laws are accepted, and only in 5 regions of the subjects of the Russian federation (as of February 1) regional by-laws have been adopted:

Law № 117-3 of the Bryansk region of 31 December 2009 “On some issues in the organization and implementation of regional state authority and municipal authority in the territory of the Bryansk region”;

Law № 66-3 f the Republic of Komi of 6 July 2009 “On some issues in the organization and implementation of regional state authority and municipal authority in the territory of the Republic of Komi”;

Law № 51 of the Khabarovsk Territory of 24 November 2010 “On the organization and implementation of regional state authority and municipal authority in the Khabarovsk Territory”;

Law № 981-03 of the Pskov Region of 3 June 2010 “On the organization and implementation of regional state authority and municipal authority in the territory of the Pskov region”;

The law of the Ryazan region of 15 July 2010 “On the organization and implementation of regional state authority and municipal authority in the territory of the Ryazan region”;

In content, these regional laws are very similar, duplicate the provisions of the Federal law № 294-F3 or refer to it, but the adoption of such laws should in itself be recognized the positive.

As for the regional by-laws, two approaches are apparent. In the first case, the highest executive body of the Federation is limited to enumerating enforcement authorities (Khabarovsk Territory, Kirov region, Penza region). In the second case, enumerating enforcement authorities is accompanied by an indication of the form of their ongoing regional authority (Khanty-Mansi Autonomous District, Moscow region, Tyumen region). This approach is preferred. It is noticed that in a number of subjects of the Federation, there are cases of granting regional control powers to regional state institutions, which is clearly contrary to Sections 1 and 4 of law № 294-F3, and must be overcome.

In the Tyumen region exists resolution № 391-P of the Government of the Tyumen region of 26 October 2011 “On the definition of the executive authority of the Tyumen region, responsible for the implementation of regional state authority” [6]. At present, there are not two kinds of regional state authority: authority over the delivery of obligatory copies of documents and regional state monitoring of the transport of passengers and baggage, and, accordingly, the bodies responsible for them, are not defined. In addition, the name of the enforcement authority needs to be brought in line with the updated federal legislation, and state supervision in the field of food safety should be excluded from the powers of regional authorities.

Four executive agencies with different legal forms (“department”, “Chief Directorate”, “Directorate”, “State Inspection”, “Committee” hold regional authority in the Tyumen region, where there is no law securing the system and structure of the executive power of the region and delimiting their basic functions. However, to date, most of the subjects of the Russian Federation have attempted a distinction between the functions of the executive power of various legal forms at the level of regional law – in 55 subjects, the laws on the executive branch have been passed*.

Thus, the analysis of existing legal acts in the sphere of regional state authority and its application clearly demonstrates the need for its continued and rapid improvement, which is directly dependent on the performance of reforming the entire system of government. Among the most important areas to improve, in our opinion, are 1) the unification of the basic legal categories; 2) legislative embodiment of a closed list of types of regional state authority; 3) securing requirements, whereby the supervisory checks are carried out; 4) elimination of duplication of supervisory powers among the various bodies of executive power; 5) the development and adoption of administrative rules, regulating administrative procedures for the implementation of all kinds of regional state authority and the cooperation of bodies for its implementation.

* Republics of Adygea, Altai, Bashkortostan, Buryatia, Ingushetia, Kabardino-Bakaria, Komi, Mordovia, Yakutia, Tatarstan, Tuva, Udmurt, Khakassia; Altai, Trans-Baikal, Krasnodar, Perm, Khabarovsk territories; Arkhangelsk, Astrakhan, Bryansk, Vladimir, Volgograd, Voronezh, Ivanovo, Irkutsk, Kaliningrad, Kemerovo, Kirov, Kostroma, Moscow, Murmansk, Nizhegorodskaya, Novgorod, Novosibirsk, Orenburg, Orel, Penza, Pskov, Ryazan, Sakhalin, Sverdlovsk, Smolensk, Tambov, Tomsk, Tula, Ulyanovsk, Chelyabinsk, Yaroslavl, the Jewish autonomous regions; Nenets autonomous, Khanty-Mansi autonomous, Chukotka autonomous and Yamal-Nenets autonomous districts.

It seems that the list of regional state authority, which, in compliance with the existing legal framework, should be implemented by the executive bodies of the subjects of the Russian Federation, at the moment is excessive. We can assume that it is superior to the resource and management capacity of the subjects of the Russian Federation. In this regard it is proposed to develop measures to reduce the types of regional authority.

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