

Operation Mechanism, Social Risks and Legal Governance: Research on China's Electronic Cigarette Administrative Law Supervision Approach

Hailong Zhu ^{#1}, Chenming Tang ^{*2}, Frank Lin ^{#3}

^{#1}: School of Public Administration, Hangzhou Normal University, No. 2318, Yuhangtang Road, Yuhang District, Hangzhou. 311121
zhhl59@126.com

^{*2}: Hunan University, No. 2, Lushan South Road, Yuelu District, Changsha
957740703@qq.com

^{#3}: Jack B. Brown College of Business and Public Administration, California State University, San Bernardino, CA 92407,
flin@csusb.edu

Abstract

As a new technological product, e-cigarettes imply great social risks in modern society. They have physical health and economic impacts and threats to citizens of all ages, fields and industries, and require re-intervention of administrative law. It is subject to special types of supervision. Through interviews and interviews with e-cigarette sellers and manufacturers, this article has formed the first-hand materials that are closest to the e-cigarette market, and drawn the following conclusions: e-cigarettes and traditional cigarettes have physiological homogeneity, but in marketing The model level is unique; the social impact of e-cigarettes is not a singular economic or physiological impact, but a collection of multi-dimensional influences and risks such as ideology, psychology, physiology, and economy; at this stage, the administrative supervision of e-cigarettes is extremely important. For major shortcomings and vacancies, it is necessary to start with the restructuring of the regulatory authority structure, the establishment of special administrative licensing procedures and the enhancement of public opinion guidance, etc., to improve supervision, effectively clarify the position of e-cigarettes in the market, and effectively control the social impact of e-cigarettes.

Keywords: -Electronic Cigarette; Administrative Law; Market Supervision; Tobacco Monopoly Law.

Tob Regul Sci. TM 2022; 8(1): 26-33

DOI: doi.org/10.18001/TRS.8.1.3

Introduction

In the traditional legal perspective, administrative law, as a basic method of social governance and management based on public power, reflects the basic trend of unlimited expansion and expansion of public power and squeezing and infringing on the private rights of citizens. Therefore, within a certain period of time, the administrative law began to follow the principle of controlling power and protecting the people to control the expansion of administrative law, leaving room for private rights and autonomy of will. At the same time, controlling power and protecting the people has become the basic legal principle and basic principle of the operation of administrative law. But in the field of tobacco law, the applicability of this jurisprudence has been reduced. Because of the particularity of China ' s tobacco industry, ^[1]the China Tobacco Monopoly

Administration (Tobacco Corporation) obtained the sole right to operate in accordance with the Tobacco Monopoly Law, which has a national monopoly; at the same time, China is a populous country with a relatively high proportion of smoking population, which determines China is a major tobacco country at the international level, which shows the theoretical legitimacy and reality of monopoly in China's tobacco industry.^[2] In addition, there are many tobacco brands in China, but the degree of integration is low, that is, compared with the international developed countries, China's tobacco industry has the characteristics of strong monopoly, large scale, and weak system, regardless of whether it is to maintain a monopoly, integrate brands, To control smoking behavior, etc., cannot rely on the traditional thinking of controlling rights and protecting the people, but should implement strict administrative supervision of state intervention and realization of parental system.^[3]

However, in the field of e-cigarettes, the jurisprudence of controlling rights and protecting the people was initially used, because the original e-cigarette industry was born to replace traditional tobacco products to a certain extent and reduce the people's exposure to tobacco. The above has a positive social effect and corrective value.^[4] Its appearance and representation have given people from all walks of life great self-confidence and significant positive significance. Therefore, the state has less intervention and intervention in it, and its development has a certain degree of freedom.^[5] However, with the gradual development of the e-cigarette industry, corresponding new types of malpractices have begun to emerge, forcing the traditional law of controlling rights and protecting the people to make certain amendments and applications.^[6] On the one hand, e-cigarettes are similar to traditional tobacco. Their addiction, dependence, economy, and harmfulness make it impossible for complete autonomy of will adequately choose and respond to them. It also requires the state to intervene in the supervision of the implementation of patriarchy. On the other hand, it monopolizes capital. The combination with new technologies has formed a new social control force, which also has a trend of unlimited expansion and the risk of infringing on citizens' rights and interests and poses a threat to the administrative power.^[7] This article intends to take the supervision of e-cigarettes as the research object, and discuss in depth the social risks contained in e-cigarettes, the necessity of administrative supervision and state intervention on e-cigarettes, the legal nature of relevant supervision objects, and policy recommendations for administrative supervision of e-cigarettes under the system. Research methods and target selection criteria

The research method used in this article is the interview method. The research conclusions are formed by conducting interviews, recording and in-depth analysis of the interview results with the interviewees. Because e-cigarettes are a new type of thing, the relevant social operation mechanism has certain particularity and concealment. Direct interviews are conducive to breaking information barriers, obtaining first-hand information, and also helping to fully and effectively grasp the current development of e-cigarettes. It has important instrumental significance for the development of research. In terms of types, the interview research methods adopted in this article are unstructured interviews, direct interviews, general interviews, and group interviews. From the perspective of the research objects, the interview objects of this article are e-cigarette manufacturers, e-cigarette sellers, and e-cigarette users. , Bystanders, government personnel, etc.

The specific reasons for selecting the above research objects are as follows: On the one hand, e-cigarette manufacturers and sellers are one of the two main subjects in the e-cigarette sales chain, while e-cigarette users are the other main subject. Both belong to the demanders and the sellers. Supplier relationship. At the same time, e-cigarette users are directly close to e-cigarette products, have intuitive perceptual experience on e-cigarette use experience and the impact of e-cigarettes, and contain certain rational cognitive conclusions; and e-cigarette manufacturers and sellers have some internal, The underlying mechanism of e-cigarette products is certain, and these cognitions and experiences are not implied by other subjects.^[8] On the other hand, bystanders and government personnel have external regulatory obligations and external demands on e-cigarette products. Government personnel require e-cigarette products and the e-cigarette industry to be within the framework of

administrative supervision, while bystanders require e-cigarettes to not affect them. Personal physical and mental health and family members (especially adolescents), so their views and understanding help to further grasp the development status and regulatory needs of e-cigarettes.

Analysis of interview results

Specifically, e-cigarettes are powered by lithium batteries, using an atomizer composed of heating electronic components, coils, and cotton to heat the liquid in the e-liquid to form a vapor that simulates smoking. The e-cigarette usually contains propylene glycol, vegetable glycerin, and flavoring. Ingredients such as spices and nicotine. The earliest e-cigarette in the modern sense was an export-to-domestic product in 2004. Theoretically, the earliest e-cigarette prototype was a patented design by Herbert A. Gilbert in 1963. However, because of the harm of traditional paper cigarettes, the society has not been fully satisfied. Therefore, the design has not been commercialized. In China, the earliest promoter of e-cigarette commercialization was Dr. Han Li in Beijing in 2004, who atomized the diluted propylene glycol nicotine liquid through an ultrasonic device, forming the prototype of e-cigarettes in China and obtained related patents. Combined with the smoking ban in major cities at that time, e-cigarettes became popular in China. As of 2019, the number of e-cigarette users over 15 years old in China has reached 10 million, and the age group with the highest usage rate is 15-24 years old. The main source of access is the Internet.

In the past nearly 20 years, China has always been in a regulatory paradigm for the e-cigarette market, and e-cigarette products are in a relatively free state of survival and development. In recent years, the country has begun to increase supervision and control intensity. For example, at the 2018 National Tobacco Work Conference, Ling Chengxing, general manager of China National Tobacco Corporation, mentioned that "the national standard for electronic cigarettes has been approved by the National Standards Committee." In 2020, the State Administration for Market Supervision and Administration The "Special Inspection Action Plan for the Electronic Cigarette Market" formulated and the "Decision on Amending the Implementation Regulations of the Tobacco Monopoly Law of the People's Republic of China" (draft for comments) issued by the Ministry of Industry and Information Technology and the State Tobacco Monopoly Administration in 2021 mentioned "Electronic cigarettes and other new tobacco products shall be implemented in accordance with the relevant regulations on cigarettes in this Regulation." However, the following theoretical issues still exist in the administrative supervision of electronic cigarettes at this stage: First, whether electronic cigarettes are theoretically "tobacco products", and Whether there is a difference between the concept and connotation extension and traditional cigarettes, whether the difference affects the legality and rationality of its exclusive management; second, what are the characteristics of electronic cigarettes that are different from traditional cigarettes in the operation and circulation process, and whether they affect electronic cigarettes? The specific administrative measures and policy arrangements for the tobacco industry; third, what are the profit models and social impacts of monopoly capital hidden behind e-cigarettes, as well as the impact and risk types caused by them in the tobacco field. In response to the above three issues, the author conducted interviews with e-cigarette Internet retailers and their upstream producers, users and bystanders, as well as relevant government officials, and conducted in-depth research and analysis on the above issues based on the interview results and materials. Based on the corresponding administrative supervision measures.

(1) The operating mechanism of e-cigarettes: redistribution of capital power

The traditional operation of tobacco products in China is characterized by state monopoly, which is an operation mode that combines special legal enforcement and administrative licensing. As an emerging product, electronic cigarettes have opened the market for capital, lowered the threshold, promoted the integration of new

technologies and capital to a certain extent, and constituted a new mechanism of capital distribution and operation.

"E-cigarettes are very profitable. As far as we (e-cigarette merchants) sell on the micro-business platform, the sales profit can reach at least 50%. Many merchants who sell to nonfamiliar customers can achieve 70% profit. In the national administration Without complete control and regulation, the market appears to be very large, and many capitals are coveting the industry. Since 2018, RELX has started the first round of angel financing with an amount of 38 million; at the same time, the capital is not complete. With the monopoly, a large part of the space left is occupied by copycat and inferior e-cigarette merchants." (Supplier)

Based on its uniqueness from traditional tobacco products, e-cigarettes have formed a new distribution of monopoly capital and capital outside of administrative regulations in modern society. E-cigarettes have a strong economic driving force based on their relatively obvious economics and the liquidity of Internet and data technology. This driving force has triggered a competition for capital and induced a series of incomparable traditional tobacco industries. Social impact. This implicit social impact and social harm further proves that it should not take a laissez-faire attitude and allow it to develop freely, because the consequence of this laissez-faire development will be the continuous erosion of the market by technological monopoly capital, wanton expansion and civil rights infringement. Administrative control measures dedicated to monopoly should be adopted. Profit is an important driving force to promote the combination of capital and technology. Under the traditional background, due to the particularity of tobacco products, China has implemented exclusive control over them. At that time, the administrative law did not fully reflect the principle and legal principle of controlling rights and protecting the people, but the special management of paternalism. The essential reason is The important impact of tobacco products on society. In the process of innovation, e-cigarettes departed from the scope of this patriarchal management, but flowed relatively freely in the capital market, transaction market, and consumer market, and its impact is immeasurable.

(2) Social risks: double hidden dangers of health and public opinion

In the field of e-cigarettes, the physical health risks of individuals have assembled to form a multi-dimensional risk system for the entire society. Specifically, it includes the overall social health risks caused by the failure of the supervision of inferior electronic cigarettes, and the social public opinion risks under the control of electronic cigarette capitalists.

"It is said that the main components of e-cigarettes are propylene glycol, glycerol, nicotine, etc., and there is no tar in it. From this perspective, it is not as harmful as cigarettes. But if you buy inferior products, there may be particles in the e-liquid. Chemicals, carbonyl compounds, polycyclic aromatic hydrocarbons, heavy metals, and cytotoxicity. Now the threshold for selling e-cigarettes is not high. The probability of buying low-quality e-cigarettes is much greater than the probability of buying fake cigarettes. The use of e-cigarettes is not what we (e-cigarette users) are most worried about. The risk of buying low-quality e-cigarettes is the worthiest of attention." (demand)

On the one hand, according to the definition of tobacco products in the "Tobacco Monopoly Law of the People's Republic of China", it refers to cigarettes, cigars, shredded tobacco, dried tobacco leaves, tobacco leaves, cigarette papers, filter rods, tobacco tows, and special tobacco products. Mechanical, from the perspective of this concept, e-cigarettes do not belong to tobacco products because they do not contain tobacco. However, in essence, it has homogeneity with traditional tobacco products, such as addiction and harmfulness. However, according to the interview results, its characteristics are unique compared with traditional tobacco products, such as the difference in raw materials, different burning temperatures, different smoke properties, different levels of harm, different operating modes, and different tastes.

In other words, from a qualitative point of view, electronic cigarettes and traditional tobacco products are of the same quality. In theory, tobacco products should be referred to, and the basic principles of control and protection of the people should not be applied. Instead, patriarchal administrative measures should be adopted to adjust the industry. However, according to current laws and regulations, the supervision of e-cigarettes is not compatible with laws and regulations such as the Tobacco Monopoly Law. If it is necessary to use administrative means to regulate it, it must be included in the scope of regulation at the legislative level to expand the Tobacco Monopoly Law and the Tobacco Monopoly Law. The implementation regulations define the boundaries of the concept of "tobacco". At the same time, the most important issue is that under the condition of low supervision, inferior e-cigarette products will inevitably run rampant on the market, and the overall health risks caused by them will be far greater than traditional tobacco products, which further proves the strengthening of administrative laws. The necessity of power intervention.

"The favourite idiom of merchants selling e-cigarettes is to compare e-cigarettes with traditional cigarettes. For example, e-cigarettes are less harmful than traditional cigarettes and induce people to buy. But this is essentially a 50-step laugh-a-hundred-step approach. The harm is the harm. There are also some words that even distort the harm. For example, many manufacturers describe the nicotine in their products as 'organic salt', and say that the nicotine in traditional cigarettes is alkaline, and their 'organic salt' is 'neutral', which has no scientific basis at all." "I don't think e-cigarettes can be used to quit smoking. Even many people who have never smoked may become addicted to traditional cigarettes because of e-cigarettes. Many people who advocate that e-cigarette can help quit smoking are likely to be manufacturers or the merchant wants to intercept the source of traditional cigarettes."

On the other hand, e-cigarette manufacturers and merchants not only tend to combine capital to plunder social profits, but also tend to use social psychological factors and social public opinion factors to justify e-cigarettes. This social influence from the inside to the outside has largely hindered the intervention of administrative law and reduced the quality and efficiency of national control. For example, some conspiracy theories combined with tax and other factors to criticize e-cigarette supervision, or maintain e-cigarettes The image of the overall social level, etc. It can be seen that the various marketing methods implemented by e-cigarette companies for profit purposes do not reflect their social responsibilities as market entities. If we continue to follow the traditional thoughts, jurisprudence and principles of power control and protection of the people in the field of electronic cigarettes, and allow them to develop freely, they will even have a greater adverse impact on the entire society, and will also cause disorder in the entire tobacco product industry and the overall market. .

(3) Governance dilemma: the lack of specialized management power and the difficulty of legal governance

According to the analysis of the previous interviews with suppliers and demanders, the legal governance of e-cigarettes is in a vacuum at this stage, and the content of the interviews with bystanders and regulators further proves this serious fact. In general, on the one hand, the imbalance of supervision makes the quality of e-cigarette products at this stage uneven, and there is no corresponding legal basis for systematic and specialized supervision of them; on the other hand, the Internet factor has further intensified the supervision of e-cigarette products. The difficulty.

"The quality of e-cigarettes cannot be guaranteed now. Nicotine has an addictive hazard. If you buy inferior products, the cytotoxins and heavy metals in it are very harmful. Even some manufacturers mix e-cigarette oil with it. Cannabis, I don't know if this kind of thing is electronic, tobacco, or drugs." (bystander)

"Until the end of last year (2020), e-cigarettes were still in the blind spot of supervision. It is not a cigarette or a medicine. Now the procedures for handling e-cigarette-related business documents are relatively simple, and

only a business license is required. And if it is sold online, 'Then you don't need anything. Point-to-point supply. If it's blocked, change the number and continue selling.'" (Supervisor)

The harmfulness of e-cigarettes to society has reached the point where national forces must intervene and be specifically controlled by administrative means. For example, uneven electronic cigarette manufacturers and sellers and electronic cigarette products that cannot obtain quality assurance may be even more harmful to the health of citizens than traditional tobacco products. In terms of administrative supervision, the e-cigarette industry directly highlights the contradiction between the lagging nature of legislation and the innovation of new things. According to the content of the interview, e-cigarette sellers and other entities themselves have very clear views on the supervision of e-cigarettes: they are in a gray area of administrative supervision, that is, they have not paid enough attention to all aspects, and it is difficult to find them in the current legislative system. The legal basis for effective supervision. According to the conceptual nature of administrative licensing, the social behaviours of general market entities follow the basic legal principle of "freedom if the law is not prohibited". For more special industries and products such as tobacco, the administrative law stipulates that an administrative license must be obtained to enter and be involved. However, the e-cigarette industry has not been included in the scope of special permits based on its industry specificity. On the one hand, it violates the legislative purpose of administrative licensing. On the other hand, it raises important problems in e-cigarette supervision.

Conclusions and prospects

(1) Research conclusion

According to the results of the interview, the e-cigarette industry has developed into a special industry that cannot be ignored by administrative supervision. It can no longer use the traditional power control and civil law to allow it to develop freely, because its original purpose is to replace traditional tobacco products and reduce The purpose of tobacco harm cannot be effectively achieved, and it may even produce some new risks and civil rights harm. Specifically, the administrative supervision difficulties of the e-cigarette industry are mainly reflected in three aspects:

First, e-cigarettes are a new type of thing, and they are not included in the scope of traditional regulations. In the "One Law, One Example, Three Orders and One Interpretation" in China's tobacco monopoly law and regulation system, the earliest tobacco monopoly law was promulgated and implemented in 1992, and the latest tobacco monopoly license management measures came into effect in 2016. At that time, the e-cigarette industry It has not fully emerged, nor has it been taken seriously by legislators. At the same time, the particularity of its nature is difficult to demonstrate and define at the legislative level, which provides opportunities for lawbreakers.^[9]

Second, the combination of capital and technology is not only reflected in the product, but also in the marketing level. For example, the Internet and social platforms have expanded e-cigarette sales channels and made supervision more difficult. Traditional markets have specialized regulatory agencies. In the Internet environment, social platforms share part of the regulatory responsibility and pressure. From a theoretical point of view, this is a correct and effective approach to regulatory diversion, but in reality, social platforms have third parties. The subject of supervisory responsibility does not reflect its supervisory value. At the same time, there are no special stores, business licenses and other related information records in the sales model of platforms such as WeChat. The scale of customers is relatively large and the distribution is relatively scattered. Once disputes occur, the efficiency of supervision and relief will be greatly reduced.

Third, the administrative law field has not yet fully applied e-cigarette administrative licensing regulations and

related procedural regulations, such as e-cigarette monopoly licenses. This reflects the lack of emphasis on electronic cigarettes in the field of administrative law, unclear and incomplete considerations, and other defects.

Therefore, in order to regulate the e-cigarette industry and realize the re-ordering of the tobacco industry, the state administrative power should first be involved in the economic platform, because platform supervision always relies on social and market forces, and patriarchal supervision in special industries requires state forces to treat. The second adjustment means that the above-mentioned social market supervision force should belong to the state administrative force. Secondly, special access procedures and access standards should be set up to strictly control the quality of e-cigarettes and the qualifications of e-cigarette manufacturers and sellers. At the same time, they should be included in the scope of special administrative licensing, and their intensity should not be lower than that of traditional tobacco products. Third, administrative means should be used to appropriately guide and adjust public opinion related to e-cigarettes to prevent social public opinion from legitimizing, legalizing, and even myths about e-cigarettes. This kind of public opinion social influence has greatly increased the probability and damage of e-cigarettes in modern society. It should be effectively controlled and adjusted based on the dual regulatory means of coercion and guidance.

(2) Prospects for the future

In the future, after strengthening the intervention of administrative law, e-cigarettes will obviously present a monopoly management situation similar to traditional tobacco products, but it will inevitably highlight its unique characteristics.^[10] Specifically, it includes the cooperation of the rule of law and social forces, the coordination of online and offline supervision, and the partial replacement of traditional tobacco products by electronic cigarettes.

First of all, the power of the rule of law belongs to the state intervention means necessary for tobacco products at this stage, while the social power belongs to the category of social supervision. Cigarette control, smoking ban, and health rights protection thoughts in modern society are gradually awakened and strengthened. Their supervisory power will be an important driving force for the supervision and management of the e-cigarette industry; at the same time, the integration of the rule of law and social forces will be the future e-cigarette industry and even the inevitable trend of tobacco industry regulation.

Secondly, in the new economic model with the Internet and micro-business as the key words, the combination of offline physical stores and online online stores of e-cigarettes may exist for a long time in the future. Therefore, the content of administrative regulations should include online and offline dual supervision and should be maintained as the main supervision status.

Third, the original purpose of e-cigarette research and development was to replace traditional tobacco products and protect citizens' health rights to a certain extent, but it was only distorted due to capital intervention during the development process. With the strengthening of the rule of law in the future, the mission and goals of the e-cigarette industry will be further elevated to an important position, which also means that the replacement of traditional tobacco products by e-cigarette products to a certain extent is an inevitable trend.

References

- [1] SM Dursun and MA Reveley."The efficacy of a dose-escalated application of transdermal nicotine plus sulpiride in Tourette's syndrome." *European Psychiatry* 11.4(1996),pp:204-206,doi:10.1016/0924-9338(96)88392-1.
- [2] Camus Marine,Gallois Claire,Gallois Glaire & Marteau Philippe.(2014).Ulcerative colitis and electronic cigarette: what's the matter?. *The American journal of gastroenterology*(4), pp:608,doi:10.1038/ajg.2013.439.
- [3] Eunhye Seo, Purum Kang and Geun Hee Seol."Trans -anethole prevents hypertension induced by chronic exposure to both restraint stress and nicotine in rats." *Biomedicine & Pharmacotherapy* 102.(2018),pp:249-253, doi:10.1016/j.biopha.2018.03.081.
- [4] Tatsuya Norii,and Adam Plate."Electronic Cigarette Explosion Resulting in a C1 and C2 Fracture: A Case Report." *Journal of Emergency Medicine* 52.1(2017),pp:86-88, doi:10.1016/j.jemermed.2016.08.010.

- [5] Agnes J. Jasinska,Todd Zorick,Arthur L. Brody,Elliot A. Stein."Dual role of nicotine in addiction and cognition: A review of neuroimaging studies in humans." *Neuropharmacology* 84.(2014),pp:111-122, doi:10.1016/j.neuropharm.2013.02.015.
- [6] Charlie Lin, and Humberto Choi."GRANULOMATOSIS DUE TO ELECTRONIC CIGARETTE USE." *Chest* 156.4(2019),pp:A2093, doi:10.1016/j.chest.2019.08.2039.
- [7] Talha Khan Burki."Electronic cigarette use in the UK." *The Lancet Oncology* 18.6(2017),pp:e311,doi:10.1016/S1470-2045(17)30365-0.
- [8] Nevin Zablotsky."Electronic cigarette hazards." *The Journal of the American Dental Association* 148.2(2017),pp:60, doi:10.1016/j.adaj.2016.12.005.
- [9] Lisa Miyashita ,and Jonathan Grigg."Effect of the iQOS electronic cigarette device on susceptibility to *S. pneumoniae* infection." *The Journal of Allergy and Clinical Immunology* 141.2(2018),pp:AB28,doi:10.1016/j.jaci.2017.12.090
- [10] Jie Gao,,Bao-Ling Adam & Alvin V. Terry.(2014).Evaluation of nicotine and cotinine analogs as potential neuroprotective agents for Alzheimer's disease. *Bioorganic & Medicinal Chemistry Letters*(6),pp:1472-1478,doi:10.1016/j.bmcl.2014.02.008.