

Government and Private Colleges: Coordinate Relations Based on Contracts

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Abstract: Private education hasn't been paid enough attention in China's education. "People's Republic of China Private Education Promotion Law" clearly defined that Private and Public higher education share an equal position, but in fact, private colleges have just played a complementary role. Under the trend of "non-administration and independent schooling", the relationship between government and private colleges requires further changes. This article explores the motivating factor and the feasibility of the introduction of contract system by analyzing the relationship between government and private colleges. And under the premise of contractual relations in liberty and equality, we want to establish some rules and norms to coordinate and promote each other, and jointly promote the development of private education.

Keywords: Contract; Government; Private Colleges; Coordination

1. Introduction

Private institutions of higher learning (here in after referred to as private colleges) is an important component of China's higher education team. It doesn't belong to the state-owned undertakings units. As a result, it is not as administrative as public colleges, thus avoiding many interferences of administrative factors, and therefore more biased to compete in the market. It introduces a large number of market mechanisms to guide their own development, and does have a lot of school autonomy in the management organization structure and mechanism of the normal school. From the microscopic point of view, private non-enterprise legal identity, the actual situation of private universities, is developed under the management of the local government education departments, as well as the dual constraints of market competition. Although in the late 1990s, private education has made considerable progress, but from a macro point of view the entire private colleges and universities as a whole and intergovernmental dislocation has severely hampered the independent normal development of the private universities, status inequality, unstable policy as well as the lack of substantive rights of the legal system and protection makes private colleges and universities also difficult to maintain an independent and stable development in the middle and long-term planning.

2. Conclusion of the contractual relationship between government and private colleges

2.1. Definition of the contractual relationship between government and private colleges

From the point of its principle part, the contractual relationship, worked out by Government and relative people is an administrative contract. Administrative contract is also an administrative act. It must be higher than the requirements of the contract of the private law if the contract system would be carried out by government departments and private colleges under the jurisdiction. That is to say, in process of contract making, not only the administrative body has permission to enter into the contract, its relative people also should have the authority and ability to work out to reach the contract achievement. In addition, the expression of the requirements of both sides should be valid, and documentation of the contract is needed.

2.2. Feasibility of contract making by Government and private colleges

Firstly, from the contract administrative angle, although it confirms that the administrative competence to conclude contract should be expressly authorized in normative documents, it doesn't deny the conclusion of the administrative contracts under no clear legal authorization. To conclude a contract by powers and responsibilities of the administrative body favors the flexibility and effectiveness of the administrative act. In case of no violation of the principles of law, the

conclusion of the administrative contract can be regarded as a modern administrative behavior. Besides, during the conclusion of the administrative contract, the relative people not only need to meet all the conditions to conclude private law, but they also need to have a complete full civil capacity, which includes the meaning of that ability as well as the responsibility for their own behavior. Meanwhile, the relative people need to have the contractual capacity of the administrative contract requirements.

In reality, Government departments and private colleges both meet the requirements as a principle body. Private colleges have the conditions to build a modern corporate enterprise system with the interior organization. And many of them have been established in accordance with the modern corporate system organizational structures, which are the Board of Directors composed of investors, as the owners of the school property rights; professional management personnel hired to manage schools; and the establishment of supervisory bodies such as a financial sector. Such modern corporate system on the basis of the contractual relationship can be regarded as mechanism system which is used by private colleges to restrain them. In the entire private education environment, the government, as the power of the regulation, is the department of educational leadership. While due to the asymmetry of information and the particularity of public education, the government cannot directly replace the school to develop education, which is a driving force to establish a principal-agent mechanism between the Government and private colleges. Government can relieve work pressure through the establishment of a principal-agent mechanism, and private colleges can take advantage of a clear mechanism to exercise its own independent authority. The principal-agent mechanism fundamentally is a social realization means of contract theory to create a complete contractual relationship.

In addition to the driving force, the Government isn't directly involved in education affairs because they just guide the cause of education through policy. So both the government and private colleges are limited liability body, that is to say in educational work the Government and the private colleges exercise their own powers, each bear their own education task and has its own autonomy. From this perspective, the government has its own administrative discretion in the cause of education work, while private colleges as state financial taxpayers have independent legal status, which offers contract system feasibility. Both sides can establish the respective rights and obligations under the principles of independence, freedom, and equality.

Second, in addition to the main body, Legitimacy means that the contents of the contract must be legally valid, which would be a constraint of freedom for both sides. The contract shall be void if certain provisions are in conflict with the law. Fairness means to maintain the principle of fair and equitable in the conclusion of the process, in particular, to avoid administrative subjects developing unfair terms and conditions with its own power resources in the process of concluding contracts, so that it ensures a fair and effective involvement of both. No threat to social and public interests means neither

violation of the social ethical responsibility in process of concluding contracts nor the impairment of benefit of other social groups for seeking interests of some groups.

In the process of conclusion of contracts between the Government and the private colleges, it is necessary to ensure that it keeps the principles of fairness and justice and to ensure that it benefits the education and welfare of the whole society rather than profits of a small number of people under the premise of the law. Since there are some laws and regulations of education in the field of China's education, there are laws to go by in the process of the conclusion of contracts. Besides, both sides stand on freedom and equality to achieve equitable principles, so the allocation of rights and obligations in the contract could meet the rules of convention.

3. Coordination mechanism after entering into the contract

It keeps the pros and cons in the limited liability. Although the function of contract with fairness and efficiency value cannot be ignored, the risk externality is "derivatives", which can't disappear. Due to the principle of contract is for lawful authority within an absolute constraint and some of the impact of the incident which are not agree in real operation, and have an influence of the original contract enforcement. At this time, we need to establish a coordination buffer in the contract execution outside of the blank area. The contract could make government and private colleges' better coordination between their fair shares of the work. But when facing some larger emergency, the introduction of the coordination mechanism is also indispensable in order to better promote the education career

3.1. The necessity for coordination introduced

First of all, from schools and government organization system speaking, we are using the hierarchical organization form that the lower the listens to the superior. And speaking from the main body, the government departments is the leading department in the social hierarchy. From this perspective, Education department normally will be affected by the superior instruction policy intervention, and then affect its internal working order, so it is easy to impact the terms of the contract made by the government and the related private colleges and spark controversy.

Secondly, in the external market competition condition, as the main body of education work, the private colleges are also facing great external competition pressure. If after the contract, the private colleges are at a disadvantage in the external competition continuously, and it is difficult to continue to perform the treaty requirements or even bankruptcy. In this process, it will bring about a series of conflicts.

Therefore, after making the contract, there must be a certain regulation and coordinating work, in order to promote the normal contract. It means that the government and colleges can contract relationship as the main frame, and they should set up dynamic coordination

mechanism for some possible burst problems and contradictions.

3.2. The introduction of coordination mechanisms

Government failure and market failure may occur due to market-oriented education, so we need to have a coordination mechanism beyond this. First introduced as a coordination mechanism for the main relations can't be part of the Government's education this, the same can't be between universities and the private interests, coordination mechanisms must maintain their neutrality and objectivity and fairness of. Therefore, it is possible to consider the introduction of an intermediary organization or the nature of the industry associations to act as a third party groups to coordinate. Groups and is not as a third party to intervene in the only encounter problems in the enforcement of contracts, and should serve as an independent body to participate in the beginning to the conclusion of contracts, so you can more clearly understand the government and private colleges and universities in the contract each convention rights as well as obligations to coordinate them more credibility and reliability.

4. Discussion and conclusion

The Government has the statutory duty of the development of higher education, but because of the lack of educational resources, the government came to encourage the development of private colleges and universities instead. In order to achieve the public goal of the development of higher education, the government needs to cooperate with private colleges and universities, and the best way of cooperation is contract. By making contracts with private colleges and universities, the government achieves the purpose of developing higher education through the development of the private colleges and universities. In order to ensure that private colleges and universities comply with laws and regulations, implement the national education policy and to ensure the quality of teaching, to cultivate professionals for socialist modernization construction, the government can't give up the administration of private colleges and universities. The government can use administrative contract to administer the private colleges and universities, the rights and obligations of the private colleges and universities are appointed in the contract. At

present, there are no relevant provisions about the contract in China's relevant laws and regulations about the administration of private colleges and universities. Change the relevant provisions of the People's Republic of China Private Education Promotion Law, increase the provisions of the contract between the government and private colleges in the People's Republic of China Private Education Promotion Law and provide a legal basis for administrative contracts between the government and the private colleges and universities. Thus, it is feasible to build the provisions of contract law between the government and private colleges and to achieve the administrative goals of the development of higher education by the contract between the government and private colleges and universities.

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