The "Gatekeeper" in the Construction of a Law-based Government: Research on the Functional Positioning and Implementation Mechanism of the Government Legal Counsel System

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Abstract: The government legal counsel system is an important institutional arrangement for the construction of a law-based government. Its function has gradually evolved from "post-event relief" in the early stage to "pre-event prevention, in-event control, post-event remediation" throughout the entire process of risk management and control, playing the role of "gatekeeper" for maintaining the legitimacy of government actions. This paper takes the innovative practice of the government legal service advisor system in Wenzhou City as a sample and, in combination with the general situation across the country, deeply analyzes the practical difficulties existing in the system in terms of functional positioning, subject selection and employment, operation mechanism, guarantee system, etc. It is necessary to start by clarifying the core functional positioning of the "gatekeeper." The implementation mechanism of the government legal counsel system is systematically optimized through the establishment of a scientific and standardized selection mechanism, the improvement of a coordinated and efficient operation mode, the strengthening of independent and professional performance guarantee, and the improvement of a digitally empowered smart platform, thereby effectively enhancing its effectiveness in serving the construction of a law-based government.

Keywords: Rule of law government; Government counsel; Functional positioning; Implementation mechanism

1. Introduction

Building a law-based government is an essential requirement for modernizing national governance. The government legal counsel system, as an important institutional innovation, bears the key responsibility of guarding the "legal gate" for administrative decision-making and is an important line of defense against legal risks and ensuring law-based administration. With the development of practice, the theoretical and practical significance of the system has become increasingly prominent, but there is still a significant gap between the design of the

system and its actual operation. Despite continuous exploration and innovation in various regions, there are still widespread problems such as neglect, hiring but not using, functional deficiency, and insufficient effectiveness, which restrict the effectiveness of the system and also affect the quality and credibility of government decision-making [1]. In this context, it is of great practical significance to examine the functional positioning and actual operation of the system in depth. This paper aims to systematically clarify the core function of government counsel in the rule of law government, analyze the causes of the mismatch between institutional design and practice, combine the practices in Wenzhou and other places, analyze the main challenges faced by the current system, and then propose practical and feasible optimization paths to provide theoretical and practical references for promoting the system to truly move from "tangible coverage" to "effective coverage."

2. The functional positioning and theoretical basis of the gatekeeper
2.1. Multi-dimensional functional positioning

The government legal counsel system is not a single-function mechanism but serves multiple complex roles as a "gatekeeper" in building a law-based government (**Table 1**). Its primary function is to conduct pre-legality reviews of major administrative decisions, normative documents, law enforcement actions, and contracts, ensuring the legality of administrative acts from the outset and preventing flawed policies from being introduced. Beyond legal review, high-quality legal advisors also offer professional insights and optimization suggestions based on legal principles, social impacts, potential risks, and enforcement costs. This multidimensional analysis enhances the scientific rigor and enforceability of administrative decisions by incorporating legal expertise and long-term strategic thinking [2].

By proactively engaging in key areas such as major project negotiations, petition handling, and emergency response, legal advisors provide solutions to prevent conflicts and offer professional support in administrative reconsideration and litigation. This reduces the risk of legal losses and economic damage, fulfilling a full-process risk control function—prevention before events, control during implementation, and remedies afterward. This comprehensive legal participation mechanism strengthens the government's capacity to manage complex legal issues and contributes to a more stable, transparent, and predictable legal environment. Additionally, legal advisors play a vital role in promoting legal education. Through participation in legal training and provision of daily legal advice, they enhance the legal awareness and law-based decision-making capabilities of government officials, foster a culture of legality within administrative agencies, and help cultivate a positive atmosphere of respecting, learning, abiding by, and applying the law within the government.

Table 1. Core functions and manifestations of government counsel

Core functions	Main forms of expression	Stages of action
Guarantee of legality	Legality review of major decisions, filing review of normative documents, and legal risk review of contracts	Before and during the event
Decision-making consultation and argumentation	Provide legal feasibility studies, risk assessment reports, and alternative proposals	Beforehand
Risk prevention and mitigation	Participate in emergency response, major project negotiations, administrative reconsideration, and litigation representation	During and after the event
Enhanced rule of law capacity	Hold legal lectures, provide daily legal advice, and spread the idea of the rule of law	The whole process

2.2. Theoretical basis

One is the theory of management by objectives. The theory holds that the government legal counsel system is an important tool and key performance indicator for achieving the macro-strategic goal of "building a law-based government." Specifically, the goal of building a law-based government is highly abstract and systematic, and must be implemented in specific administrative practices through operational decomposition mechanisms. The legal counsel system is an important vehicle for achieving this transformation. By breaking down the overall goals step by step into specific tasks of the legal counsel, not only can the system always operate around the core goals, but also the normativity and legality of administrative decision-making can be effectively enhanced.

The second is the theory of collaborative governance. This theory breaks through the traditional single-subject management model of government and emphasizes the collaborative participation of multiple social forces. In the context of increasingly complex modern public governance, it is difficult for governments to deal with increasingly diverse legal issues and governance challenges by relying solely on internal forces. Collaborative governance theory advocates building an open and interactive governance network through collaboration between the government and external professional forces. The legal counsel system is an important form of practice in which the government works in collaboration with lawyers, scholars, legal experts, and other professional forces to promote the rule of law in governance. This synergy is not only reflected in the legal oversight of administrative decisions by legal advisors, but also in their role as a "bridge" that organically combines legal practice experience, academic research results, and policy-making processes, thereby enhancing the professionalism and foresight of government governance [3].

The third is the theory of organizational boundaries. The theory points out that there are information barriers within government organizations, which can lead to "information silos" that affect decision-making efficiency and scientificity. Organizational boundaries are not only reflected in the division of functions among departments, but also in differences in knowledge structure, information access channels, and decision-making thinking patterns. Legal counsel, especially external legal counsel, as an external role that crosses organizational boundaries, can bring in external information resources and independent professional perspectives to make up for the limitations of internal decision-making. This external perspective helps to break the established administrative mindset and provide more innovative and compliant solutions. By introducing external professional forces, the government can not only enhance its own legal risk prevention and control capabilities but also achieve effective supervision and supplementation of administrative power at the institutional level, thereby comprehensively improving the scientific and legal nature of administrative decision-making.

3. Real-world dilemmas: An analysis based on the Wenzhou sample and national issues

The implementation of the government legal service advisor system in Wenzhou is a pioneering exploration, but the research data (see **Figure 1** for details) profoundly reveals the universal predicament faced by this system.
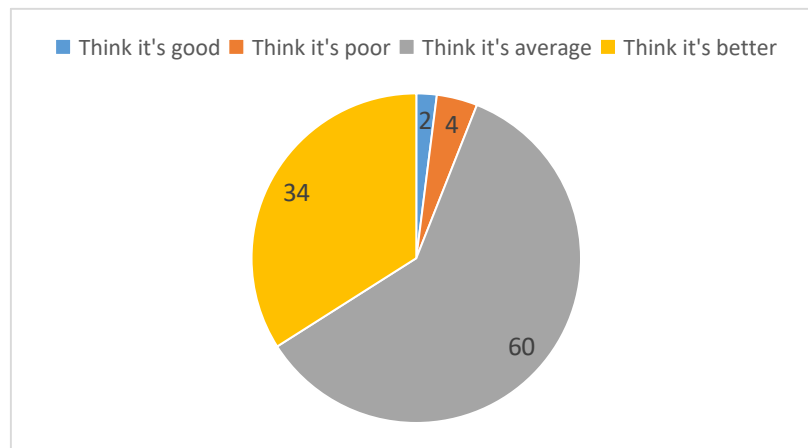
Figure 1. A survey on the satisfaction of the staff of the Wenzhou Municipal Bureau of Justice with the "Government Legal Service Advisor" system

3.1. Ambiguous subject positioning and unclear gatekeeping duties

First, the scope of subjects eligible to serve as government legal advisors, the boundaries of their responsibilities, and their participation mechanisms still lack unified national standards. Although cities like Wenzhou have experimented with involving scholars, experts, and lawyers in legal advisory roles, there remains a lack of clarity regarding their selection criteria, professional qualifications, service scope, and accountability mechanisms.

Second, functional roles are often overlapping, and responsibilities remain undefined. In practice, legal scholars, social experts, and full-time lawyers frequently lack effective coordination due to unclear role divisions and ambiguous primary or secondary responsibilities. For example, in the review of an administrative decision involving economic policy adjustments, a law professor may focus on legal compliance, an economics expert on economic impact, and a practicing lawyer on legal risk management—resulting in fragmented input rather than integrated legal advice [4].

Third, legal opinions issued by legal counsel lack institutional authority and binding effect. Currently, such opinions are often treated merely as internal reference materials in the decision-making process, with no clear legal standing or enforceable effect. As Hou Mengjun noted, administrative authorities may choose whether or not to follow these opinions without facing legal consequences for non-adoption [5]. This weakens the gatekeeping function of legal counsel and limits their ability to provide effective legal oversight and risk prevention, ultimately undermining the quality and legality of government decision-making.

3.2. The selection mechanism is flawed, and the "gatekeeper" team is not professional

First, the selection process is rather arbitrary and lacks standardized and institutionalized mechanisms. Song Zhimin pointed out long ago that in the early days, many places did not include legal advisors in the government procurement sequence when selecting them, nor did they establish an open and transparent selection process [6]. They often relied on internal recommendations from judicial administrative departments or introductions through personal connections of leaders, and there were phenomena of "valuing reputation over expertise" and "valuing connections over ability." This non-institutionalized selection process not only affects the professionalism and independence of the legal counsel team but may also lead to an imbalance in the allocation of legal service resources. Although some places, such as Wenzhou, have made improvements in institutional building in

recent years and established relatively standardized selection processes, there are still structural problems in the composition of their advisory teams. For example, in Wenzhou's current 22-person legal counsel team, nearly 60% of the members are over 46 years old (**Table 2**), showing a trend of an older age structure. Although there is a high proportion of highly educated talents in the team, some members lack practical experience in local rule of law practice, and the match between their professional background and local governance needs still needs to be improved.

The second is the lack of an effective competition mechanism and personnel mobility, which leads to a lack of institutional vitality. At present, most local governments have not established open and transparent competitive selection and dynamic elimination mechanisms in the process of hiring legal advisors. Once appointed, unless there is a major mistake, legal advisors tend to remain in office for a long time, creating what is known as the "iron hat advisor" phenomenon. This lack of an exit mechanism and performance evaluation system can easily lead to a lack of renewal motivation for the advisory team, making it difficult to introduce new forces and diverse perspectives, and thus affecting the continuous improvement of overall service quality and professional level.

Table 2. Age and educational background distribution of government legal service consultants in Wenzhou

Project	Classification	Number of people	Proportion
Age	Under 30	0	0%
	30–35 years old	2	9.09%
	36–45 years old	7	31.82%
	46–55 years old	11	50.00%
	Over 56 years old	2	9.09%
Educational background	Bachelor's degree	3	13.64%
	Master's	8	36.36%
	Doctor	10	45.45%
	Postdoctoral	1	4.55%

3.3. The operation mechanism is not smooth, and the "gatekeeping" effectiveness is not obvious

The traditional passive service model of "calling only when there is a problem" makes it difficult for government legal advisors to have an in-depth understanding of the decision-making background and the entire process. The opinions they provide often remain superficial and lack systematicness and foresight. Although Wenzhou attempts to implement the "resident representative office" mechanism to improve the participation of legal advisors, the actual effect of the mechanism remains highly uncertain if it is not truly integrated into the core process of administrative decision-making. One of the deep-seated obstacles is that some administrative officials still have a strong "official-centered" mindset, are reluctant to give up the space for decision-making autonomy, and are resistant to legal scrutiny, which directly limits the role of legal advisors. On the other hand, legal advisors generally face difficulties in obtaining information during the course of their duties. Due to the independent systems and strict data barriers of various government departments, there are serious "information silos", and advisors often have to work in a "half-blind" state with incomplete information [7]. According to a survey in Wenzhou, as many as 66% of legal advisors believe that poor access to information is the main problem in their work, which greatly affects

the professionalism and accuracy of legal advice. In addition, the current assessment mechanism for legal advisors focuses more on formal indicators such as the number of reviewed documents, and lacks in-depth assessment of key performance dimensions such as the quality of opinions, the adoption rate, and the ability to anticipate risks. At the same time, the remuneration mechanism is poorly designed. In many regions, "free service" or symbolic payment is still implemented, which fails to reflect the professional value of legal services and also makes it difficult to motivate consultants to devote themselves fully to their work.

3.4. The security system is weak, and the "gatekeeping" foundation is not solid

In many regions, the funds for government legal advisors have not been separately included in the fiscal budget, or the standards set are significantly too low to match the actual service demands. For instance, in Jilin Province, it was explicitly stipulated in the early years that no remuneration would be paid to external legal advisors. Such institutional arrangements led to a high turnover rate and uneven professional capabilities of the advisory team, which could not provide stable and high-quality support for government decision-making. In terms of the management mechanism, there are prominent problems of overlapping responsibilities and unclear ownership. The repetitive assignment of tasks and inconsistent standards by different departments have led to a lack of effective guidance and supervision in the daily performance of consultants. More importantly, there are obvious, ambiguous areas in the current mechanism for defining responsibilities. On the one hand, there is a lack of clear regulations on what legal or professional responsibilities legal counsel should bear if they provide wrong opinions due to professional negligence and cause administrative decision-making mistakes; On the other hand, there is also a lack of institutional basis on how to hold decision-makers accountable if the government fails to adopt the correct legal advice provided by advisors and thus causes disputes or losses. The absence of such a two-way accountability mechanism results in a serious mismatch of rights, responsibilities, and benefits, with both sides lacking adequate constraints and positive incentives, and to some extent weakens the original intention of the legal counsel system [8].

4. Optimize the path: Build an effective gatekeeping mechanism

4.1. Define the functional positioning and refine the "gatekeeping" responsibilities

Firstly, a unified "List of Powers of Government Legal Advisors" should be formulated through local government regulations or administrative normative documents, etc., to clearly define the specific scope of matters that must involve legal advisors in consultation, argumentation, and legality review in a "list-based" manner. Such matters should at least include: decisions involving major public interests, policy adjustments that may affect social stability, major investment and construction projects, and the use of large amounts of fiscal funds. Positive list management can effectively reduce the discretionary space of administrative agencies in deciding whether to seek legal advice and prevent legal risks from the source.

Secondly, establish a "mandatory procedure" system and a "justification" mechanism for the legality review of major decisions. It is clearly stipulated that any decision-making matter included in the power list shall not be submitted to the meeting for discussion or signed and implemented without the written legality review and signature of the legal counsel. If the decision-making body decides not to adopt the opinions raised by the legal counsel, it must state the reasons in writing and file them together with the legal opinion for future reference. This, on the one hand, sets legality review as a prerequisite hard constraint for decision-making, and on the other hand, by "stating reasons", it forces decision-making authorities to make careful considerations, thereby substantially

increasing the weight of legal opinions.

In addition, the organization and use of legal advisors should be actively optimized, and a specialized grouping mechanism for government legal service advisors should be implemented [9]. Specialized groups such as the administrative decision-making group, civil and commercial contract group, the administrative litigation and reconsideration group, and foreign-related legal affairs group can be classified based on the professional background, practical experience, and areas of expertise of the advisors. Through this model of "categorized deployment and on-demand invocation", it ensures that professionals handle professional matters, significantly enhancing the accuracy and quality of legal services.

4.2. Standardize the recruitment mechanism and build a strong "gatekeeper" team

First, a transparent and standardized selection process should be established. In principle, all consultants should be recruited through open recruitment, competitive review, etc. The recruitment announcements should be made public in a timely manner, and the standards and procedures should be clearly defined to ensure that the process is open and transparent, avoiding "internal designation" or "favoritism", and guaranteeing the competitiveness and professionalism of the consultant team from the source.

Secondly, scientific and comprehensive access conditions should be set. The selection criteria should not simply focus on fame, title, or social title, but should take into account the candidate's professional field fit, years of practice, typical achievements, industry reputation, as well as political quality and professional ethics. According to the actual needs of government legal services, the requirements for different positions can be refined to ensure that the candidates have the corresponding practical ability and compliance awareness. In terms of team structure, emphasis should be placed on the combination of senior, middle-aged, and young members, and the echelon structure should be consciously optimized. In particular, in regions like Wenzhou, where legal innovation is vigorous, the proportion of young legal advisors under the age of 35 can be appropriately increased to inject new ideas and methods into the team and enhance overall vitality and responsiveness. At the same time, people should also actively break down geographical restrictions and select outstanding lawyers and legal experts from a wider range to avoid the tendency of "localization" and "circleization." In terms of management mechanisms, it is suggested that a fixed-term system be implemented, such as a three-year term, with an automatic dismissal upon the expiration of the term and re-recruitment to avoid "permanent appointment." More importantly, establish a dynamic assessment and exit mechanism that is in line with the tenure, set key performance indicators including the quality of opinions, adoption, and the effectiveness of risk prediction, and resolutely dismiss or not renew consultants who fail the assessment, fail to perform their duties properly, and lack effectiveness, so as to achieve a healthy flow of personnel and always maintain the advanced nature and professional standards of the consultant team [10].

4.3. Innovate the operation mode and enhance the "gatekeeping" efficiency

First, people should deepen the design of the mechanism for legal advisors' participation in decision-making and promote their in-depth involvement throughout the entire chain, from decision motions, plan drafting, expert arguments, compliance reviews, to policy implementation and post-evaluation. Change the previous passive service model of "seeking only when there is a problem and asking only when there is a lawsuit" and achieve a fundamental shift from "putting out fires after the fact" to "providing protection throughout the process", move the legal risk prevention line forward, and truly exert the early warning and planning functions of legal advisors.

Secondly, it is suggested that the government take the lead in establishing a unified "government legal counsel work platform" and implement digital task management. Gradually achieve data integration with urban government big data systems, administrative law enforcement platforms, etc., and, on the premise of ensuring information security, rely on the authority management mechanism to partially open key data query ports to legal advisors, fundamentally break down the "information silos" caused by departmental segmentation, and ensure that advisors can put forward accurate opinions with full knowledge.

Finally, it is necessary to establish a performance appraisal system with quality at its core. Change the previous evaluation tendency of emphasizing quantity over quality, and highlight result-oriented indicators such as the rate of legal opinion adoption, the accuracy of decision-making risk prediction, and the correlation between the rate of losing cases and legal opinion, to form a multi-dimensional performance evaluation model. In terms of the remuneration mechanism, the model of "basic salary + performance bonus" is implemented to make the remuneration level truly reflect the professional value and contribution of legal services, thereby establishing a sustainable incentive and guarantee mechanism.

4.4. Strengthen guarantee and supervision to build a solid foundation for "gatekeeping"

In terms of financial support, efforts should be made to promote the inclusion of legal counsel funds as a special expenditure in the local government's fiscal budget, which should be separately listed and managed, fundamentally changing "free services" or temporary arrangements where the budget is attached to administrative funds (**Table 3**). Clarify management responsibilities to avoid the chaotic situation of "multiple management and unclear rights and responsibilities." Clarify that the judicial administrative department is the unified leading unit for government legal counsel work, fully responsible for the selection and appointment, daily management, performance evaluation and supervision, and accountability of government legal counsel at the same level. Other types of employing units should put forward demands and cooperate in performing their duties under the overall coordination of the judicial administrative department, so as to eliminate problems such as multiple authorities, conflicting instructions, and management vacuum. To enhance management efficiency and work synergy.

The most crucial thing is to improve the two-way responsibility mechanism to ensure that rights and responsibilities are consistent. On the one hand, it is necessary to clarify the obligations and responsibilities of legal advisors through employment contracts, and hold them accountable for breach of contract in accordance with the law and regulations for providing wrong opinions due to major faults or violations of professional norms that cause significant losses, and strengthen the sense of responsibility and professional ethics of advisors. On the other hand, it is even more necessary to strictly enforce the responsibility of the decision-making body. For those who, despite receiving legal and reasonable opinions, refuse to adopt them, act arbitrarily, and thereby cause major decision-making mistakes or losses, the decision-making body and the relevant responsible persons shall be held legally accountable. Only in this way, with mutual restraint and equal rights and responsibilities, can people prevent advisors from being "indifferent and perfunctory", and restrain decision-makers from being "arbitrary and disregarding the rule of law", and truly form a good governance ecosystem where legal advisors dare to speak and tell the truth, and decision-makers respect the law and revere the rules.

Table 3. Key points for the implementation of the optimization path of the government legal counsel system

Optimize dimensions	Core measures	Expected results
Functional Positioning	List-based management, mandatory procedures, justification system, and classified performance of duties	Clear responsibilities, enhanced effectiveness, and substantive participation
Recruitment mechanism	Open competition, clear standards, optimized structure, tenure elimination	The team is professional, well-structured, and dynamic
Operating mode	Whole-process embedding, digital platform, quality-oriented assessment	Unobstructed information, efficient processes, and effective incentives
Safeguards supervision	Fiscal budget guarantee, judicial administration, two-way accountability	Solid foundation, orderly management, equal rights and responsibilities

5. Conclusions

The effectiveness of the government legal counsel system, as the "gatekeeper" of a law-based government, is directly related to the level of law-based administration and the realization of social fairness and justice. The current practice shows that the system is moving from "physical coverage" to "effective coverage" in the deep water zone, facing multiple challenges such as functional positioning, team quality, operation mechanism, and guarantee system. Wenzhou's exploration of "government legal service advisor +" provides useful local experience, but also exposes common problems. In the future, people must adhere to systems thinking and carry out comprehensive reforms that combine top-level design with grassroots innovation. The first step is to get to the root of the matter and clarify the authoritative position of legal advisers as "gatekeepers" and the rigid binding force of their opinions through legislation or high-level policy documents. On this basis, a scientific, standardized, efficient, and well-guaranteed implementation mechanism will be established around the core goal of "selecting the best, managing well, using effectively, and ensuring security." Only in this way can government legal advisors truly move from "advisory" to "guarding", from "form" to "substance", and truly build a solid legal defense line for the construction of a law-based government, ultimately achieving the core requirement of "putting power in the cage of institutions."

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