



Undue Process

New York City's Department of Consumer Affairs and its commissioner, Gretchen Dykstra, are nothing if not persistent. For three years, the department has been trying to expand its enforcement authority against New York businesses, but to no avail. First, the state Legislature rebuffed the department's appeal for new prosecutorial powers. Then Mayor Bloomberg tried to grant such powers in his proposed amendments to the City Charter in 2003. These columns editorially opposed the measure at the time, and so did New York's voters when they rejected the mayor's charter revisions by a 70-30 ratio.

Now, the same proposal has resurfaced a third time. Introductory Bill 390, currently before the City Council, would amend the City Charter to authorize the Department of Consumer Affairs to prosecute businesses at its own administrative tribunals rather than in actual courts of law. In effect, the department would act as prosecutor, judge, and jury all at the same time.

It took some gall for the department to attempt such a power grab the first time, but at this — the third attempt by the Department of Consumer Affairs to avoid granting due process to the businesses it prosecutes — one can't help but remark at the thought of what so zealous a cadre of regulators might do with the power to haul local entrepreneurs before its own tribunals.

Even without new powers of enforcement, the department has gone after New York's businesses with a vengeance. Between 2003 and 2004, the Department of Consumer Affairs managed to increase by 40% the amount of money it collects from local businesses in fines. That's \$7 million.

According to a spokesman for the Neighborhood Retail Alliance, Richard Lipsky, the Bloomberg administration's stepped-up enforcement actions have been more aggressive than any past administration. "This increase, along with the doubling and tripling of fine levies, has created the worst climate in 20 years for New York City's small businesses," Mr. Lipsky said in testimony before the City Council. "Put simply, we are under assault."

The assault has taken the form of a new cigarette tax that transferred \$250 million from bodegas and newsstands to the state and city governments, according to a study by the Small Business Survival Committee, as well as a new sales tax that drives business out of the city and a new commercial real estate tax that raised the costs of doing business for many.

In many ways, some might suggest, Introductory Bill 390 can be seen as emblematic of the way the Bloomberg administration has sought to relate to the city's small businesses: to act as judge, jury — and executioner. It can only help the Democrats.

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