



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**STATE COURT STRIKES DOWN CITY COUNCIL MANDATED
WELFARE WORK PLAN / LOCAL LAW 23 ON
PRE-EMPTION AND CURTAILMENT GROUNDS**

***JUDGE RULES THAT THE LOCAL CITY COMMISSIONER OF SOCIAL SERVICES HAS DISCRETION UNDER
STATE LAW TO ADMINISTER WELFARE WORK PLAN WITHOUT INTERFERENCE FROM CITY COUNCIL***

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New York, Nov. 25, 2004 – Justice Faviola Soto of the New York Supreme Court in Manhattan has struck down Local Law 23 of 2003 as an invalid exercise of the City Council's power to legislate in an area occupied by the State social services law. Justice Soto struck down the law both because it is pre-empted by State social services law and because it curtailed the power of a mayoral appointee without the referendum required by both the City Charter and the State Municipal Home Rule Law.

"I am pleased that Justice Soto recognizes the responsibility of the Administrator of the local social services district, as an agent of the State, to – as the judge quotes in her decision – 'administer the laws and regulations promulgated by the State,'" said Human Resources Administration (HRA) Administrator Verna Eggleston. Under State law, Commissioner Eggleston is also the City's local Commissioner of Social Services.

"This victory is yet another step toward better understanding the allocation of power between the Mayor and the Council under the City Charter and State law," added Corporation Counsel Michael A. Cardozo of the New York City Law Department. The Law Department litigated the case successfully for HRA.

Local Law 23, enacted over the Mayor's veto in April 2003, required the City's local Commissioner of Social Services to count the educational activities of welfare and food stamp assistance recipients towards the work requirements of Federal and State welfare law. This attempted legislative fiat removed from the local Social Services Commissioner the power to decide how the local social services district was to comply with Federal and State law and the power to assign work based on an assessment of the applicant that is required by State law.

In *Mayor of the City of New York v. Council of the City of New York*, Index No. 401512/03 (Sup. Ct. N.Y. Co.), Justice Soto relied upon her earlier decision in *Killett-Williams v. Bloomberg*, Index Nos. 115516/01, 404900/01, N.Y. L.J., May 15, 2003, p. 21, col. 6. at 3 (Sup. Ct., N.Y. Co. 2003). In *Killett-Williams*, the Court held that the Council's attempt to mandate a subsidized job program for public assistance recipients was invalid because that law, involving the very same section of the state social services law at issue in Local Law 23, amounted to a comprehensive regulatory scheme that "evidenced the State's intention to assume control over the field and to preempt local legislation." The Court rejected the Council's argument that Local Law 23 merely regulated the administration of public assistance because Local Law 23 "establishes regulations which the Council wants [the local] DSS (Department of Social Services) to be compelled to follow."

With respect to the Mayor's further argument that Local Law 23 illegally curtailed the powers of a mayoral appointee, Justice Soto held that, because Local Law 23 "has an adverse impact upon the powers allotted to the City Commissioner by the State," a voter referendum was required under the City Charter and the Municipal Home Rule Law for the law to be valid. (Reporters' Note: Local Law 23 has also been known informally as the "Coalition for Access to Training and Education" or CATE Bill.)

Justice Soto's decision allows the City to continue its successful approach of combining work with education and training in a comprehensive program designed to move New Yorkers from welfare to work. This year alone, over 70,000 jobs have been obtained, and since taking office, the Bloomberg Administration has helped record numbers of individual into employment and reduced the public assistance caseload.

Senior Counsel Richard J. Costa of the Law Department's Affirmative Litigation Division represented the City in the Local Law 23 case, with assistance from Affirmative Litigation Division Chief Gail Rubin. Legal Counsel Division Deputy Chief Martha Mann Alfaro and Legal Counsel Division Senior Counsel Spencer Fisher also worked on the case.

Mr. Costa noted, "State law already provides for educational opportunities for public assistance and food stamp recipients, and Commissioner Eggleston is actively involved in making such opportunities available. The Court's decision reaffirms the Mayor's position that the question of how to provide such educational opportunities resides in the Commissioner's discretion and not with the City Council."

This City Council local law is the fourth to be invalidated by the courts in the last two years – and the seventh to be invalidated since 1995 – as a result of litigation between the Mayor or Mayoral entities and the Council. For example, in addition to prevailing in the *Killett Williams* decision described on page 1, the Mayor also prevailed earlier this year when a State court invalidated on pre-emption grounds local legislation that would have applied new lending restrictions to City contractors.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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