

EDITORIALS

A Hobson's Choice

Governmental regulations abound. William E. Simon, a former Secretary of The Treasury, once observed that for the year 1976 alone, the rulings and regulations promulgated for American business required 57,027 pages of fine print in the federal register. It is probably safe to say that there has been no substantial decrease in the number of pages required annually to fulfill this task since 1976. And this does not include the rulings and regulations of each state, including New Jersey.

One unfortunate by-product of a proliferation of regulations is an inevitable creation of conflict, i.e., the creation of incompatible rules where two public policy issues are at odds. An example of the problem is evidenced in *Gibbs v. Harrison*, 253 N.J. Super 673 (Law Div. 1992). The conflict reported in *Gibbs* is this. A municipality has the power "to enact and enforce zoning restrictions and other ordinances for the health and welfare of its inhabitants." However, there is also a codified State policy preventing "self-help" evictions of residential tenants. NJSA 2A:39-1. These policies sometimes conflict.

The defendant, Ms. Harrison, received a notice from a municipal construction official informing her that a residence that she owned violated zoning codes and "must be vacated immediately." She complied by taking immediate action to bar Mr. Gibbs, a tenant in the building, from further access. Mr. Gibbs brought a wrongful

detainer action alleging that such action violated appropriate summary dispossess procedures. It is significant to note that such violations of municipal health ordinances may take many forms and may be caused by a landlord, tenant, or someone else.

In complying with the municipal directive, Ms. Harrison avoided incurring penalties that would result from non-compliance. However, by the same action, she subjected herself to penalties for violation of the statute enacted for the public interest, because she failed to provide the three month's notice that a landlord must provide to a tenant before terminating a tenancy. No citizen should be confronted with this Hobson's Choice while attempting to comply with the law.

Judge Fast suggested in *Gibbs* that these conflicting principles of public policy be "re-evaluated by the legislature." We endorse that suggestion but understand that no new legislation has been introduced for consideration since *Gibbs* was decided in December 1992. There is, of course, a perpetual divergence of opinion regarding what philosophical principles should be embraced and how much legislation and governmental regulation is necessary or appropriate. However, whenever legislation is enacted, it should not be so philosophically and practically disparate from the existing law as to require someone to violate one law in an attempt to comply with another.

In a free society, that is simply no choice at all.