

THE TICKETED THUNDERBIRD

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Given the historical image (and horsepower) of the Ford Thunderbird, it perhaps is not surprising that T-birds and tickets issued under governmental authority unfortunately sometimes have crossed paths. But there are certain occasions when that mixture is desirable — such as when the ticket is a raffle ticket and the Thunderbird is the prize.

The Recovery Alliance, Inc. v. Department of Revenue Services, Division of Special Revenue, decided on March 30 by the Superior Court of Connecticut, Judicial District of New Haven, involved such a situation and the dispute that developed.

The Division had issued RAI a permit to conduct a "Class 6" raffle in Connecticut by the sale of tickets between March 28, 1991 and December 28, 1991. The "Grand Prize" was a 1957 "E" Series Thunderbird, which was going to be restored. RAI sold what proved to be the winning ticket to one Joel File at an auto show in Rhinebeck, New York, on May 5, 1991. RAI held the drawing for the winning ticket on December 28, 1991, and notified File that he was the winner on December 29.

All was fine for File, but not for RAI. The problem was that the applicable Connecticut statute required that such "Class 6" raffles "shall be consummated within nine months of the granting of the permit and the aggregate value of the prize or prizes offered shall be not more than one hundred thousand dollars." The dollar amount was not a problem; the time limit was.

The Division found that RAI never performed the necessary restoration work on the Thunderbird. Thus, RAI had not been able effectively to award the prize to File within the nine-month period required by the statute.

The Division also found that the sale of the (winning) ticket in New York violated Connecticut law (in addition, no doubt, to frustrating many Connecticut residents). For these reasons, the Division revoked RAI's raffle permit, imposed a \$600 penalty, and advised it would not accept future applications by RAI for bazaar or raffle permits for three years. RAI appealed.

The court concluded that the Division's finding that RAI had not awarded the prize within the required period was supported by evidence that the Thunderbird was never adequately restored. This consisted of the testimony of File and others, as well as photographs of various parts of the automobile showing its disrepair and deterioration.

The Court observed that, although RAI had offered testimony in opposition, the Division was entitled to decide the factual issues. As the Connecticut Supreme Court stated in a prior case, "Judicial review of the commissioner's action... is very restricted.... The credibility of witnesses and the determination of factual issues are matters within the province of the administrative agency, and, if there is evidence... which reasonably supports the decision of the commissioner [the court], cannot disturb the conclusion reached by him."

Thus, the Superior Court rejected RAI's appeal of this aspect of the Division's determination. However, the Court was more receptive to RAI's appeal of the Division's finding that the sale of the ticket in New York violated Connecticut law. The applicable statute allowed any permit holder to "sell or promote the sale of... raffle tickets... in any... town, city or borough which has adopted" the raffle law. A related regulation prohibited such a permit holder

from selling tickets in "any municipality which has not adopted the provisions of the bazaars and raffles act."

The Court noted that the statute and regulation, which formed the basis of the Divisions' decision, contained no explicit prohibition against the sale of tickets outside the state. All they were intended to do was to allow the sale of raffle tickets in certain Connecticut municipalities where such sales would otherwise be prohibited.

The Court further observed there was no evidence — nor did the Division argue — that the sale of the ticket to File in New York violated New York law.

Based on these considerations, the Court concluded that the Division had erroneously applied the statute and regulation to RAI's sale of the ticket in New York. Since the fine and possibly also the revocation of RAI's permit may have been based on that erroneous interpretation, the Court sent the case back to the Division for a review and modification of the penalties, limiting them to the time-period violation.

In a sense, the *RAI* case provides a mixture of the usual and the unusual. On the usual side, it reflects the all-too-common experience of restoration work taking longer than you think it will. But it also involves the somewhat unusual situation of someone other than those buying the raffle tickets ending up losing.

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