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UNPUBLISHED OPINION. CHECK
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Superior Court of Connecticut,
Judicial District of New Britain.

Edward PERUTA

v.

CT DEPARTMENT OF PUBLIC SAFETY et al.

No. CV074015984S. | April 22, 2009.

Attorneys and Law Firms

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Safety/CT State Board of Firearms Permit Examiners/CT
State Police Officers Standards and Training CNCL.

Opinion

HENRY S. COHN, Judge.

*1 The plaintiff, Edward [Peruta](#), has brought this action for a [declaratory judgment](#) under [General Statutes § 52-29](#) to determine whether Connecticut prohibits the open carrying of a pistol or revolver when one holds a permit under § 29-35. One defendant in the [declaratory judgment](#) action is the department of public safety (the department). The plaintiff states in his complaint in paragraph 11: “The Special License and Firearms Unit [of the department] is responsible for the issuance of state pistol permits, oversight and regulation of firearm sale transactions ...” Also named a defendant is the board of firearms permit examiners (the board). In paragraph 13 of the complaint, it is alleged: “The Board hears appeals by any person aggrieved by any refusal to issue or renew a

permit or certificate ... or by any limitation or revocation of a permit or certificate ... or by a refusal or failure of any issuing authority to furnish an application ...” The department has moved to dismiss, in part for failure to exhaust administrative remedies.¹

While the plaintiff purports to bring the declaratory judgment under § 52-29, the general declaratory judgment provision, when state agencies are defendants, §§ 4-175 and 4-176 must be satisfied. See *Office of Consumer Counsel v. Dept. of Public Utility Control*, Superior Court, judicial district of New Britain, Docket No. CV 084016359, (May 8, 2008, Cohn, J.). These sections require the plaintiff to submit a request for a declaratory ruling to the agency before the court may address the issue raised in the declaratory judgment. Failure to comply with §§ 4-175 and 4-176 is grounds for dismissal on the basis of subject matter jurisdiction. *Pinchbeck v. Dept. of Public Health*, 65 Conn.App. 201, 782 A.2d 242, cert. denied, 258 Conn. 928, 783 A.2d 1029 (2001).

Here the plaintiff submitted his request to the board, which declined to rule on the matter on November 20, 2007. He did not, however, submit any request to the department. In light of the allegations in the complaint, the court concludes that the department has a central role to play in consideration of whether Connecticut permits “open” display of a pistol or revolver. Since the plaintiff has not satisfied §§ 4-175 and 4-176, the declaratory judgment action must be dismissed. *Liberty Mobile Home Sales, Inc. v. Cassidy*, 6 Conn.App. 723, 507 A.2d 499 (1986).

Further, the plaintiff cannot claim the “futility” exception to the requirement of exhaustion. The department has never officially addressed the issues raised by the declaratory judgment action, and should have the opportunity to do so. While the plaintiff states that the department is likely to rule that he does not have the right to display firearms openly, his assertion is not sufficient to establish “futility.” *Concerned Citizens of Sterling v. Town of Sterling*, 204 Conn. 551, 559, 529 A.2d 666 (1987).

The motion to dismiss is therefore granted.

Footnotes

¹ In light of the court's ruling, it does not reach the other issues raised in the motion to dismiss.