

**OPINION
45-266**

January 31, 1945(OPINION)

SEARCH WARRANTS

RE: Right to Search Without

In your letter of January 23 you submitted the question of whether or not a game warden has the authority to search a locker plant for the purpose of ascertaining whether there exists any unlawful possession of games birds by the lessees of the lockers.

Section 18 of the Constitution of our state reads:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized."

Section 20-0217. POLICE POWERS OF COMMISSIONER, DEPUTY COMMISSIONER, AND BONDED APPOINTEES OF COMMISSIONER. The commissioner, deputy commissioner, and any bonded appointee of the commissioner may:

1. Enter and inspect any hotel, restaurant, cold storage warehouse, plant, ice house, or any building used for the storage of dressed meats, game, or fish for the purpose of determining whether game or fish, or parts thereof, are kept or stored therein in violation of any of the provisions of this title;
2. Open, enter and examine, without warrant all buildings, camps, tents, vessels, boats, wagons, automobiles or other vehicles, cars, crates, boxes, and other receptacles and places when he has reason to believe that game or fish, or parts thereof, or green furs, which have been taken or are held or possessed in violation of any of the provisions of this title may be found. The right to enter and search without a warrant however, shall not apply to the entry or search of the dwelling house or living quarters of any person or of a sealed railroad car;
3. (This subsection is not pertinent to the questions you asked.)

4. Enter, without warrant upon the premises of any dealer or trader in green furs, for the purpose of inspecting any warehouse, storerooms, or other places used for storage purposes, and may call for and inspect records of buying, shipping, or selling of green furs. The right to enter and search without a warrant however, shall not apply to the entry or search of the dwelling house or the living quarters of any person or of a sealed railroad car, etc."

It will be immediately observed that no mention is made of a search of any of the places mentioned in the first subsection of the law above quoted without a warrant. That would be some indication that a warrant was necessary before a search could be made of any of the places enumerated under subsection 1 of the above quotation. It will be further noted that under subsection 2, the places mentioned may be searched without a warrant. This also is true of the provision under subsection 4 of the above quoted section of the statute. The inference is clear that only those places can be searched without a warrant where the specific authority is given to the commissioner, his deputy, and bonded appointee to enter the same and search for possible violation of the game law without a warrant.

In order to attempt to get at the history of the revised statute, I examined the sources of the statute as they appear in the 1913 Compiled Laws, the 1925 Supplement, chapter 149 of the 1937 Session Laws, section 14, and chapter 148 of the 1931 Session Laws, section 7, subsection 1. These enactments give us some clue as to what the Legislative Assembly intended with reference to the need of a search warrant in order to give authority to a game warden to search for game violations of a cold storage warehouse, plant, or ice house, or any other building used for storing dressed meats, game or fish. As this is an important question, I am detailing the contents of the various statutes enacted upon this subject since 1913 for the purpose of showing how the legislative assembly worded the statutes with the thought in mind that that indicates whether a search warrant was deemed to be necessary in searching any of the places where game might be illegally keep in cold storage.

Section 10276 of the 1913 Compiled Laws dealing with much the same subject matter as subsection 1 of section 20-0217 of the North Dakota Revised Code of 1943 reads of follows:

The members of the board of control and all game wardens, shall inspect from time to time hotels, restaurants, cold storage houses or plants and ice houses commonly used in storing meats, game or fish for private parties, including all buildings used for like purpose, for the purpose of determining whether game or fish are kept therein in violation of the provisions of this chapter, etc."

It will be observed that no mention is made of whether a search under the above statute could be accomplished without a warrant and we must infer that since it was not specifically set forth that the places mentioned in this statute could be searched without a warrant, that a warrant was necessary before search could be made of them.

Section 10322a15 of the 1925 Supplement dealing with this matter reads as follows:

The members of the game and fish board and any game wardens shall from time to time inspect hotels, restaurants, cold storage houses or plants, meat markets, ice boxes, cars, and ice houses, commonly used for storing meats, game or fish for private parties, including buildings used for such purposes, and tents, conveyances, vehicles, automobiles, wagons and camps which they have reason to believe contain game, for the purpose of determining whether game is kept therein in violation of the provisions of this act, etc."

It will again be observed that no mention is made of whether these places can be searched without a warrant. So we must again infer, in absence of a specific statement, that they might be searched without a warrant, that a warrant to search them was necessary.

Tracing the history of this statute further, we find chapter 149, s. 15, (1) of the 1927 Session Laws, which reads:

To enter and inspect any hotel, restaurant, cold storage warehouse, plant, ice house or building actually used for the storage of dressed meats, game or fish for the purpose of determining whether game or fish or parts thereof are kept or stored therein in violation of this chapter, and without warrant to open, enter and examine all buildings, camps, vessels, boats, wagons, automobiles or other vehicles, cars, crates, boxes, other receptacles and places where they have reason to believe that wild animals or parts thereof are to be found which have been taken or held in violation of the laws pertaining to be the taking of wild game or fish. Provided, however, that the right to enter and search without a warrant shall be in no manner taken or construed to apply to the entry or search of the dwelling house or living quarters of any person, etc."

The above statute evidences absolutely no right to search a cold storage warehouse, plant, ice house, or building actually used for the storage of meats, game or fish, unless the searching authority has a warrant authorizing such search. The first part of the statute is apparently the direct source of section 20-0217, subsections 1 and 2 of the North Dakota Revised Code of 1943.

Chapter 148, s. 7 (1) of the 1931 Session Laws reads much the same as the above quoted statute from the 1927 Session Laws, and is a further indication of the legislative intent as to the requirements for a warrant before a search can be made of a hotel, restaurant, or cold storage warehouse, plant, ice house, or building used for storage of dressed meats, game or fish. That statute again, tracing the origin of the statute as it now exists in the revised code, reads:

To enter and inspect any hotel, restaurant, cold storage warehouse, plant, ice house or building for storage of dressed meats, game or fish for the purpose of determining whether game or fish or parts thereof are kept or stored, therein in violation of this act, and without warrant to open, enter and examine all buildings, camps, vessels, boats, wagons, automobiles or other vehicles, cars, crates, boxes and other receptacles and places where they have reason to believe that wild game or parts thereof may be found which have been taken or held in violation of the laws pertaining to the taking of wild game or fish. Provided, however, that the right to enter and search without a warrant shall in no manner be taken or construed to apply to the entry or search of a dwelling house or living quarters of any person or a sealed railroad car, etc."

This statute is undoubtedly the direct source, together with the 1927 statute, of the statute we are considering, as now found in the 1943 revised code.

After a careful examination of the various statutes dealing with the search of the places enumerated in them, the conclusion is inescapable that the legislative assembly designated definitely the places that might be searched without a search warrant, and such places do not include a hotel, restaurant, cold storage warehouse, plant, ice house, or any building used for the storage of dressed meats, game or fish.

When these statutes are further considered in connection with the constitutional provisions of our state and the fact that the courts have guarded zealously the right of privacy from unreasonable searches and seizures, down through the ages of our history, it is conclusive that if the legislative assembly intended that any game warden had authority to search a locker plant, a cold storage warehouse or building of that character without a warrant it would have been so specified.

It is therefore, the opinion of this office that the commissioner, (referring to the game and fish commissioner) his deputy, or any bonded game warden, or appointee of the commissioner, has no right or authority to search any cold storage locker plant or warehouse or ice house, or any other similar building where meats are generally kept in cold storage by individuals, unless he has a warrant to search the same. Since locker plants are leased individually and the right of every individual to be secure in his effects exists, it is the further opinion of this office that a game warden must have a search warrant to search the particular locker under lease by the individual named in the search warrant. In other words, it is our opinion that the law does not contemplate that a search warrant can be issued, or should be issued, authorizing the game and fish commissioner, or his deputy, or bonded game warden to search a whole cold storage plant under the authority of one warrant. It is our opinion that a warrant must be served upon the individual whose cold storage locker is to be searched before such search can be made.

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