

Answer by letter-Wood

May 6, 1970

OPINION LETTER NO. 280

Mr. Joseph Jaeger, Jr.  
Director of Parks  
Missouri State Park Board  
1204 Jefferson Building  
P. O. Box 176  
Jefferson City, Missouri 65101



Dear Mr. Jaeger:

You have inquired as to the legality of searches without warrants by agents of the Conservation Commission of rented cabins at State Parks.

A specific statute defines the powers of search of these agents:

"[Any authorized agent of the conservation commission] may search, without warrant, any creel, container, gamebag, hunting coat, or boat in which he has reason to believe wild life is unlawfully possessed or concealed; and at any and all times may seize any wild life in the possession or control of any person violating or who there is good reason to believe has violated this law or any of the rules or regulations of the commission; provided, however, that he shall first obtain a search warrant to enter and search an occupied dwelling and outbuildings immediately adjacent thereto, cold storage locker plant, motor vehicle, or sealed freight or express car for such purposes and then only in the daytime, and in the

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search of a cold storage locker plant every precaution shall be exercised to prevent contamination of foods stored therein. Any judge, or magistrate having jurisdiction, shall issue to such agent, sheriff, or marshal, a search warrant upon his complaint being made on oath in writing that the affiant has reasonable and probable cause to believe that wild life is possessed or concealed in such occupied dwellings and outbuildings immediately adjacent thereto, cold storage locker plant, motor vehicle, or sealed freight or express car contrary to this law or to any such rules and regulations." (Section 252.100(2), RSMo 1959)

This statute must be viewed in the light of Federal (Kaufman v. U.S., 394 U.S. 217, 22 L.Ed.2d 227 (1969) and State constitutional standards relating to searches and seizures, for the United States Supreme Court has ruled that these standards apply to administrative inspections pursuant to police power statutes or ordinances. In Camara v. San Francisco Municipal Court, 387 U.S. 523 18 L.Ed 2d 930 (1967), the Court declared that a city housing code authorizing city health inspectors to enter apartment residences without a search warrant was an unconstitutional search, and in See v. City of Seattle, 387 U.S. 541, 18 L.Ed.2d 943 (1967), the same declaration was made as to a municipal fire code permitting inspectors to enter a commercial warehouse without a search warrant. We believe that Missouri's Conservation Law must be likewise judged by constitutional search and seizure standards, and of course, construed in harmony with the same.

The Federal Constitution preserves "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, . . . ." (Fourth Amendment) and the State Constitution preserves the right of the people to ". . . be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; . . . ." (Article I, Section 15).

These constitutional protections extend beyond a person's home, house, or dwelling taken in their strict sense.

". . . What the Fourth Amendment protects is the security a man relies upon when he places himself or his property within a constitutionally protected area, be

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it his home or his office, his hotel room or his automobile. There he is protected from unwarranted governmental intrusion . . . . So it was that the Fourth Amendment could not tolerate the warrantless search of the hotel room in Jeffers, [342 U.S. 48]. . ." (Hoffa v. U.S. 385 U.S. 293, 301 17 L.Ed. 2d 374, 381(1966)).

" . . .it is the right to use the premises that is a factor determinative of standing. If the defendant is legally occupying, or has been granted a right to occupy the premises, even though he is not physically present at the time of the search, then his privacy has been invaded by a search of these premises. . . ." (Spinelli v. U.S., 382 F2d 871, 879 (8th Cir. Mo. 1967) Rev'd on other grounds, 393 U.S. 410 (1969)).

Applying these principles to Section 252.100 (2) RSMo 1959, we believe this statute cannot be construed to authorize conservation agents to search without a warrant a cabin located on a State Park during the time it is rented to a park visitor. While rented to the park visitor, and whether or not he is physically within the cabin, it should be secure against governmental search without a warrant.

It is the opinion of this office that an agent of the Missouri Conservation Commission, acting pursuant to Section 252.100 (2) RSMo 1959, may not in search of illegal game enter a cabin at a state park while the cabin is properly rented to a park visitor unless he has a valid search warrant or the visitor's consent to the entry.

Yours very truly,

JOHN C. DANFORTH  
Attorney General