



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

0-4244  
GERALD C. MANN  
ATTORNEY GENERAL

Game, Fish and Oyster Commission  
Austin, Texas

Gentlemen:

Attention: Mr. Wm. J. Tucker

Opinion No. 0-4244

Re: Whether or not locker plants are  
cold storage plants, as de-  
fined by Article 909, Penal  
Code?

We have your letter requesting an opinion upon the  
above subject matter, as follows:

"Article 909 P. C. 1925 as amended by  
Senate Bill 30, 43rd Legislature provides  
the manner in which cold storage plants may  
be operated. The third paragraph of this  
Article provides that game and fish wardens  
may inspect these plants or the record books  
thereof and any operator or employee of such  
plant shall be guilty of a misdemeanor and  
upon conviction shall be fined in a sum not  
less than \$25.00 nor more than \$200.00 if he  
fails to keep a record or refuses to permit a  
game and fish warden to inspect such plant.

"Many locker plants are in operation at  
this time in this State. Lockers are rented  
or leased to individuals at so much per month  
or per annum. The lessee is furnished with a  
key to his locker; the operator of the plant  
may or may not possess a key to the locker.

"Are these locker plants cold storage  
plants as defined by the Article cited above  
and would a game and fish warden have author-  
ity to search these private lockers without a  
search warrant if he had good reason to believe  
that game animals or game birds were stored in  
them?"

Article 909 of the Penal Code, so far as pertinent, reads:

"It shall be unlawful for any person to place in any public cold storage plant, or for any operator or employee of any such cold storage plant to place or accept for placing in such cold storage plant, any game bird or game animal of this State at any time except during the open season provided for the taking of same and for a period of three days immediately thereafter.

"The owner or operator of any public cold storage plant, which intends to accept or does accept, any game bird or game animal of this State for storage, before accepting same shall provide a book in which he shall keep a legible record. Such record shall show the name of each and every person placing any game bird or game animal on storage in such public cold storage plant, the name of the person for whom it is placed on storage, the number of same, the kind of game bird or game animal placed on storage and the date on which such game bird or game animal is placed on storage. For the purpose of this Act, any plant in which game is stored for any person, other than the owner of such plant, is hereby defined as a public cold storage plant. Any public cold storage plant, or the record book required to be kept in such a plant, shall be subject to inspection by any game and fish warden of this State at any time and no warrant shall be required therefor."

It is our opinion that the locker plants described by you are cold storage plants, under this Article, and our conclusion is impelled by the following language therein:

"\* \* \* \* For the purpose of this Act, any plant in which game is stored for any person, other than the owner of such plant, is hereby defined as a public storage plant. \* \* \*"

Furthermore, we think the plain letter of the statute authorizes any game and fish warden to search such

private lockers without a search warrant, that language being:

"Any public cold storage plant, or the record books required to be kept in such a plant, shall be subject to inspection by any game and fish warden of this State at any time and no warrant shall be required therefor."

Such right of search is not in violation of Article 1, Section 9, of the Constitution, forbidding unreasonable search and seizure, as evidenced by the following authorities:

- New Way Lumber Co. v. Smith, 96 S. W. (2) 282;
- Moore v. Adams, 91 S. W. (2) 447;
- Blackburn v. State, 66 S. W. (2) 697;
- Interstate Forwarding Co. v. Vineyard, Tax Assessor, 49 S. W. (2) 403; Same case, 3 S. W. (2) 947;
- Pence v. State, 296 S. W. 542;
- Battle v. State, 290 S. W. 762;
- Karr v. Baldwin, 57 Fed. (2) 252.

Of course, such search may not be arbitrarily made without the existence of reasonable grounds or belief as a basis therefor. See the foregoing authorities, likewise Chapin v. State, 296 S. W. 1095.

Trusting that this will be a sufficient answer to your inquiries, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

*Handwritten signature of Gov. Allan*

By

*Handwritten signature of Cecil Speer*  
Cecil Speer  
Assistant

OS-MR

*Handwritten initials*

