



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

February 9, 1966

Honorable John C. Mullen
County Attorney
Jim Wells County
P. O. Box 1429
Alice, Texas

Opinion No. C-603

Re: Under the new Code of Criminal Procedure, whether a search warrant may issue to search a house for venison in connection with a proposed charge of killing deer out of season.

Dear Mr. Mullen:

In your recent request for an opinion of this office you state in effect that a game warden came to you to apply for a search warrant to search a house for venison in connection with the proposed charge of killing deer out of season in Jim Wells County. You state further that under the provisions of Article 18.02 of the new Code of Criminal Procedure, a search warrant may be issued to discover property acquired by theft or any other manner. You state further:

"The addition of the word 'such' in Section 5, of 18.02 in my opinion restricts the scope of that section to the specific articles named in 1, 3 and 4."

You then ask under what circumstance may a search warrant issue to seize the illegally obtained venison.

Article 18.02, new Code of Criminal Procedure, reads in its entirety as follows:

"Article 18.02 305 When it may issue

"A search warrant may be issued:

"1. To discover property acquired by theft or in any other manner which makes its acquisition a penal offense;

"2. To search suspected places where it is alleged property so illegally acquired is commonly kept or concealed;

"3. To search places where it is alleged implements are kept for use in forging or counterfeiting;

"4. To search places where it is alleged arms or munitions are kept or prepared for the purpose of insurrection or riot; and

"5. To seize and bring before a magistrate any such property, implements, arms and munitions."

Clearly, under Section 1, a search warrant may issue to discover any property which is acquired in any manner where the acquisition has been declared a penal offense.

Article 873, Vernon's Penal Code, states that it shall be illegal for any person to take, kill, hunt, wound or shoot at a game animal at any time of year other than during the open season, as provided for in Chapter VI, of the Penal Code, and that to do so is a misdemeanor. Article 879g, Vernon's Penal Code, provides for an open season on buck deer from November 16 to December 31 of each year. Article 978L-2, Section 2 and Section 18, Vernon's Penal Code, makes it unlawful and a misdemeanor to kill game animals west of the Pecos River. Section 4 thereof provides for an open season. Acts 58th Leg., R.S. 1963, ch. 288, p. 761, provides that it shall be unlawful and a misdemeanor to kill deer in Jim Wells County unless authorized by the Game and Fish Commission (Board for Parks and Wildlife) by proclamation or order. Article 978j, Vernon's Penal Code, lists numerous local and special game laws making it a misdemeanor to kill deer except during a prescribed open season. Acquiring venison by the act of killing deer out of season in Jim Wells County is a penal offense.

In view of the statutes aforementioned, we are of the opinion that Article 18.02, new Code of Criminal Procedure, authorizes the issuance of a search warrant to search for venison obtained by someone by killing deer out of the legal season and to bring the venison before a magistrate.

SUMMARY

Article 18.02, Code of Criminal Procedure (1966) provides for the issuance of a search

Honorable John C. Mullen, page 3 (C-603)

warrant to search for venison which has been obtained by killing deer out of season, said act being a penal offense and it further provides that the venison might be brought before a magistrate.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: J. Milton Richardson
J. MILTON RICHARDSON
Assistant Attorney General

JMR/dt:br

APPROVED

OPINION COMMITTEE:

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APPROVED FOR THE ATTORNEY GENERAL
By: T. B. Wright