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who has received a forest permit to go upon public lands to cut timber. A lessee may be an oilman who has acquired an oil and gas lease to explore for oil and gas upon public lands. And the public in general has a right to use public land for hunting,[26] fishing, camping,[27] and prospecting.[28]

A Missouri court answered the question of when the easement arises.[29] It stated that, where the United States Government sells a section of land surrounded by other Government land, the grantee acquires a right of way to the land he has purchased over land retained by the Government; and if this land is afterwards sold to other individuals, they take it subject to the burden imposed upon it while it belonged to the Government.

The scope of an easement by necessity must be such as to enable those who possess a right to use the easement full enjoyment of their land for all lawful purposes, so long as the necessity exists.[30] In addition, the scope of a way of necessity enlarges to meet the uses made of the lands.[31]

Finally, members of the public in general, or the other lawful users as the case may be, who desire to exercise their rights should consult with the owner of land which must be crossed in order that they can mutually arrive at a designated way which would least interfere with the landowner's use of the land. If the landowner fails to designate a way, the members of the public in general may make a selection with the restriction that they cannot lawfully encroach upon the land further than circumstances require.[32]

It should be clearly noted that most courts will only recognize a strict necessity as reason to allow the right to be exercised, while some consider a practical necessity sufficient. Under either view, if there are other means of access, although less convenient, there is no way of necessity.

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AUTHORITY OF GAME WARDENS TO SEARCH AUTOMOBILES WITHOUT A WARRANT

The extent to which a game warden or his deputy may search an automobile is governed in part by the Wyoming Constitution, which protects the people from unreasonable searches and seizures;[1] and in part by the Wyoming Compiled Statutes, which designate the State of Wyoming as

26. Supra note 20. See also Act of June 28, 1934, c. 865, § 1, 48 Stat. 1269, as amended June 26, 1936, c. 842, Title I, § 1, 49 Stat. 1976; May 28, 1954, c. 243 § 2, 68 Stat. 151, 43 U.S.C. § 315 (1940 ed.).
27. Diana Shooting Club v. Husting, 156 Wis. 261, 145 N.W. 816 (1914).
28. Act of May 10, 1872, c. 152, § 1, 17 Stat. 91, 30 U.S.C. 22 (1940 ed.).
29. Snyder v. Warford and Thomas, 11 Mo. 513 (1848).
30. Jones, Easements (1898) § 323; Simonton, *Ways By Necessity,* 33 W.Va. L.Q. 64 (1926).
31. Myers v. Dunn, 49 Conn. 71 (1881); Whittier v. Winkley, 62 N.H. 338 (1882); Erie R.R. v. S. H. Kleinman Realty Co., 92 Ohio St. 96, 110 N.E. 527 (1915); Uhl v. Ohio River R.R., 47 W.Va. 59, 34 S.E. 934 (1899).
32. Mackay v. Uinta Development Co., 219 Fed. 116 (8th Cir. 1914).

1. Wyo. Const., Art. 1, § 4.

owner of all wild life and authorize the state to control, propagate, manage and protect all wild life.[2] In protecting the wild life, game wardens, fish wardens, each deputy warden, and each law enforcement officer of the State of Wyoming are by statute given a right of search. This right includes the searching of automobiles for wild life which the warden or officer shall have reason to believe was taken or is possessed in violation of the laws of Wyoming—and the search may be made without a warrant.[3]

Generally speaking, no search is reasonable or lawful unless made under a search warrant in due conformity with the constitution.[4] This raises the question whether a Wyoming statute authorizing a game warden to make a search without a warrant would be constitutional. In interpreting the constitution the Wyoming court has, in effect, worked out several exceptions to the constitutional requirement.

For example, in *Wiggen v. State*[5] the court indicated that the law was well settled that an officer has the right to search without a warrant any party lawfully arrested, and to take from his person and from his possession property reasonably believed to be connected with the crime. But the search would not be lawful, at least without a legal warrant, if made in order to discover whether a defendant has violated the law.[6] The court held in *State v. Bonolo*[7] that any person who has control of the property in question may consent to a search thereof, and when such consent is given, the officers are at liberty to make such search as they may deem proper. However, a waiver of the citizen's fundamental constitutional rights must appear by clear and positive testimony, and if the search is based on the consent given to the officer, there should be no question about it. Finally in *State v. Kelley*[8] the court was faced with the interpretation of a Wyoming law of 1921, which made it the duty of any officer of the law to seize, upon discovery, intoxicating liquors transported in an automobile in violation of law.[9] The court followed *Carroll v. United States*[10] in which it was pointed out, first of all, that there has always been a distinction in the laws of the United States between searching homes and searching vehicles. The opinion continued to the effect that although a home cannot be searched without a warrant, the search of an automobile without a warrant cannot be said to be unreasonable under all circumstances; that a competent official may be by statute authorized to search if he has "probable cause" for believing that a vehicle is carrying contraband or illegal goods.

In view of the above exceptions and particularly in view of *State v.*

2. Wyo. Comp. Stat. § 47-101 (1945).
3. Wyo. Comp. Stat. § 47-125 (1945).
4. State v. George, 32 Wyo. 223, 231 Pac. 683 (1924).
5. 28 Wyo. 480, 206 Pac. 373 (1922).
6. Supra note 4.
7. 39 Wyo. 299, 270 Pac. 1065 (1928).
8. 38 Wyo. 455, 268 Pac. 571 (1928).
9. Wyo. Rev. Stat. § 59-126 (1921).
10. 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543, 39 A.L.R. 790 (1925).

Kelley,[11] it is evident that the constitutionality of the statute would be upheld.

The question then, that arises in the application of the statute, concerns the interpretation of the term "reason to believe." The constitution of Wyoming only protects people against unreasonable searches;[12] therefore, a thorough understanding of the term "reason to believe" becomes very important in determining when an unreasonable search exists, for it has been held that an officer, seeking to justify a search without a warrant acts unlawfully, unreasonably, and at his peril unless he can show the court "probable cause" for believing that a violation has taken place.[13]

Various states and courts have preferred to use other terms than "reason to believe." They have employed such phrases as "probable cause," "cause to believe," "reasonable cause," "reasonable belief," "probable cause to believe," "reason to suspect," and other terms in describing the circumstances under which a game warden may search without a warrant. Indeed, some courts have used two or more terms interchangeably in the same case.[14] Research has revealed no significant distinction between the different terms for the purposes of this note. It appears that they are all based upon the fundamental principle that facts and circumstances must exist that would lead a man of prudence and caution to believe that the offense has been committed.[15] For purposes of uniformity the term "probable cause," will be used in this article.

The Wyoming Supreme Court has apparently never decided a case involving the authority of a game warden to search an automobile. New York,[16] Wisconsin,[17] Oregon,[18] and Texas[19] have constitutional provisions on unreasonable searches which are similar to those in the Wyoming Constitution, and similar statutory provisions which purport to give game wardens the right to search without a warrant if they have "probable cause." In most cases these states have interpreted "probable cause" as a very definite restriction on the authority of game wardens to search automobiles without a warrant.

A resident of New York was driving his automobile along the highway, and was signaled and commanded to stop by the game protectors and state police. This was done in order that they might examine the contents of the automobile and ascertain whether the conservation law had been violated, or was being violated. He did not stop. There was no allegation that the officers had any cause or reason to believe that he had been violating the conservation law and there was no allegation that he

11. Supra note 8.
12. Wyo. Const., Art. 1, § 4; State v. George, 32 Wyo. 223, 231 Pac. 683 (1924).
13. Supra note 10.
14. People v. Hill, 131 Misc. 521, 227 N.Y.Supp. 285 (1928).
15. Stacey v. Emery, 97 U.S. 642, 69 S.Ct. 1311, 24 L.Ed. 1035 (1878).
16. N.Y. Const. Art 1, § 12; N.Y. Conservation Law § 164 (1950).
17. Wis. Const., Art. 1, § 11; Wis. Stat. § 29.05 (6) (1931).
18. Ore. Const., Art. 1, § 9; Ore. Comp. Laws Ann., § 82-114 (1939).
19. Tex. Const., Art 1, § 9; Vernon's Tex. Stat. Art. 923 d (1948).

knew for what reason the officers sought to stop him. The court held that the officers had no right to stop the car and search it, unless they had "probable cause" to believe that it contained evidence of a violation of the conservation law. It was apparent from the indictment that they had no such "probable cause."[20] In a clearer case arising in Wisconsin, men dressed as hunters were returning from the vicnity of a hunting camp on a narrow and deeply rutted road. The game warden looked through the window of the car and noticed a rifle and a sack. He also observed a Christmas tree lying in the back seat in such a manner that he suspected something was hidden underneath the tree. He stopped the car and searched it and found nothing. It appeared that the game warden knew that a member of the party had been convicted of violating game laws in the past. The trial court held that the game warden had no "probable cause" to search the automobile. On appeal to the supreme court, the court said that facts which warrant nothing but a suspicion are not sufficient to justify an officer in believing that an offense is probably being committed.[21]

"Probable cause" has been held to exist in Oregon where a game warden was informed by a forest ranger of an entry into a reserve by hunters. When he later met the hunters, he noticed blood on their clothing. The jury took into consideration the season of the year along with other circumstances in finding the existence of "probable cause."[22]

"Probable cause" was also found to exist in Texas where game wardens followed hunters in a car until they stopped. While the game warden was less than 100 yards from the hunters they shined their spotlight on a deer, and fired a rifle. The hunters fled but were pursued by the game warden, who overtook them. Upon search of the automobile he found in the trunk a dead deer which had been killed approximately two hours earlier.[23]

In each of the above cases the court took a very careful look at the evidence in considering whether, beyond all reasonable doubt, the sportsman had in fact violated the law, before holding that "probable cause" existed. It is likely that the Wyoming court would apply the same thinking to our statute which contains the same "probable cause" provision.

Although there are no cases directly in point on the authority of game wardens or their deputies to search either with or without a warrant in Wyoming, the court has given much consideration to the interpretation of "probable cause" in the issuance of a warrant to search.[24] It has been held that an affidavit for search and seizure based on mere belief of the

20. People v. Hill, 131 Misc. 521, 227 N.Y.Supp. 285 (1928).
21. State v. Johnson, 210 Wis. 334, 246 N.W. 446 (1933).
22. State v. Evans, 143 Ore. 603, 22 P.2d 496 (1933).
23. Phillips v. State, 159 Tex.Cr. 286, 263 S.W.2d 159 (1953).
24. State v. George, 32 Wyo. 223, 231 Pac. 683 (1924); Wiggen v. State, 28 Wyo. 480, 206 Pac. 373 (1922); State v. Peterson, 27 Wyo. 185, 194 Pac. 342, 13 A.L.R. 1284 (1920).

affiant did not show "probable cause."[25] Such deliberation would indicate the willingness of the Wyoming court to go so far as to limit the authority to search to offenses committed in the game warden's presence; or at least to require a showing of facts which would lead a prudent man to believe, beyond all reasonable doubt, that the sportsman was violating the game laws of the State of Wyoming.

A few states have discarded the test of "probable cause" in attempting to clothe their conservation officers with additional authority to make searches. Tennessee has adopted a statute making it the duty of every person participating in the privilege of taking or possessing wild life, to permit the game and fish director or his conservation officers, to ascertain whether the game laws are being violated.[26] This statute conforms to the theory that constitutional immunity from unreasonable searches, being a personal privilege, may be waived.[27] The Tennessee court construed the purchase of a license to be a consent to searches and a waiver of the constitutional right to be protected from unreasonable searches; thus no search could be considered "unreasonable."[28]

Pennsylvania, in the face of a constitutional provision protecting people from unreasonable searches, has gone so far as to enact a statute empowering a representative of the game commission to stop and search a vehicle without a warrant, at any time or place within the commonwealth. The statute requires no showing of "probable cause"; however, it does contain an additional provision that such officer shall display his badge or other insignia and shall state the purpose of the search to the person in charge of the vehicle or conveyance.[29] Pursuant to this statute a series of road blocks was set up for the purpose of inspecting vehicles and their occupants to determine if there was any legally or illegally killed game in their possession. An occupant who was driving an automobile was requested to stop, to identify himself, and to submit to the usual and ordinary inspection. The occupant allowed his gun and license to be examined, but refused to allow the inspection of the trunk of the automobile. The occupant was aware that the road check was being made by duly authorized officers of the Pennsylvania Game Commission. The automobile was stopped by a deputy game protector who was in uniform. The officer who first spoke to him displayed his badge and other insignia and repeatedly advised the purpose of the inspection. A conviction of violating the game laws was affirmed on the grounds that the statute directly covered the situation.[30]

25. Wiggen v. State, 28 Wyo. 480, 206 Pac. 373 (1922).
26. Tenn. Pub. Acts, c. 115, § 5 (1951).
27. Tobin v. State, 36 Wyo. 368, 255 Pac. 788 (1927).
28. State v. Hall, 164 Tenn. 548, 51 S.W.2d 851 (1932).
29. Pa. Stat. Ann., § 1311.214(h) (1953).
30. Commonwealth v. Rhone, 174 Pa.Super. 166, 100 A.2d 147 (1953), cert. denied, 348 U.S. 841.

Because of the uncertainty in meaning of the term "probable cause," the phrasing of the Wyoming statute could be improved. The aim of any legislation in this area must be to provide game wardens with sufficient authority to preseve wild life on one hand, and to protect sportsmen from unreasonable searches on the other. The local situation could be remedied in part by the adoption of legislation similar to that of Tennessee, whereby a sportsman upon the purchase of a license waives his constitutional privilege against searches without a warrant. Perhaps no additional legislation is necessary, since the Supreme Court of Wyoming has held that a person in control of the property in question may give consent to a search, the only requirement being a positive and clear consent given freely and not under stealth, force or coercion.[31] However, a statute specifically authorizing the incorporation of such a consent in the license, to become valid by the sportsman's signature on the license, would be desirable. If a sportsman is unwilling to avail himself of the privilege accorded him, upon the terms and provisions prescribed, he may decline the invitation, but he should not enjoy the benefits without submitting to the burdens. Such a provision would put a sportsman on notice, and he would not be in a position to claim surprise, embarrassment, or deprivation of constitutional rights when asked to submit to the routine search of a game warden. By preventing misunderstandings and arguments, the statute would promote good public relations between sportsmen and the State Game and Fish Commission.

With this legislation it would be unnecessary for the courts to strain at the interpretation of "probable cause" as is now required by statute, and what is more important, it would enable a game warden to carry out his duties without the burden of determining whether he has "probable cause" at the commencement of every search.

A further recommendation would be to add to the statute that portion of the Pennsylvania law which requires all representatives of the game commission engaged in the inspection of automobiles to be in full uniform, to display their badges or other insignia, and to state the purpose of the search to the person in charge of a vehicle or conveyance. Such a provision would lend dignity to the members of the commission inspecting automobiles and reassurance to sportsmen who may be asked to submit to searches. As a psychological matter, any person will respond to the laws and to the law enforcer more willingly if such officers handle themselves in a courteous and dignified manner, and appear clothed with the authority they are about to exercise.

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31. Wiggen v. State, 28 Wyo. 480, 206 Pac. 373 (1922).