

# MAINE STATE LEGISLATURE

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January 30, 1948

To Thomas S. Bridges, Esq.  
County Attorney

I have your letter of January 28th, enclosing an editorial from the Bangor Daily News of January 28, 1948, under the caption "Poachers' Paradise." I note that this editorial states that the U.S. Supreme Court has decided that game wardens cannot search a car without a search warrant.

You must realize by this time that the newspapers have to write something. When it comes to interpreting a decision of the U.S. Supreme Court, I hope you as County Attorney are not relying on such an interpretation!

The U.S. Supreme Court decision referred to in the editorial is U.S. vs. DIRM, which is in the Advance Sheets of the Lawyers' Cooperative Publishing Company; Vol. 92, No. 6, page 218. This decision had to do with counterfeit gasoline ration coupons. I will give you a summary of the case for your own information.

"On information received that the informer was to buy counterfeit gasoline ration coupons from a certain person at a named place, officers appeared at the place and found sitting in a parked automobile its owner, from whom the informer had just purchased coupons, and a third person was thereupon arrested without a warrant, and without protest accompanied the officers to a police station where a search of his person disclosed an envelope concealed inside his clothing containing 100 gasoline ration coupons which proved to be counterfeit.

"Upon the evidence so obtained he was convicted on a charge of knowingly possessing such coupons in violation of the statute."

The action of a Circuit Court of Appeals in setting aside the conviction as being based on evidence obtained by an illegal search was sustained by the Supreme Court in an opinion delivered by Justice Jackson. The contentions that the search was justified as incidental to a search of a vehicle reasonably believed to be carrying contraband, and that it was justified as incidental to a lawful arrest, were rejected by the Supreme Court. Chief Justice Vinson and Justice Black dissented without opinion.

This case, to which the editorial refers, has no application to the Fish and Game laws. In this case search was of the person for counterfeit gasoline ration coupons. The automobile was not searched, and the Court found it unnecessary to decide that question. It does, however, answer the Government's contention that the officers had the right to search the automobile, and incidentally to search the individual for contraband. The Court then proceeded to discuss the rule they lay down in Carroll vs. U.S., wherein they sustained a reasonable search of an automobile and the seizure thereof under the National Prohibition Act, where the statute expressly authorized the search and seizure. There was no such authority in the case of searching for or seizing ration coupons. The Carroll case is to be found in

267 U.S. 132; 37 A.L.R. 790. The search of the automobile in the Carroll case was made and its validity was upheld by the Supreme Court, under the search and seizure provisions enacted for the enforcement of the National Prohibition Act, and of that Act alone.

The Fish and Game Laws expressly authorize game wardens and other officers to search and seize without a warrant game transported or possessed in violation of the provisions of the statute, or equipment possessed in violation thereof, and within a reasonable time libel for same. See Section 107 of the Ninth Biennial Revision, which authorizes the search of buildings, motor vehicles, etc., without a warrant, but excluding a dwelling house. Under Section 68, it is unlawful for a person to have in his possession at any time any wild bird or wild animal or parts thereof taken in violation of the provisions of this section. It prohibits having a loaded rifle, or a loaded shotgun, or a gun with a cartridge in the magazine thereof in any motor vehicle.

It is my opinion that reasonable search and seizure of contraband would not violate the Constitution, as this statute expressly authorizes this to be done, and it would fall within the rule laid down in the case of Carroll vs. U.S., 267, U.S. 132.

Furthermore, the rule seems to be in Maine that although the officer proceeds illegally in making search and seizure, the evidence he obtains is admissible, though the officer may be liable for violation of the law. State vs. McCann, 61 Maine 116. See also 113 Maine, 15.

I would not worry about your two game cases for night hunting in which the game wardens searched the cars without a warrant and took guns. You should proceed without paying any attention to the said editorial published in the Bangor Daily News under date of January 28, 1948.

Another point in this DiRe case that I want to bring out is that the respondent was arrested and taken to the station and booked, but the record at the station did not show upon what charge. He was later indicted for a misdemeanor of knowingly possessing counterfeit gasoline ration coupons in violation of ration order #5 of the OPA and the search was of the person rather than of an automobile, and there was no statute authorizing search and seizure for ration coupons.

So in case the attorney for the respondent in your game cases cites the Bangor Daily News for his authority, you want to rely on Carroll vs. U.S., 267 U.S. 132.

Ralph W. Farris  
Attorney General

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