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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF OHIO

OPINION No. 88-035

1988 Ohio Op. Atty Gen. 155; 1988 Ohio Op. Atty Gen. No. 35; 1988 Ohio AG LEXIS 35

June 15, 1988

SYLLABUS:

[*1]

1. *R.C. 313.11* gives a coroner control over the area "near the body" at the scene of an unexplained death. The determination of the extent of the area "near the body" is within the discretion of the coroner. (1980 Op. Att'y Gen. No. 80-091, syllabus, paragraph one, approved and followed.)

2. *R.C. 313.11* requires that everyone, including law enforcement personnel, must receive a permissive order from the coroner before removing or disturbing the body or articles found on or near the body, including but not limited to suicide notes, firearms, and other physical items found at the scene. (1980 Op. Att'y Gen. No. 80-091, syllabus, paragraph one, approved and followed.)

3. *R.C. 313.11* does not restrict the duration of the coroner's control over the scene of an unexplained death; the coroner has control over this area for as long as he deems this control to be necessary in the exercise of his discretion.

4. A law enforcement officer may request that the coroner or his staff perform forensic tests on physical items found at the scene of an unexplained death only in the limited circumstances permitted under *R.C. 313.21* and *R.C. 313.05*. §5. Public employees and medical personnel [*2] required to notify "the office of the coroner" of an unexplained death pursuant to *R.C. 313.12* may notify any person employed in the coroner's office.

6. Only the coroner and the deputy coroner have the authority to "go to a dead body and take charge of it" pursuant to *R.C. 313.13*.

7. The coroner's investigators may perform any investigatory tasks that are not limited to the authority of the coroner or the deputy coroner by *R.C. 313.17* or another statute.

8. In fulfilling the duties imposed by R.C. Chapter 313, neither the coroner nor his staff may go beyond the investigate tasks necessary to determine the manner, mode, and cause of death; however, it is within the discretion of the coroner to determine which investigative tasks are necessary.

9. Evidence found at the scene of an unexplained death does not "inure to the province of law enforcement" after the coroner makes his initial observation of evidence on or near the body unless, pursuant to *R.C. 313.11*, the coroner permits the law enforcement officers to remove or disturb the evidence.

10. The coroner has the authority to decide, within the exercise of his discretion, whether or not to permit law

enforcement officials [*3] to photograph the body during an autopsy. *R.C. 313.15* requires the coroner to consult with the appropriate law enforcement officers before releasing the body; accordingly, law enforcement officers are permitted to photograph the body before the coroner releases it.

11. Under *R.C. 313.14*, the coroner has a mandatory duty to inform the family members of a person who meets death in the manner described in *R.C. 313.12*; he may, however, perform this duty in any manner he deems appropriate in the exercise of his discretion.

REQUESTBY:

ANTHONY J. CELEBREZZE, JR., Attorney General

OPINION:

The Honorable Gregory J. Brown
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I have before me your request for my opinion concerning the rights and duties of coroners and law enforcement officers at the scene of an unexplained death. Specifically, you ask:

1. If there is an alleged suicide note, who takes possession of the original for possible analysis, fingerprints, etc.?
2. Who takes immediate possession of a weapon, found near the deceased, that may be related to the death so that the weapon may be analyzed for fingerprints and other information?
3. Who is [*4] in charge of requesting the forensic testing of physical items found at the scene? Who takes custody of these items?
4. Are the duties of a county coroner pursuant to *R.C. 313.12* and *313.13* delegable to his investigators, or must the coroner or his deputy go to the scene?
5. Does *R.C. Chapter 313* give any appointed coroner's investigator the right to act similarly to law enforcement officers to investigate beyond the death scene's immediate area (for example, to interview neighbors, family, and witnesses or collect evidence or conduct tests)?
6. Pursuant to *R.C. 313.11*, after the coroner makes his initial observation of any evidence and its location upon or near the body, does the law enforcement agency then have the immediate right to secure evidence, photograph, conduct its own investigation, etc.?
7. Does the coroner's authority to determine the cause of death, the manner of death, and the type of injury involved extend beyond those parameters into the province of law enforcement investigation?
8. Does the coroner have the right to withhold from law enforcement officials evidence found at a death scene until he makes a formal written determination of the cause of [*5] death, or does that evidence inure to the province of law enforcement after the coroner makes his initial observation of any evidence and its location upon or near the body pursuant to *R.C. 313.11*?
9. Does law enforcement have the right to photograph the body at the morgue or during an autopsy?
10. Is it the exclusive duty of the coroner to notify the relatives of a deceased person of that person's death in the manner described in *R.C. 313.12*, or may law enforcement assist?

Both coroners and law enforcement officers are creatures of statute, and, as such, they may exercise only the authority explicitly granted to them by statute or ordinance or necessarily implied therefrom. *see, e.g., State ex rel. Harrison v. Perry*, 113 Ohio St. 641, 644, 150 N.E. 78, 78 (1925) (concerning origin of coroner's authority); *State ex rel. Trago v. Evans*, 166 Ohio St. 269, 274, 141 N.E.2d 665, 669 (1957) (concerning origin of sheriff's authority). R.C. Chapter 313 describes the powers and duties of the coroner. R.C. Chapters 309, 311, 509, and 737 describe, respectively, the powers and duties of the county prosecuting attorney, the county sheriff, the township constable, and of city [*6] police and village marshals.

R.C. 309.08, which enumerates the duties of the county prosecuting attorney, provides in pertinent part that the prosecuting attorney "may inquire into the commission of crimes within the county." The investigatory authority of other types of law enforcement officers is less explicit. In general, law enforcement officers are required to "preserve the peace." *R.C. 311.07(A)*, which describes the powers and duties of the county sheriff, provides the "(e)ach sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the court of common pleas, and the sheriff shall commit such persons to jail in case they refuse to do so." *R.C. 509.05*, which describes the powers and duties of township constables, provides that "constables . . . shall apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within the county." *R.C. 737.11*, which describes the general duties of police departments, provides that "(t)he police force of a municipal corporation [*7] shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority of the municipal corporation, all criminal laws of the state and the United States, and all court orders issued and consent agreements approved pursuant to *sections 2919.26 and 3113.31 of the Revised Code*." Finally, *R.C. 737.19(c)*, which describes the powers and duties of village marshals, provides that the marshal of a village "shall suppress all riots, disturbances, and breaches of the peace, and to that end may call upon the citizens to aid him. He shall arrest all disorderly persons in the village and pursue and arrest any person fleeing from justice in any part of the state." Accomplishing these goals necessarily requires law enforcement officers to investigate crimes that occur within their jurisdiction. A United States District Court has noted that a county sheriff's common law duties include the pursuit and capture of lawbreakers:

The common law powers of a sheriff in Ohio have been defined. It is the duty of the sheriff ". . . to preserve the peace in his bailwick or county. To this end he is the first man within the county, and it is incident to his [*8] office that he apprehend and commit to prison all persons who break or attempt to break the peace. He is bound, *ex officio*, to pursue and take all traitors, *murderers*, felons, and rioters."

United States v. Laub Baking Co., 283 F. Supp. 217, 220 (N.D. Ohio 1968) (emphasis added) (citation omitted).

In contrast to the vaguely defined investigatory duties of law enforcement officials, the investigatory duties of the coroner are fairly specific. The coroner is required to determine the cause, manner, and mode of unexplained deaths in the county. *See R.C. 313.19*. To accomplish these tasks, he has broad authority to gather information at the scene of an unexplained death and beyond, and to interview and subpoena witnesses when necessary. *See generally, R.C. 313.11, R.C. 313.13, and R.C. 313.17*. In addition, *R.C. 313.09* authorizes the coroner to request that law enforcement officers investigate unexplained deaths, and provides in pertinent part:

The coroner shall promptly deliver, to the prosecuting attorney of the county in which . . . (an unexplained) death occurred, copies of all necessary records relating to every death in which, in the judgment of coroner [*9] or prosecuting attorney, further investigation is advisable. The sheriff of the county, the police of the city, the constable of the township, or marshal of the village in which the death occurred may be requested to furnish more information or make further investigation when requested by the coroner or his deputy.

I also note that R.C. Chapter 313 permits or requires cooperation between the coroner and local law enforcement officials in certain circumstances. n1

1 See, e.g., *R.C. 313.05* (providing that pathologists appointed by the coroner "shall . . . perform such other duties as are directed by the coroner or recommended by the prosecuting attorney"), *R.C. 313.12* (requiring that a member of a law enforcement agency who "obtains knowledge" of an unexplained death in the course of his duties shall "immediately notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of such death, and any other information which is required pursuant to . . . (*R.C. 313.18* (providing that the prosecuting attorney or the coroner may "order the disinterment of any dead body, under the direction and supervision of the coroner, and may authorize the removal of such body by the coroner to the quarters established for the use of such coroner, for the purpose of examination and autopsy"), and *R.C. 313.21* (providing that the coroner may "use or may allow the use of the coroner's laboratory and facilities . . . for law enforcement-related testing, and may direct his assistants and other personnel to perform such testing in addition to testing performed in execution of their duties as set forth in . . . [*R.C. 313.01-.22*]").

[*10]

R.C. Chapter 313 gives the coroner broad discretion in the investigation and determination of the cause, manner, and mode of an unexplained death in his county. *R.C. 313.12* requires that the coroner be notified immediately of certain types of deaths, and provides in pertinent part:

When any person dies as a result of criminal or other violent means, or by casualty, or by suicide, or suddenly when in apparant health, or in any suspicious or unusual manner, the physician called in attendance, or any member of an ambulance service, emergency squad, or law enforcement agency who obtains knowledge thereof arising from his duties, shall immediately notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of such death, and any other information which is required pursuant to *sections 313.01 to 313.22 of the Revised Code*.

R.C. 313.11 describes the coroner's authority over the area in which an unexplained death has occurred:

(A) No person shall, without an order from the coroner, purposely remove or disturb the body of any person who has died in the manner described in . . . [*R.C.] 313.12* . . . or purposely and without such an order disturb [*11] the clothing or any article upon or near such a body or any of the possessions which the coroner has a duty to store under . . . [*R.C.] 313.14*

(B) It is an affirmative defense to a charge under this section that the offender attempted in good faith to rescue or administer life-preserving assistance to the deceased person, even though it is established he was dead at the time of the attempted rescue or assistance.

(C) Whoever violates this section is guilty of unlawfully disturbing a body, a misdemeanor of the fourth degree.

In addition, *R.C. 313.13*, which provides that the coroner may perform an autopsy on a dead body within his jurisdiction, authorizes the coroner or deputy coroner to "go to the dead body and take charge of it."

Thus, R.C. Chapter 313 gives the coroner broad authority to investigate unexplained deaths. I turn now to your first question, in which you ask whether the county coroner or a law enforcement officer has the authority to take possession of the original of a possible suicide note in order to analyze the note for fingerprints or other information. R.C. Chapter 313 makes clear that the coroner has the authority to take possession of the note. [*12]

R.C. 313.17 authorizes the coroner to conduct an inquest to determine "how the deceased came to his death." As part of this inquiry, the coroner is required to make a report based on "the personal observation by the coroner or his deputy of the corpse . . . the statements of relatives or other persons having any knowledge of the facts . . . *such other sources of information as are available*, or . . . the autopsy." (Emphasis added.) Certainly a possible suicide note would qualify as another "source of information" that might help the coroner to accomplish his task of determining the manner in which the decedent died. I also note that *R.C. 313.11* provides that "[n]o person shall, without an order from the

coroner . . . purposely and without such an order disturb the clothing or any article upon near such a body . . . " (Emphasis added.) My predecessor interpreted the "literal meaning" of the statute to be that "everyone, *including law enforcement personnel*, must receive some type of permissive order from the coroner prior to removing or disturbing the body or articles found on or near the body." 1980 Op. Att'y Gen. No. 80-091 at 2-353. (Emphasis added.) In determining [*13] the meaning of the phrase "near such body," my predecessor concluded that the determination of the area "near the body" was within the discretion of the coroner:

[The] determination of the dimensions of the area "near the body" is a factual matter that is not susceptible to a precise rule of measurement. Rather, the determination of the area "near" the body to be preserved for purposes of investigation is a matter of judgment, depending on where the body is found, and is within the sound discretion of the coroner.

Id. I agree with the conclusions of my predecessor, and conclude that the coroner may take possession of the original of a possible suicide note if he determines that the note is sufficiently "near" to the body and that the note will help him to determine the manner or mode in which the decedent died.

In your second question, you ask who takes immediate possession of a weapon which is found near the deceased and which is possibly related to the death for purposes of analysis, fingerprinting, and the like. As I noted above, *R.C. 313.17*, which authorizes the coroner to conduct an inquest to determine how the deceased "came to his death," requires the coroner [*14] to make a report based on, among other things "such . . . sources of information as are available." Certainly the information available from the analysis of a weapon found "near the deceased" could be helpful to the coroner as he conducts his inquiry into the manner of death. n2 Accordingly, for the same reasons that I concluded that the coroner has the authority to take possession of a possible suicide note, I conclude that *R.C. Chapter 313* authorizes the coroner to take immediate possession of any weapons found near the deceased.

n2 In 1982, the Summit County Court of Appeals addressed the issue of the proper method of disposal for a firearm used in a suicide. *See Farley v. Kyriakides*, 7 Ohio App. 3d 284, 455 N.E.2d 676 (Summit County 1982). In *Farley*, the administrator of the estate of a person who had committed suicide sued the county to recover the valuable shotgun that the coroner had found in the deceased's possession. After considering *R.C. 313.14*, *313.141*, and *313.22*, the court found that the statutes required the coroner to return the shotgun to the administrator of the decedent's estate. *Id.* at 286, 455 N.E.2d at 678.

R.C. 313.14 requires the coroner to sell the "valuable personal effects . . . found in connection with . . . the unclaimed dead body, except firearms, which shall be disposed of as provided by . . . [*R.C.*] *313.141* . . ." *R.C. 313.141* provides that the coroner must deliver firearms found on or near the body to a local law enforcement agency. The *Farley* court determined that *R.C. 313.141* applies only in cases in which the coroner has taken jurisdiction over an *unclaimed* body and that in all other cases, the coroner must comply with *R.C. 313.22*, which requires that any "moneys and effects" of the deceased taken by the coroner must be delivered to the administrator of the estate of the deceased. *Farley*, 7 Ohio App. 3d at 286, 455 N.E.2d at 678. *But see* 1977 Op. Att'y Gen. 77-102 (syllabus) ("*R.C. 313.12* requires a county coroner to deliver a firearm included in the personal effects of a person who has met death by suicide to the applicable law enforcement officer named in said statute").

[*15]

In your third question, you ask who is in charge of requesting the forensic testing of physical items found at the scene, and who takes possession of these items. As previously noted, the coroner has complete control of the scene of an unexplained death pursuant to *R.C. 313.11*, and even law enforcement officers must have the coroner's permission to remove any item found near the body. *See* Op. No. 80-091 at 2-353. Accordingly, I conclude that unless the coroner gives a permissive order to a law enforcement officer, that officer may not take possession of any item found at the scene of the death. Once a law enforcement officer has possession of an item, I presume that he may order other law

enforcement officers to perform forensic tests on the items in accordance with local regulations or procedures. I note, however, that in limited circumstances *R.C. 313.05* and *R.C. 313.21* permit law enforcement officers to request that the coroner or his staff test physical items. *R.C. 313.05* provides in pertinent part that the prosecuting attorney may require the coroner's employees to perform certain tests:

The coroner may appoint, in writing, assistant coroners who shall be licensed [*16] physicians of good standing in their profession, one of whom may be designated as the chief deputy coroner. Such coroner may also appoint pathologists as assistant coroners, who shall assist in doing autopsies, make pathological and chemical examinations, and perform *such other duties as are directed by the coroner or recommended by the prosecuting attorney*. The coroner may appoint any necessary technicians. (Emphasis added.)

I also note that under *R.C. 313.21(A)* the coroner, in the exercise of his discretion, may "use or may allow the use of" his facilities for law-enforcement related testing. *R.C. 313.21(A)* provides in pertinent part:

The coroner may use or may allow the use of the coroner's laboratory and facilities for tests in an emergency involving suspected toxic substances *or for law enforcement-related testing*, and may direct his assistants and other personnel to perform such testing in addition to testing performed in execution of their duties as set forth in *sections 313.01 to 313.22 of the Revised Code*. (Emphasis added.)

Accordingly, I conclude that law enforcement officers may request that the coroner test physical items only in the limited circumstances [*17] permitted under *R.C. 313.05* and *R.C. 313.21*.

In your fourth question, you ask whether the coroner may delegate his duties under *R.C. 313.12* or *R.C. 313.13* to the coroner's investigators. Investigators are hired pursuant to *R.C. 313.05*, which provides in pertinent part that coroners in certain counties may "appoint . . . investigators, and shall define their duties." *R.C. 313.12* requires certain public employees and medical personnel who become aware of a person who has died within the county in "any suspicious or unusual manner" to notify the coroner of that death. The statute enumerates no particular duties of the coroner; rather, it imposes duties upon public employees and medical personnel to "notify the office of the coroner" of the facts surrounding the death. Because *R.C. 313.12* requires that notice be provided to "the office of the coroner" rather than to "the coroner," I conclude that any person employed in the coroner's office may be notified of the death.

R.C. 313.13 requires the coroner or his deputy to take charge of a dead body and to determine whether or not to conduct an autopsy:

The coroner or deputy coroner may go to the dead body and take charge of it. [*18] Whether and when an autopsy is performed shall be determined under *section 313.131 of the Revised Code*. If an autopsy is performed by the coroner, deputy coroner, or pathologists, a detailed description of the observations written during the progress of such autopsy, or as soon after such autopsy as reasonably possible, and the conclusions drawn therefrom shall be filed in the office of the coroner.

If he takes charge of and decides to perform, or performs, an autopsy on a dead body under *section 313.131 of the Revised Code*, the coroner, or in his absence, the deputy coroner, may, under division (E) of *section 2108.02 of the Revised Code*, waive his paramount right to any donated part of the dead body.

R.C. 1.42 provides that "[w]ords and phrases [in statutes] shall be read in context and construed according to the rules of grammar and common usage." *R.C. 313.13* specifically authorizes either the coroner or deputy coroner to "go to the dead body and take charge of it." The language used in *R.C. 313.13* is permissive; the statute provides that the coroner or his deputy "may" take charge of the dead body. See, e.g., *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, [*19] 271 N.E.2d 834 (1971) (Syllabus, paragraph one) ("In statutory construction, the word 'may' shall be construed as permissive . . . unless there appears a clear and unequivocal legislative intent that [it] receive a construction other than [its] ordinary usage"). I see no reason, however, to conclude that *R.C. 313.13* authorizes anyone other than

the coroner or his deputy to take charge of a dead body at the scene of an unexplained death. Such an interpretation would directly contradict the plain language of the statute. Accordingly, I conclude that only the coroner and the deputy coroner have the authority to "go to a dead body and take charge of it" pursuant to *R.C. 313.13*.

In your fifth question, you ask whether the coroner's investigator has the authority to investigate an unexplained death "beyond the death scene's immediate area" and to interview neighbors, family, and other witnesses; collect evidence; or conduct tests. *R.C. 313.17* authorizes the coroner to conduct an inquest and to question witnesses:

The coroner or deputy coroner may issue subpoenas for such witnesses as are necessary, administer to such witnesses the usual oath, and proceed to inquire how the deceased [*20] came to his death, whether by violence to self or from any other persons, by whom, whether as principals or accessories before or after the fact, and *all circumstances relating thereto*. The testimony of such witnesses shall be reduced to writing and subscribed to by them, and with the findings and recognizances mentioned in this section, shall be kept on file in the coroner's office, unless the county fails to provide such an office, in which event all such records, findings and recognizances shall be kept on file in the office of the clerk of the court of common pleas. The coroner may cause such witnesses to enter into recognizance, in such sum as is proper, for their appearance to give testimony concerning the matter. He may require any such witnesses to give security for their attendance, and, if any of them fails to comply with his requirements he shall commit such person to the county jail until discharged by due course of law. In case of the failure of any person to comply with such subpoena, or on the refusal of a witness to testify to any matter regarding which he may lawfully be interrogated, the probate judge, or a judge of the court of common pleas, on application [*21] of the coroner, shall compel obedience to such subpoena by attachment proceedings as for contempt. A report shall be made from the personal observation by the coroner or his deputy of the corpse, from the statements of relatives or other persons having any knowledge of the facts, and *from such other sources of information as are available*, or from the autopsy. (Emphasis added.)

I concluded above that the coroner may not delegate to an investigator a task that only the coroner or his deputy is authorized to perform. *R.C. 313.17* does restrict the completion of several tasks to the authority of the coroner or the deputy coroner. For example, only the coroner or deputy coroner may issue subpoenas to witnesses and administer "the usual oath" to these witnesses, or cause the witnesses to enter into recognizances to assure their appearance. *R.C. 313.17* does not, however, authorize only the coroner or deputy coroner to take "statements of relatives or other persons having any knowledge of the facts." There could be many times when it would be necessary or logical for an investigator, rather than the coroner or deputy coroner, to conduct interviews with and take statements of witnesses. [*22] Not all potential witnesses will have information sufficiently relevant to the unexplained death to require their formal testimony; the coroner's investigators could conduct preliminary interviews with potential witnesses to identify those witnesses who have sufficiently relevant information to justify the issuance of a subpoena. n3

n3 One of my predecessors addressed the question of whether a coroner could conduct an "informal inquiry of witnesses at the scene and of any persons that might shed light on how the deceased came to death." *See* 1975 Op. Atty Gen. No. 75-011 at 2-42. My predecessor determined that the last sentence of *R.C. 313.17* authorizes the coroner to "collect data pertaining to the cause of death through means other than by formal inquest. Such an informal inquiry can take place by questioning of anyone who may be in possession of information . . . that would aid the coroner in the disposition of his duty." *Id.* My predecessor cited as authority the Ohio Supreme Court's opinion in *State v. Sharp*, 162 Ohio St. 173, 122 N.E.2d 684 (1954). In that case, the court decided that in certain circumstances defense counsel could see a copy of his client's written statement taken in connection with a coroner's inquest. The court looked at the language of *R.C. 313.17* and determined that "[t]he coroner is . . . not required to swear all persons from whom he acquires information, nor is he required to reduce to writing the testimony of a witness who has not been subpoenaed and have him sign it." *Id.* at 181, 122 N.E.2d at 689.

[*23]

R.C. 313.17 authorizes the coroner to base his report on, among other things, "such other sources of information as are available." Certainly information gathered by the coroner's investigators would constitute another "source of

information." Accordingly, I conclude that the coroner's investigators may undertake any appropriate investigatory tasks that are not limited to the authority of the coroner or the deputy coroner by *R.C. 313.17* or another statute.

In your sixth question, you ask whether the local law enforcement agency has the "immediate right" to secure evidence, take photographs, and conduct its own investigation at the scene of an unexplained death after the coroner terminates his initial observation pursuant to *R.C. 313.11*. *R.C. 313.11* gives the coroner complete control over the area "near the body." I have already discussed the fact that *R.C. 313.11* gives the coroner the discretion to define the area "near the body" for purposes of *R.C. 313.11*, and to control that area. *R.C. 313.11* does not restrict the duration of the coroner's control over this area. I conclude that the coroner has control over the scene of an unexplained death for as long as he deems this control to [*24] be necessary. Accordingly, until the coroner completes his investigation of the scene, local law enforcement officers must have the coroner's permission to secure evidence and conduct investigations within the area of the coroner's control.

In your seventh question you ask: "Does the coroner's authority to determine the cause of death, the manner of death, and the type of injury involved extend beyond those parameters into the province of law enforcement investigation?" *R.C. 313.19* requires the coroner to determine the cause, manner, and mode of death, and provides that the coroner's verdict is usually the legally accepted cause of death:

The cause of death and the manner and mode in which the death occurred, as delivered by the coroner and incorporated in the coroner's verdict and in the death certificate filed with the division of vital statistics, shall be the legally accepted manner and mode in which such death occurred, and the legally accepted cause of death, unless the court of common pleas of the county in which the death occurred, after a hearing, directs the coroner to change his decision as to such cause and manner and mode of death. n4

n4 Two inferior courts have declared *R.C. 313.19* unconstitutional as it applies to civil actions: *See State ex rel. Dana v. Gerber*, 79 Ohio App. 1, 70 N.E.2d 111 (Cuyahoga County 1946); *Roark v. Lyle*, 68 Ohio L. Abs. 177, 116 N.E.2d 817 (Hamilton County C.P. 1953). In addition, the Seneca County Court of Appeals concluded in a criminal case that it would avoid declaring the statute unconstitutional by deciding that the function of the coroner pursuant to *R.C. 313.19* is "to determine the physical or physiological cause of death and to assemble facts pertinent to the circumstances surrounding the death, but that 'the cause of death and the manner and mode in which death occurred' when determined by the coroner do not contemplate a determination thereby as to the criminal responsibility for that death." *State v. Cousin*, 5 Ohio App. 3d 32, 35, 449 N.E.2d 32, 36 (Seneca County 1982).

[*25]

My predecessor, addressing the scope of the coroner's authority, discussed the meaning of the terms "cause, manner, and mode of death," as they are used in *R.C. 313.19*:

It is my understanding that the cause of death is generally understood to be the medical reason for death -- as, for example, loss of blood resulting from a wound to the heart; that the mode of death is generally understood to be the type of instrument or injury involved -- as, for example, a gunshot wound; and that the manner of death is generally understood to be the style in which the event occurred -- as, for example, a suicide, homicide, or accident.

1980 Op. Att'y Gen. No. 80-091 at 2-352. To determine the cause, manner, and mode of death, the coroner may be required to complete many tasks that are similar to law enforcement tasks. For example, he may need to interview witnesses, to examine the area where the body was discovered, or to conduct forensic tests on items found at the scene or discovered elsewhere. *R.C. 313.11* and *R.C. 313.05* empower the coroner to accomplish these tasks by giving him control over the scene of an unexplained death and by permitting certain coroners to hire investigators. [*26] In addition, *R.C. 313.07* provides for the establishment of the coroner's office and laboratory.

Both the coroner and law enforcement officers are trying to determine how a person died. The coroner is more concerned with the physical and medical causes of the death, while law enforcement officers are more concerned with whether or not another person unlawfully caused the death. *See generally, R.C. 309.08* ("The prosecuting attorney may inquire into the commission of crimes within the county"); *United States v. Laub Baking Co.*, 283 F. Supp. 217, 220 (N.D. Ohio 1968) ("The common law powers of a sheriff in Ohio have been defined . . . He is bound, *ex officio*, to pursue and take all traitors, *murderers*, felons, and rioters.") (Emphasis added.) It is not surprising that the duties of law enforcement officers and coroners would overlap. I note, however, that the duties of the coroner are not identical to the duties of law enforcement officers. As one of my predecessors has opined, coroners do not have the authority to determine whether the law has been broken, or to determine that a particular person is guilty of violating the law:

The coroner, as a physician, [*27] is not qualified to make legal determinations.

Therefore, it is my opinion, and you are advised that a coroner in his investigation of a death coming within his jurisdiction does not have the authority to apply law to the facts and determine what, if any, statute has been violated, and the legal responsibility of the persons involved.

1969 Op. Att'y Gen. No. 69-036 at 2-63 (and syllabus). The Seneca County Court of Appeals addressed a similar issue when it was asked to determine whether or not a coroner's determination that a death was an "accident" could be used to reverse a voluntary manslaughter conviction. *State v. Cousin*, 5 Ohio App. 3d 32, 449 N.E.2d 32 (Seneca County 1982). The court concluded that the coroner's determination was not dispositive, noting that the coroner's area of expertise is in medical, rather than legal, knowledge:

We therefore conclude the terminology of *R.C. 313.19* must be given an interpretation which makes the coroner's verdict and death certificate the "legally accepted manner and mode in which such death occurred, and the legally accepted cause of death" only as to the physiological cause of death and the immediate mechanical, chemical [*28] or biological means by which death was caused, but does not extend to a determination of the criminal responsibility or non-responsibility of any human agency involved in the causal chain. The function of the coroner is ultimately that of an expert witness, who expresses an opinion on matter[s] within the scope of his expertise, and not that of the courts which apply law to the facts and assign responsibility under the law.

Id. at 35, 449 N.E.2d at 37. I concur with the conclusions of my predecessor and the Seneca County Court of Appeals, and conclude that in fulfilling the duties imposed by R.C. Chapter 313, neither the coroner nor his staff may go beyond the investigative tasks necessary to determine the manner, mode, and cause of death; however, it is within the discretion of the coroner to determine which investigative tasks are necessary.

I turn now to your eighth question, in which you ask:

Does the coroner have the right to withhold from law enforcement officials evidence found at a death scene until he makes a formal written determination of the cause of death, or does that evidence inure to the province of law enforcement after the coroner makes his initial observation [*29] of any evidence and its location upon or near the body pursuant to *R.C. 313.11*?

R.C. 313.11 provides in pertinent part that the coroner has control of the death scene:

[A] *No person* shall, without an order from the coroner, purposely remove or disturb the body of any person who had died in the manner described in *section 313.12 of the Revised Code*, or purposely and without such an order disturb the clothing or *any article* upon or near such a body or any of the possessions which the coroner has a duty to store under *section 313.14 of the Revised Code*. (Emphasis added.)

As I have already noted, my predecessor has concluded that the "literal meaning" of *R.C. 313.11* is that, "everyone, including law enforcement personnel, must receive some type of permissive order from the coroner prior to removing or

disturbing the body or articles found on or near the body." Op. No. 80-091 at 2-353. My predecessor also noted some of the reasons for the restrictions in *R.C. 313.11*:

Obviously, the determination of the cause, manner and mode of death is extremely important to several persons and entities, including heirs of the estate, insurance companies, and *law enforcement agencies*. [*30] In his death investigation, the coroner should have the opportunity to observe, photograph, or evaluate evidence which may be found on or near the body. The apparent function of *R.C. 313.11* is to enable the coroner to make his initial observations of any evidence and its location upon or near the body. The fact that the coroner is given charge of the scene of a violent death ensures that he has an opportunity to perform these functions. If pains are taken to preserve the death location, sound data may be collected and well documented.

Op. No. 80-091 at 2-352 (emphasis added). As I have already noted above, *R.C. 313.11* does not restrict the duration of the coroner's control over the scene of an unexplained death; it is within the reasonable exercise of the coroner's discretion to determine when sufficient time has expired. Accordingly, evidence found at the scene of an unexplained death does not "inure to the province of law enforcement" after the coroner makes his initial observation of evidence on or near the body unless the coroner gives the law enforcement officers "some type of permissive order" that would allow them to disturb the evidence pursuant to *R.C. 313.11*. [*31]

In your ninth question, you ask whether law enforcement personnel may photograph the body at the morgue or during an autopsy. I find no specific mention of a right to photograph in *R.C. Chapter 313*. *R.C. 313.13* regulates the coroner's performance of an autopsy, and provides in pertinent part:

The coroner or deputy coroner may go to the dead body and take charge of it If an autopsy is performed by the coroner, deputy coroner, or pathologists, a *detailed description* of the observations written during the progress of such autopsy, or as soon after such autopsy as reasonably possible, and the conclusions drawn therefrom shall be filed in the office of the coroner. (Emphasis added.)

See also R.C. 313.09 (providing that the coroner shall "promptly deliver" to the prosecuting attorney "copies of all necessary records relating to every death in which, in the judgment of the coroner or prosecuting attorney, further investigation is advisable"), *R.C. 313.10* (providing that "[a]ll records in the coroner's office shall be open to . . . the public").

R.C. 313.13 and *R.C. 313.131* give the coroner the authority to determine whether or not to conduct an autopsy; implicit [*32] in this authority is the authority to determine the manner in which to conduct the autopsy. *See, e.g., State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 12, 112 N.E. 138, 141 (1915), affirmed, 241 U.S. 565 (1916)* (holding that where a statute give no direction to a public officer as to the manner of performing a task, the officer has the "implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded"). I conclude that the coroner has the authority to decide, within the exercise of his discretion, whether or not to permit law enforcement officials to photograph the body during the performance of an autopsy. I note, however, that *R.C. 313.15* provides that the coroner shall not release a body from his custody until he has determined, after consultation with the appropriate law enforcement authorities, that the body is no longer needed to assist any of these officials in his duties:

All dead bodies in the custody of the coroner shall be held until such time as the coroner, *after consultation with the prosecuting attorney, or with the police department* of a municipal corporation, if the death [*33] occurred in a municipal corporation, *or with the sheriff*, has decided that it is no longer necessary to hold such body to enable him to decide on a diagnosis giving a reasonable and true cause of death, or . . . to assist any of such officials in his duties. (Emphasis added.)

R.C. 313.15 requires the coroner to ascertain whether or not law enforcement officers need to use the body for any purpose, such as obtaining fingerprints or other physical evidence. I conclude that because *R.C. 313.15* requires the

coroner to consult with the appropriate law enforcement officers before releasing the body, law enforcement officers are permitted to photograph the body before the coroner releases it.

In your tenth and final question, you ask whether *R.C. 313.14* gives the coroner the "exclusive duty" to notify relatives of the death of a person who dies in the manner described in *R.C. 313.12*. *R.C. 313.14* provides in pertinent part that "[t]he coroner shall notify any known relatives of a deceased person who meets death in the manner described by section 313.12 of the Revised Code by letter or otherwise." (Emphasis added.) The use of the word "shall" in a statute means that the duty [*34] imposed is a mandatory one. See, e.g., *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (Syllabus, paragraph one) ("[i]n statutory construction . . . the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that [it] receive a construction other than [its] ordinary usage").

Nothing in *R.C. 313.14* indicates that the coroner's duty to inform is discretionary. Accordingly, I conclude that the coroner has a mandatory duty to inform the family members of a person who meets death in the manner described in *R.C. 313.12*. *R.C. 313.14* does not specify the manner that the coroner must use to notify the family members of the decedent's death. The statute requires only that the coroner notify the relatives "by letter or otherwise." I note, however, that the Ohio Supreme Court has held that where a statute gives no direction to a public officer as to the manner of performing a task, the officer has the "implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method" of performing his duties. *State ex re. Hunt v. Hildebrant*, 93 Ohio St. 1, 12, [*35] 112 N.E. 138, 141 (1915), affirmed, 241 U.S. 565 (1916); see also *Jewett v. Valley Railway Co.*, 34 Ohio St. 601 (1878). Thus, while the coroner is duty-bound to notify the relatives of the death, he is free to select any appropriate means of providing such notice.

Several of the questions you have asked raise the question of the extent of the coroner's discretion in investigatory matters. The Ohio Supreme Court considered this issue in *State ex rel. Harrison v. Perry*, 113 Ohio St. 641, 150 N.E. 78 (1925). In that case, the parent of a child who had died of diphtheria sought a writ of prohibition to prevent the coroner from exhuming his son's body to conduct an autopsy. The court held that an injunction, rather than a writ of prohibition, was the appropriate remedy. *Id.* (Syllabus, paragraphs one and two). The court explained the standard typically followed in determining whether an abuse of discretion has occurred:

While the discretion of a public official honestly and judiciously exercised will not be controlled by courts, yet an injunction may be issued in case of the gross abuse of such discretion, when it appears that his discretion is being exercised [*36] arbitrarily, on grounds, or for reasons, clearly untenable, or to an extent clearly unreasonable.

Id. at 649, 150 N.E. at 80. Of course, it would not be appropriate for me to speculate as to the circumstances under which the coroner might have exceeded his discretionary authority; only a court could make such a decision.

Accordingly, it is my opinion and you are advised that:

1. *R.C. 313.11* gives a coroner control over the area "near the body" at the scene of an unexplained death. The determination of the extent of the area "near the body" is within the discretion of the coroner. (1980 Op. Atty Gen. No. 80-091, syllabus, paragraph one, approved and followed.)

2. *R.C. 313.11* requires that everyone, including law enforcement personnel, must receive a permissive order from the coroner before removing or disturbing the body or articles found on or near the body, including but not limited to suicide notes, firearms, and other physical items found at the scene. (1980 Op. Atty Gen. No. 80-091, syllabus, paragraph one, approved and followed.)

3. *R.C. 313.11* does not restrict the duration of the coroner's control over the scene of an unexplained death; the coroner has [*37] control over this area for as long as he deems this control to be necessary in the exercise of his discretion.

4. A law enforcement officer may request that the coroner or his staff perform forensic tests on physical items found at the scene of an unexplained death only in the limited circumstances permitted under *R.C. 313.21* and *R.C. 313.05*.

5. Public employees and medical personnel required to notify "the office of the coroner" of an unexplained death pursuant to *R.C. 313.12* may notify any person employed in the coroner's office.

6. Only the coroner and the deputy coroner have the authority to "go to a dead body and take charge of it" pursuant to *R.C. 313.13*.

7. The coroner's investigators may perform any investigatory tasks that are not limited to the authority of the coroner or the deputy coroner by *R.C. 313.17* or another statute.

8. In fulfilling the duties imposed by R.C. Chapter 313, neither the coroner nor his staff may go beyond the investigative tasks necessary to determine the manner, mode, and cause of death; however, it is within the discretion of the coroner to determine which investigative tasks are necessary.

9. Evidence found at the scene of an unexplained [*38] death does not "inure to the province of law enforcement" after the coroner makes his initial observation of evidence on or near the body unless, pursuant to *R.C. 313.11*, the coroner permits the law enforcement officers to remove or disturb the evidence.

10. The coroner has the authority to decide, within the exercise of his discretion, whether or not to permit law enforcement officials to photograph the body during an autopsy. *R.C. 313.15* requires the coroner to consult with the appropriate law enforcement officers before releasing the body; accordingly, law enforcement officers are permitted to photograph the body before the coroner releases it.

11. Under *R.C. 313.14*, the coroner has a mandatory duty to inform the family members of a person who meets death in the manner described in *R.C. 313.12*; he may, however, perform this duty in any manner he deems appropriate in the exercise of his discretion.

Legal Topics:

For related research and practice materials, see the following legal topics:
Criminal Law & Procedure Defenses General Overview Evidence Scientific Evidence Autopsies Healthcare
Law Treatment Human Remains Duties of Coroners & Medical Examiners