

December 10, 2014

The Honorable Kirk E. Yosick
Williams County Prosecuting Attorney
216 S. Lynn St.
Bryan, Ohio 43506

SYLLABUS:

2014-043

1. Pursuant to R.C. 2981.11(C), a person “entitled to possession of the property” includes a finder of abandoned or lost property under the common law.
2. Where a lost or abandoned canoe is found by an individual, is in the possession of the sheriff, and the true owner is not located, the finder is entitled to possession of the canoe.
3. Where lost or abandoned money is found by an individual, is in the possession of the sheriff, and the true owner is not located, the finder is entitled to possession of the money.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

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OPINION NO. 2014-043

The Honorable Kirk E. Yosick
Williams County Prosecuting Attorney
216 S. Lynn St.
Bryan, Ohio 43506

Dear Prosecutor Yosick:

You have requested an opinion concerning the disposition of lost or abandoned property in the possession of a county sheriff. Specifically, a citizen notified the Williams County Sheriff that a canoe floated downstream and landed on the citizen's property. According to a member of your staff, the citizen notified the sheriff to inform him that he found the canoe and to enlist the sheriff's help in finding the canoe's true owner. The canoe is now in the custody of the sheriff. The sheriff has advertised for the owner to claim the canoe, but no one has claimed to be the owner. The citizen who found the canoe and owns the land where it was found wishes to have the canoe if the owner is not located. The sheriff wishes to use the canoe in his law enforcement duties. You would like to know who is entitled to possession of the canoe. You would also like to know what the law is generally with respect to lost or abandoned property, such as money, in the possession of the county sheriff. Before answering your question, it is helpful to give some background on laws pertinent to lost or abandoned property.

R.C. 2981.11

R.C. 2981.11 generally governs the safekeeping of certain property in the custody of a law enforcement agency. Pursuant to R.C. 2981.11(A)(1):

Any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited and that is in the custody of a law enforcement agency shall be kept safely by the agency, pending the time it no longer is needed as evidence or for another lawful purpose, and shall be disposed of pursuant to [R.C. 2981.12 and R.C. 2981.13].

In other words, lost or abandoned property, *inter alia*, in the custody of a law enforcement agency, must be kept safe and then disposed of pursuant R.C. 2981.12 or R.C. 2981.13. R.C. 2981.12 applies to the disposition of unclaimed or forfeited property. R.C. 2981.13 governs the disposition of contraband, proceeds, or instrumentalities. Both of these statutes set up

procedures for the disposition of these types of property.¹ Before reaching these procedures, however, R.C. 2981.11(C) must be followed. It states:

A law enforcement agency with custody of property to be disposed of under [R.C. 2981.12 or R.C. 2981.13] shall make a reasonable effort to locate persons entitled to possession of the property, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time.

R.C. 2981.11(C). This means that a law enforcement agency with property subject to R.C. 2981.11 must make an effort to find the person who is “entitled to possession” of the property and return that property to that person.²

Common Law Regarding Abandoned, Lost, or Mislaid Property

Because the phrase “entitled to possession” is not defined by R.C. 2981.11, we must look to the common law to determine the meaning of that phrase. There is a presumption that the General Assembly has not intended to abrogate the common law unless a statute contains language that clearly shows such an intention. *State ex rel. Morris v. Sullivan*, 81 Ohio St. 79, 90 N.E. 146 (1909) (syllabus, paragraph 3). Thus, where there is no such language, the common law continues in “full force.” *Carrel v. Allied Products Corp.*, 78 Ohio St. 3d 284, 287, 677 N.E.2d 795 (1997) (abrogated by statute on other grounds). “There is no repeal of the common

¹ R.C. 2981.12 provides that unclaimed or forfeited property in the custody of a law enforcement agency, with certain exceptions, be disposed of by order of certain courts of record. R.C. 2981.12(A). It then sets forth certain guidelines for disposal of certain types of property. R.C. 2981.12(A)(1)-(8). Unclaimed or forfeited property that does not fall into those particular categories, with court approval, may be used by the law enforcement agency in possession of the property or sold at public auction or disposed of in another manner the court considers proper. R.C. 2981.12(B). R.C. 2981.13 governs the disposition of contraband, proceeds, or instrumentalities. R.C. 2981.13 sets forth certain rules with regard to the sale of these items, allocation and expenditure of proceeds of the sale, and registration and title requirements. R.C. 2981.13(B)-(E).

² Law enforcement agencies that have custody of property that is subject to R.C. 2981.11 shall adopt and comply with written internal control policies that meet certain criteria set forth in the section. R.C. 2981.11(B)(1). These criteria include keeping detailed records as to the amount of property acquired by the agency and the date the property was acquired, keeping detailed records of the disposition of the property including the manner in which it was disposed, and complying with R.C. 2981.13 if the agency has a law enforcement trust fund or similar fund created under that section. R.C. 2981.11(B)(1). *See* 1994 Op. Att’y Gen. No. 94-064; 1991 Op. Att’y Gen. No. 91-021.

law by mere implication.” *Frantz v. Maher*, 106 Ohio App. 465, 472, 155 N.E.2d 471 (Clark County 1957).

Under the common law, abandoned property is “property over which the owner has relinquished all right, title, claim, and possession with the intention of not reclaiming it or resuming its ownership, possession or enjoyment.” *Doughman v. Long*, 42 Ohio App. 3d 17, 21, 536 N.E.2d 394 (Butler County 1987). Lost property is property which the owner has “involuntarily parted with through neglect, carelessness, or inadvertence.” *Ray v. Flower Hosp.*, 1 Ohio App. 3d 127, 128, 439 N.E.2d 942 (Lucas County 1981) (quoting 1 Ohio Jurisprudence 3d 22, Section 12). Lost property is property that the owner has “unwittingly suffered to pass out of his possession and the whereabouts of which he has no knowledge.” *Id.* Whether property is abandoned or lost “is to be determined from all the facts and circumstances of the particular case.” *Ray v. Flower Hosp.* at 129.

A finder who takes possession of “abandoned property” acquires absolute title to it. *See Baker v. City of W. Carrollton*, No. CA 9904, 1986 WL 8615, at *1 (Montgomery County App. Aug. 7, 1986) (advisory opinion); *Wyman v. Hurlburt*, 12 Ohio 81, 87 (1843). Although the finder of a lost article does not acquire an absolute title, he has a prior claim to it against everyone except the actual owner. *See Baker v. City of W. Carrollton*; *Wyman v. Hurlburt*, 12 Ohio at 87; *Niederlehner v. Weatherly*, 78 Ohio App. 263, 69 N.E.2d 787 (Hamilton County 1946) (syllabus, paragraph 1); *Toledo Trust Co. v. Simmons*, 52 Ohio App. 373, 3 N.E. 2d 661 (Lucas County 1935) (syllabus, paragraph 3); *Cleveland Ry. Co. v. Durschuk*, 31 Ohio App. 248, 253, 166 N.E. 909 (Cuyahoga County 1928).

Persons Entitled to Possession Pursuant to R.C. 2981.11

You would like to know what the law is generally with respect to abandoned or lost property, such as money, and specifically, who is entitled to possession of the canoe under the facts you have provided us. Under the common law, a finder who takes possession of abandoned property acquires absolute title to it. *See Baker v. City of W. Carrollton*; *Wyman v. Hurlburt*. Thus, if it is determined that the property in the sheriff’s possession is abandoned, the finder is entitled to possession of it under the common law. If, however, it is determined that the property in the sheriff’s possession is lost, the finder has a claim to it against everyone except the actual owner under the common law. *Baker v. City of W. Carrollton*; *Niederlehner v. Weatherly* (syllabus, paragraph 1); *Toledo Trust Co. v. Simmons* (syllabus, paragraph 3); *Cleveland Ry. Co. v. Durschuk*, 31 Ohio App. at 253.

These common law rules apply unless they have been clearly abrogated by statute. R.C. 2981.11 generally governs lost or abandoned property in the custody of a law enforcement agency. In order to determine if R.C. 2981.11 abrogates the common law, we must determine whether a person “entitled to possession” includes a finder of lost or abandoned property.

Although there are few cases interpreting R.C. 2981.11, there are a large number of cases and opinions interpreting former R.C. 2933.41, the precursor to R.C. 2981.11. 2005-2006 Ohio Laws, Part IV, 7397, 7398 (Sub. H.B. 374, eff. Sept. 28, 2006) (last version of R.C. 2933.41 before it was repealed); 2005-2006 Ohio Laws, Part V, 9092, 9233 (Sub. H.B. 241, eff. March 30, 2007) (enacting R.C. 2981.11, repealing R.C. 2933.41). R.C. 2933.41 contained language substantially similar to R.C. 2981.11(C) regarding a law enforcement agency's duty to keep items in its possession safe and to "make a reasonable effort to locate the persons entitled to possession of the property in its custody." 2005-2006 Ohio Laws, Part IV, 7397, 7400 (Sub. H.B. 374, eff. Sept. 28, 2006). Because the legislature made changes to former R.C. 2933.41, but did not change that particular language, we may assume that the analysis that applied to R.C. 2933.41 would apply equally to R.C. 2981.11. Thus, we will look to cases and opinions that interpret former R.C. 2933.41 when interpreting R.C. 2981.11.

At least two cases have determined that R.C. 2933.41, and by extension, R.C. 2981.11, do not abrogate the common law with respect to the rights of finders. *Houpt v. City of Berea*, No. 76917, 2000 WL 1867269 (Cuyahoga County App. Dec. 14, 2000); *Baker v. City of W. Carrollton*, No. CA 9904, 1986 WL 8615. The *Houpt* court found "no clear intent [in the statute] to uproot the common law of lost and mislaid property." *Houpt v. City of Berea*, No. 76917, 2000 WL 1867269, at *5 (discussing former R.C. 2933.41). Rather, the common law was to be read in conjunction with R.C. 2933.41. Therefore, a law enforcement agency had no right to deny an individual finder's claim "based solely on the fact that the 'true owner' has not appeared" to claim the property. *Id.* at *6. Because R.C. 2933.41 did not require a "true owner" but simply one "entitled to possession," the court in *Houpt* ruled that the finder was entitled to claim the property. *Id.* Similarly, in *Baker*, the court found that "a finder of lost property which is unclaimed by the true owner is a person 'entitled to possession of property' under R.C. 2933.41(B)." *Baker v. City of W. Carrollton*, No. CA 9904, 1986 WL 8615, at *2; see 1991 Op. Att'y Gen. No. 91-021, at 2-109 ("[i]mplicit in the directives of R.C. 2933.41 is the basic principle that evidence remains the private property of the person legally entitled to its possession at the time of its seizure for evidence").

Lending additional support, the term "possession" for purposes of R.C. 2933.41 has been defined to refer to "the control of property 'for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, either held personally or by another who exercises it in one's place and name.'" *State v. Standen*, 173 Ohio App. 3d 324, 2007-Ohio-5477, 878 N.E.2d 657, at ¶11 (quoting *State v. Owens*, No. 99CA34, 2000 WL 334170, at *4 (Athens County App. March 28, 2000) and *Chagrin Falls v. Loveman*, 34 Ohio App. 3d 212, 216, 517 N.E.2d 1005 (Cuyahoga County 1986)) (emphasis added). "Possession ... may include a range of forms of ownership from merely holding the property for another to full ownership." 1991 Op. Att'y Gen. No. 91-021, at 2-109 n.3. Because the term "possession" includes a range of forms of ownership and includes simply having a qualified right in the property, such term is broad enough to include a finder of abandoned or lost property.

Therefore, in answering your question regarding who is generally entitled to lost or abandoned property in the custody of a county sheriff, we believe that R.C. 2981.11, and division (C) in this instance, must be read in conjunction with the common law. Consequently, pursuant to R.C. 2981.11(C), a person “entitled to possession” of lost or abandoned property includes a finder of such property. This means that if money has been abandoned, then the finder of the money has absolute title to it. If, on the other hand, money was lost, the finder of the money has a right to it against all but the true owner. The sheriff is not entitled to the money under these circumstances. By extension, under the facts you have provided, the person entitled to possession of an abandoned canoe is the finder of that canoe. The person entitled to possession of a lost canoe is the finder of that canoe against all but the true owner. The sheriff is not entitled to the canoe under these circumstances. Under the facts that you have provided regarding the canoe, the sheriff made a good faith effort to find the true owner of the canoe in accordance with R.C. 2981.11(C) and was unable to do so. Thus, the canoe must be returned to the finder.

Conclusions

It is, therefore, my opinion, and you are hereby advised that:

1. Pursuant to R.C. 2981.11(C), a person “entitled to possession of the property” includes a finder of abandoned or lost property under the common law.
2. Where a lost or abandoned canoe is found by an individual, is in the possession of the sheriff, and the true owner is not located, the finder is entitled to possession of the canoe.
3. Where lost or abandoned money is found by an individual, is in the possession of the sheriff, and the true owner is not located, the finder is entitled to possession of the money.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General