OPINION NO. 75-011

Syllabus:

1. A coroner may proceed with an informal inquiry of persons having knowledge of the facts for the purpose of determining the cause of death.

2. A person may refuse to answer questions during a coroner's informal inquiry. A person may refuse to answer during a formal inquest under oath on the ground of privilege.

3. It is not necessary for a coroner to give Miranda warnings to a witness unless he has been taken into custody.

4. The court of common pleas of the county in which death occurred can direct the coroner to change his decision pursuant to R.C. 313.19, unless the court of appeals for that district has held that statute unconstitutional.

To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio
By: William J. Brown, Attorney General, February 21, 1975

I have before me your request for my opinion, which poses the following questions:

> "1. Whether anyone can refuse to informally provide the Coroner with information regarding suspicious death or refuse to answer questions during inquest under oath, on the grounds of privileged communication law, or does Ohio Revised Code Section 2317.02 apply to such a situation?
>
> "2. Whether the Coroner can, after viewing the body, proceed with informal inquiry of witnesses at the scene and of any persons that might shed light on how the deceased came to death, including physicians who treated him, or must he hold a formal inquest when medical history and circumstances are needed for diagnosis and ruling?
>
> "3. Whether the Coroner during informal inquiry at the scene or during formal inquest must give 'miranda warning' to any witnesses questioned by him?
>
> "4. Whether the Common Pleas Court can question a Coroner's verdict pursuant to R.C. Section 313.19?"

I will first consider your second question since your first and third questions relate in part to it. That question inquires as to the legality of an informal inquiry by the coroner of any persons having knowledge of the facts.

R.C. 313.17 provides in part as follows:

> "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."

This provision gives the coroner power 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 (medical history or otherwise) that would aid the coroner in the disposition of his duty.

The case of State v. Sharp, 162 Ohio St. 173, 181 (1954), held likewise when the court stated:

> "Section 2855-7, General Code (Section 313.17, Revised Code), provides that witnesses who are subpoenaed to testify at a coroner's inquest must be sworn and 'the testimony of such witness shall be reduced to writing [and] respectively subscribed.'
>
> "But this Section also requires the coroner to prepare a 'report from the personal observation of the corpse, statements of relatives or other persons having any knowledge of the facts, and such other sources of information as may be available from the autopsy.'

> "The coroner is, therefore, 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."
>
> (Court's emphasis.)

Therefore, a coroner may, after viewing the body, proceed with informal inquiry of witnesses at the scene and of any other person who may shed light on how the deceased came to death.

Your first question asks whether a person may refuse to answer the coroner's informal inquiries. No one is required to respond to informal questioning. See Miranda v. Arizona, 384 U.S. 436 (1966). No one technically becomes a witness until he has been served with a subpoena and has taken the oath.

You then ask whether a witness at the formal inquest may refuse to testify in reliance on R.C. 2317.02 which is the statutory provision governing privileged communications and acts. This Section provides:

> "The following persons shall not testify in certain respects:
>
> "(A) An attorney, concerning a communication made to him by his client in that relation or his advice to his client; or a physician, concerning a communication made to him by his patient in that relation, or his advice to his patient, but the attorney or physician may testify by express consent of the client or patient, or if the client or patient be deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of such deceased client or patient; and if the client or patient voluntarily testifies, the attorney or physician may be compelled to testify on the same subject;
>
> "(B) A clergyman or priest, concerning a confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs;
>
> "(C) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;
>
> "(D) A person who assigns his claim or interest, concerning any matter in respect to which he would not, if a party, be permitted to testify;
>
> "(E) A person who, if a party, would be restricted in his evidence under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning such property or thing."

It is clear that the statute is intended to prevent the designated persons from testifying as to information which they have received in confidence through enumerated relationships. The statute's purpose is to encourage individuals to reveal facts necessary for such relationships without fear that the information will later be used against them. State v. Antill, 176 Ohio St. 61 (1964); Taylor v. Sheldon, 172 Ohio St. 118 (1961). The statute is in derogation of the common law and, therefore, must be strictly construed. As a result only those expressly enumerated relationships afford the privilege. Weis v. Weis, 147 Ohio St. 416 (1947). Of course, the constitutional privilege against self-incrimination can also be invoked.

R.C. 313.17 contains provisions for subpoenas, oaths, testimony of witnesses at a coroner's inquest. It reads in part as follows:

> "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 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, * * *. The coroner may cause such witnesses to enter into recognizance, in such sum as is proper, for their appearance in the succeeding term of the court of common pleas, to give testimony concerning the matter. * * * 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 of the coroner, shall compel obedience to such subpoena by attachment proceedings as for contempt. * * *."

The language of this Section indicates that information given by witnesses at a formal inquest is considered testimony. Attachment proceedings can only be instituted against a witness who refuses to answer any matter on which he may lawfully be interrogated. The obvious intent of the provision was to permit the coroner or deputy coroner to take action against a witness under oath who refuses to answer a question but has no legal grounds for such refusal. However, since R.C. 2317.02 creates a legal incompetency as to the designated persons concerning the subject matter covered by that statute, no attachment proceedings could be instituted against such an individual for failure to testify on that subject matter. Therefore, a person who comes within the provisions of R.C. 2317.02 may refuse to provide a coroner with information under oath at an inquest on the grounds of privileged communication.

Your third question is whether a coroner must give Miranda warnings during informal inquiry or at a formal inquest. The coroner's duty is to determine the cause of death when he has acquired jurisdiction. His jurisdiction arises when an individual dies as a result of "criminal or other violent means, or by casualty, or by suicide, or suddenly when in apparent health, or in any suspicious or unusual manner." R.C. 313.12; 1973 Op. Att'y Gen. No. 73-123.

The purpose of an inquest was considered in 1935 Op. Att'y Gen. No. 4837. That Opinion states, at p. 1400, as follows:

> "The purpose of an inquest is not merely to determine the cause of the death of the deceased party, but also to aid in detecting crime and causing the punishment of the parties guilty thereof * * * . An inquest held by a Coroner is an ex parte proceeding intended by the legislature to be merely an investigation to determine the cause of death of a deceased party, * * *."

The Opinion further provides that the coroner has no power to hold or detain a person in custody. 1969 Op. Att'y Gen. No. 69-036, held that a coroner cannot apply the law to facts and determine violations of statutes and responsibility of individuals. Thus, it is clear that the role of the coroner in the criminal process is purely an investigatory one, and that he has no power to make legal judgments.

Miranda warnings have been developed as a result of interplay between the Fifth and Sixth Amendments of the U.S. Constitution. The Fifth Amendment states that no one must be a witness against himself, and the Sixth guarantees the right to counsel. Both of these amendments have been held to afford protection against involuntary confessions or incriminatory statements where a person is in the custody of, and being interrogated by, the police. In Miranda the Court defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Miranda v. Arizona, 384 U.S. 436, 444 (1966). The Miranda decision clearly states that the requirement of warning does not apply to on-the-scene investigatory questioning where no custody is involved. Therefore, a coroner would not be required to give such warning at informal on-the-scene questioning.

In considering other informal questioning and the appearance of witnesses at an inquest, it must be recalled that the coroner does not have the power to take anyone into custody and his criminal role is purely investigatory. Consequently, the coroner would not be required to give Miranda warnings, except in questioning a person already under police custody. The fact that the witness appears in response to a subpoena or a summons does not mean that the interrogation is custodial. United States v. Maius, 378 F. 2d 716 (CA6), cert. den. 389 U.S. 905.

Your fourth question is whether a Common Pleas Court can question a coroner's verdict pursuant to R.C. 313.19 which provides as follows:

> "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."

State Courts of Appeals in Cuyahoga and Hamilton counties have held this Section unconstitutional. State ex rel. Dann v. Gerber, 79 Ohio App. 1 (Cuyahoga Co. 1946); Roark v. Lyle, 68 Ohio L. Abs. 180 (App. Hamilton Co. 1952), aff'g. 68 Ohio L. Abs. 177 (1953). The basis for these decisions was, first, that the legislature cannot vest the coroner with power to make a judicial determination, binding upon all persons, even those who had no right to be represented at the coroner's inquest; and second, that the grant of a right to appeal to the court of common pleas, without a specified method or procedure, is too indefinite to be valid.

While decisions of courts of appeals are entitled to consideration and respect, they do not bind other courts of appeals. Hogan v. Hogan, 29 Ohio App. 2d 69, 77 (1972). Furthermore, a statute is presumed constitutional until it is held unconstitutional by a court. 2A Sutherland, Statutory Construction, Sec. 56.04 (4th ed. 1973). Therefore, R.C. 313.17 is still valid in a jurisdiction outside those of the two appellate courts which have held it unconstitutional.

In specific answer to your questions, it is my opinion and you are so advised that:

1. A coroner may proceed with an informal inquiry of persons having knowledge of the facts for the purpose of determining the cause of death.

2. A person may refuse to answer questions during a coroner's informal inquiry. A person may refuse to answer during a formal inquest under oath on the ground of privilege.

3. It is not necessary for a coroner to give Miranda warnings to a witness unless he has been taken into custody.

4. The court of common pleas of the county in which death occurred can direct the coroner to change his decision pursuant to R.C. 313.19, unless the court of appeals for that district has held that statute unconstitutional.