

OPINION NO. 80-091**Syllabus:**

1. When any person has died in a manner described in R.C. 313.12, the coroner, for purposes of determining cause of death, has control of the area where the body is found to the extent that no person, without an order from the coroner, may purposely disturb the body, clothing or any other article on or near the body; R.C. 313.11(B) provides an affirmative defense for a person who has attempted in good faith to rescue or administer life-preserving assistance to the deceased.
2. A county sheriff or the chief of police of a municipal corporation must issue a receipt for firearms delivered to him by the coroner pursuant to R.C. 313.141.
3. A county coroner's duty to determine cause of death when he has acquired jurisdiction pursuant to R.C. 313.12 does not qualify him as a "law enforcement officer" for purposes of eligibility for the services of the Bureau of Criminal Identification and Investigation pursuant to R.C. 109.52 and R.C. 109.54; a coroner is so qualified only when he acts pursuant to specific statutes which confer upon him duties and authority of the sort contemplated by R.C. 2901.01(K)(2), and then only within the limits of such statutory duties and authority.
4. A distinction must be made between township police departments and municipal police departments for purposes of delineating a coroner's duties under R.C. Chapter 313.

To: Stephan Gabalac, Summit County Pros. Atty., Akron, Ohio

By: William J. Brown, Attorney General, December 18, 1980

I have before me your request for an opinion concerning the duties of a county coroner. Your request poses the following questions:

1. Is the Coroner in complete control of the entire death scene and all property found thereon?
2. Does a firearm found at the death scene come within the jurisdiction of the Coroner to be handled pursuant to Ohio Revised Code 313.141, or [is it] under the jurisdiction of the investigating police department?
3. Can the Coroner require police departments to give receipts for firearms turned over to them?

4. Can the Coroner retain all firearms, both from homicides and suicides, and have the Bureau of Criminal Investigation of the state do the ballistics, fingerprinting, and reporting to the national computer?
5. Is there any distinction in the treatment of township police departments and municipal police departments accorded by the Coroner?

In addition, I have received your letter of November 21, 1980, in which you ask whether a county coroner is qualified to utilize the services of the Bureau of Criminal Investigation by reason of his statutory duties. A discussion of this question appears following my discussion of question number four.

I have determined that it is not possible for this office to respond fully at this time to all the issues raised by your request. My response to several of the questions in your request is not complete due to the fact that certain issues concerning the coroner's handling of firearms pursuant to R.C. 313.141 are the focus of litigation in the Summit County Court of Common Pleas. I feel it would be inappropriate to opine on such matters when a court decision in this area may be imminent. I do, however, want to respond at least in part to your request.

The first question addresses the meaning of R.C. 313.11, which states:

(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 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.

(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.

A county coroner in Ohio exercises only the jurisdiction and power provided by statute. *State ex rel. Harrison v. Perry*, 113 Ohio St. 641, 150 N.E. 78 (1925). Generally, the coroner has the duty of determining the cause of death "[w]hen any person 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. To accomplish this the coroner is empowered by R.C. 313.13 to go to the dead body and "take charge of it." The coroner is also authorized to incorporate, in his report and in the death certificate, the manner and mode in which the death occurred. See 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.

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. 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.

You have specifically inquired whether the coroner is in complete control of the "death scene." Although the term "death scene" is not used in R.C. Chapter 313, the plain language of R.C. 313.11 indicates that the legislature intended for the area in relatively close proximity to the body of a person who has died in the manner described in R.C. 313.12 to come within the control of the coroner pursuant to R.C. 313.11 and R.C. 313.13. In this regard, R.C. 313.11 prohibits any person, without an order from the coroner, from purposely disturbing "the clothing or any article upon or near" the body of the deceased. The term "article" is defined by Black's Law Dictionary 102 (rev. 5th ed. 1979) as "[a] particular object or substance, a material thing or a class of things, material or tangible object." See R.C. 1.42 (words should be construed in accordance with common usage). In light of the language employed in R.C. 313.11, it must be concluded that a coroner has jurisdiction over and can take charge of all moneys, clothing, and other objects found upon or near the body of a person who has died as described in R.C. 313.12. A determination of the dimensions of the area "near such 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 a coroner. As an example, if a deceased body is found within a house, it may be appropriate to preserve and protect the entire structure to prevent inadvertant destruction of evidence by the intrusion of non-investigatory persons.

"Complete control" is another term used in your questions which is not used or defined in R.C. Chapter 313. The extent of the control the coroner is empowered to exert must be distilled from the unambiguous language of R.C. 313.11: "No person. . .without an order from the coroner" shall remove or disturb the body or any clothing and articles found on or near the body. R.C. 313.11(A) (emphasis added). The literal meaning of this statute 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. There are two exceptions to this requirement, and the first is evident from the word "purposely" in division (A) of R.C. 313.11. Obviously, if a person inadvertently or without design moves or disturbs the body, clothing, or a nearby article he is not guilty of unlawfully disturbing the body. The second exception is the affirmative defense spelled out in R.C. 313.11(B), applicable when a person in good faith has attempted to revive the deceased. In addition, it is clear that the coroner is required to exercise his authority to issue orders for the purposeful removal or disturbance of the body or a nearby article in a reasonable fashion. Any abuse of discretion could be challenged in the courts. State ex rel. Harrison v. Perry, 113 Ohio St. 641, 150 N.E. 78 (1925).

In answer to the first question, when a death has occurred as described in R.C. 313.12, a coroner, for purposes of determining the cause of death, has control over the area where the body is found to the extent that no one, unless ordered by the coroner or pursuant to the exceptions noted above, may move or disturb the body or any clothing or other articles found upon or near the body.

Your second question requires a reading of R.C. 313.141, which states:

If firearms are included in the valuable personal effects of a deceased person who met death in the manner described by section 313.12 of the Revised Code, the coroner shall deliver the firearms to the chief of police of the municipal corporation within which the body is found, or to the sheriff of the county if the body is not found within a municipal corporation. The firearms shall be used for law enforcement purposes only or they shall be destroyed. Upon delivery of the firearms to the chief of police or the sheriff, the law enforcement officer to whom the delivery is made shall give the coroner a receipt for the firearms that states the date of delivery and an accurate description of the firearms.

A literal interpretation of this statute would appear to require the coroner to turn over to the proper law enforcement officer all weapons found in the valuable personal effects of any deceased person who died as described in R.C. 313.12. The constitutionality of this interpretation is currently the subject of litigation in the Summit County Court of Common Pleas. Accordingly, I will not presume to opine at this time on the issue of the source of a firearm as a determining factor in the subsequent handling of that weapon. See 1972 Op. Att'y Gen. No. 72-097 at 2-392 ("[i]n almost all cases it would, of course, be improper for me to issue an Opinion on a question which is presently awaiting judicial decision").

The third question asks whether police can be required to give receipts for all firearms turned over to them by the coroner. Pertaining to this question is the last sentence of R.C. 313.141, which states:

Upon delivery of the firearms to the chief of police [of the municipal corporation within which the body is found] or the sheriff, the law enforcement officer to whom the delivery is made shall give the coroner a receipt for the firearms that states the date of delivery and an accurate description of the firearms. (Emphasis added.)

It is my understanding that no issue concerning the constitutionality of this portion of R.C. 313.141 is involved in the pending litigation. Accordingly, I presume its constitutionality, and I deem it appropriate to address your question.

The Ohio Supreme Court has recently noted that the word "shall" in a statute "must be construed as imposing a mandatory duty" unless there is a legislative intent otherwise. *State ex rel. City of Niles v. Bernard*, 53 Ohio St. 2d 31, 372 N.E. 2d 339 (1978). The last sentence of R.C. 313.141 simply imposes a duty on the sheriff or chief of police of a municipal corporation, as a public officer, to give a receipt for firearms the coroner has turned over to him. This provision is effective only when the firearms are turned over to an appropriate county sheriff or municipal chief of police. Delivery to other police jurisdictions is not contemplated by this statute. Thus, there does exist authority for the coroner, pursuant to R.C. 313.141, to require either a county sheriff or the chief of police of a municipal corporation to issue a receipt for firearms delivered pursuant to that section.

Your next question asks whether a coroner can keep all firearms recovered from homicides and suicides and have the Bureau of Criminal Identification and Investigation do the ballistics, fingerprinting, and reporting to the national computer. An interpretation of the firearms to which R.C. 313.141 refers is again a necessary component of an answer to the question. As previously mentioned, this statute's constitutionality is in litigation and I must decline to opine on such a matter at this time.

Whether a county coroner is qualified to utilize the services of the Bureau of Criminal Identification and Investigation is the question presented in your subsequent request of November 21, 1980, and is basically a broader approach to the same issue raised in the previous question. There are two statutes pertinent to this broader question which make an interpretation of R.C. 313.141 unnecessary. The two statutes are R.C. 109.52, which relates to the provision of laboratory services, and R.C. 109.54, which authorizes the Bureau to provide trained personnel or specialized equipment, upon request, for purposes of the investigation of criminal activity.

R.C. 109.52 states:

The bureau of criminal identification and investigation may operate and maintain a criminal analysis laboratory and mobile units thereof, create a staff of investigators and technicians skilled in the solution and control of crimes and criminal activity, keep statistics and other necessary data, assist in the prevention of crime, and engage in such other activities as will aid law enforcement officers in solving crimes and controlling criminal activity. (Emphasis added.)

This statute authorizes the Bureau to operate and maintain a criminal analysis laboratory, to maintain a staff of investigators and technicians skilled in solving and controlling crimes, to keep statistics, to assist in the prevention of crime, and to otherwise "aid law enforcement officers in solving crimes and controlling criminal activity." While the statute does not state expressly that the services of the Bureau's laboratory are to be available only to law enforcement officers, such a result is implicit from the purpose of the statute—to authorize the Bureau to carry out the activities specified and such other activities as will be of assistance to law enforcement officers in carrying out their duties.

R.C. 109.54 states, in pertinent part:

The bureau of criminal identification and investigation may investigate any criminal activity in this state which is of statewide or intercounty concern when requested by local authorities and may aid federal authorities, when requested, in their investigation of any criminal activity in this state. On and after July 1, 1971, the bureau may investigate any criminal activity in this state involving drug abuse or illegal drug distribution prohibited under Chapter 3719. or 4729. of the Revised Code.

The bureau may provide such trained investigative personnel and specialized equipment as may be requested by any sheriff, chief of police, or other law officer to aid and assist such officer in the investigation and solution of any crime or the control of any criminal activity occurring within his jurisdiction. This assistance shall be furnished by the bureau without disturbing or impairing any of the existing law enforcement authority or the prerogatives of local law enforcement authorities or officers. (Emphasis added.)

The first paragraph of this statute authorizes the Bureau to carry out its own investigation of any criminal activity in the state which is of statewide or intercounty concern, when requested by local authorities, and to aid federal authorities upon request. It also authorizes the Bureau to investigate criminal activity involving drug abuse or distribution. The second paragraph of R.C. 109.54 is the portion which addresses your concern. It authorizes the Bureau to provide investigative personnel or specialized equipment upon the request of a "sheriff, chief of police, or other law officer" and qualifies this authority by the requirement that the granting of such assistance not disturb or impair the activities of local law enforcement authorities or officers. The purpose of this paragraph is clearly to permit the Bureau to aid law enforcement officers, who are expressly granted authority to request personnel or equipment from the Bureau.

While the first paragraph indicates generally that "local authorities" may request an investigation by the Bureau of matters that are of statewide or intercounty concern, I do not find that it authorizes the Bureau to provide investigative assistance to persons other than law enforcement officers. Rather, it seems to contemplate investigation by the Bureau of matters that go beyond a single jurisdiction. I conclude, therefore, that, pursuant to R.C. 109.52 and R.C. 109.54, the Bureau of Criminal Identification and Investigation is authorized to provide laboratory services, investigative personnel, specialized equipment, and other services only to law enforcement officers.

Determining whether a county coroner is a "law enforcement officer" is the obvious path to the resolution of whether a coroner may utilize the services of the Bureau. The term "law enforcement officer" is defined in R.C. 2901.01(K) for use in the Ohio Revised Code. R.C. 2901.01(K) states:

- (K) "Law enforcement officer" means any of the following:
- (1) A sheriff, deputy sheriff, constable, marshal, deputy marshal, municipal police officer, or state highway patrolman;
 - (2) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by

statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of such statutory duty and authority;

(3) A mayor, in his capacity as chief conservator of the peace within his municipality;

(4) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of such member's appointment or commission;

(5) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when such person is called;

(6) A person appointed by a mayor pursuant to section 737.01 of the Revised Code as a special patrolman or officer during riot or emergency, for the purposes and during the time when such person is appointed;

(7) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(8) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor.

A coroner, in his official capacity, clearly does not fit within R.C. 2901.01(K)(1), (3), (4), (5), (6), (7), or (8). The only portion of this definition which is even arguably applicable to a coroner is R.C. 2901.01(K)(2), which limits his status as a law enforcement officer to instances in which he has both a statutory duty to conserve the peace or to enforce the law and the authority to arrest violators.

As discussed above, in connection with your first question, a coroner's primary duty is to determine the cause of death when death has occurred in a manner described in R.C. 313.12. The coroner's responsibility for determining cause of death is reiterated throughout R.C. Chapter 313, i.e., R.C. 313.09, R.C. 313.15, R.C. 313.19. The qualification imposed by R.C. 313.02 that a candidate for coroner must be a licensed physician implies that the principal determination a coroner is qualified to make is the physiological cause of death. It is, of course, possible that a coroner may determine by way of an autopsy or inquest pursuant to R.C. 313.13 or R.C. 313.17, respectively, the manner and mode of death, explaining how the death occurred. Yet, R.C. 313.09 and several Attorney General opinions make it clear that once cause of death is determined, further investigation into the criminal or suspicious aspects of the death is to be furnished by persons outside the coroner's office.

R.C. 313.09 authorizes a coroner to record the cause of death and deliver to the prosecuting attorney of the county in which the death occurred the records which require further investigation. R.C. 313.09 also allows the coroner to request the proper sheriff, police, constable, or marshal to investigate the death further. The statute does not authorize the coroner to make his own investigations beyond the cause, manner and mode of death.

In 1969 Op. Atty Gen. No. 69-036, one of my predecessors stated: "[T]he county coroner is a physician who determines the cause of death of all dead bodies which have come into his custody. The coroner works in conjunction with the prosecuting attorney, who is the chief legal officer of the county." The syllabus of Op. No. 69-036 states: "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." I cited this Opinion in 1975 Op. Atty Gen. No. 75-011, in which I opined that a coroner has no power to make legal judgments and that his role in the criminal process is purely an investigatory one of determining the cause of death when he has acquired jurisdiction pursuant to R.C. 313.12.

Thus, I conclude that, in carrying out his duties of determining cause, mode, and manner of death, a coroner is not a "law enforcement officer" for purposes of R.C. 2901.01(K). There are instances, nevertheless, where a coroner is authorized

by statute to perform duties normally accorded a sheriff or other law enforcement officer. The following is a non-exhaustive list of those instances:

- when serving process of a probate court (R.C. 2101.09)
- when serving subpoenas (Ohio R. Civ. P. 45(C))
- when serving attachments for a witness (R.C. 2317.21)
- when executing an order for the commitment of a witness (R.C. 2317.26)
- when serving process in an action in which the sheriff is a party (R.C. 311.08)
- when arresting an escaped convict from a penitentiary (R.C. 2941.44)
- when succeeding to the duties of a sheriff until a successor is elected or appointed after the sheriff has been removed by the governor (R.C. 311.24)

Several of these provisions simply impose ministerial duties which, needless to say, would not necessitate the services of the Bureau's laboratory even if the coroner performing the duties did qualify as a law enforcement officer. When a coroner is faced with the situation of arresting an escaped convict, he perhaps comes within the definition of a law enforcement officer given in R.C. 2901.01(K)(2), since he has the duty to conserve the peace and the authority to arrest. Such a coroner would, however, be a law enforcement officer only "within the limits of such statutory duty and authority." When, pursuant to R.C. 311.24, a coroner is performing the duties of a sheriff, the coroner is clearly a law enforcement officer for purposes of R.C. 109.52 and R.C. 109.54. Except when a coroner acts pursuant to such statutes, he is not a law enforcement officer within the definition set forth in R.C. 2901.01(K).

Therefore, in answer to the question, I conclude that a county coroner's duty to determine cause of death does not qualify him as a "law enforcement officer" for purposes of eligibility for the services of the Bureau of Criminal Identification and Investigation pursuant to R.C. 109.52 and R.C. 109.54. A coroner is so qualified only when he acts pursuant to specific statutes which confer upon him duties and authority of the sort contemplated by R.C. 2901.01(K), and then only within the limits of such statutory duties and authority.

Your final question asks whether a distinction should be made in the coroner's treatment of township police departments and municipal police departments. To begin with, there is a definite distinction between the jurisdictions of a township police department and a municipal police department. R.C. 715.05 provides that all municipal corporations may organize and maintain police departments. R.C. 505.48 establishes the authorization for township police districts and states in part: "The trustees of any township may . . . create a township police district comprised of all or a portion of the unincorporated territory of the township as the resolution may specify" (emphasis added). See generally 1971 Op. Att'y Gen. No. 71-076.

R.C. Chapter 313 contains no language that expressly requires the coroner to work with a township police department. On the other hand, one section in particular, R.C. 313.15, requires the coroner, in determining the necessity of further custody of the body, to consult with the prosecuting attorney, the sheriff, or the police department of the municipal corporation if the death occurred therein. Where the death does occur in a municipal corporation, a coroner must consult with the police department of that municipal corporation. If, however, the death occurs outside the limits of a municipal corporation, the coroner may not merely consult with the township police but must, pursuant to R.C. 313.15, consult with either the county sheriff or the prosecuting attorney. See also R.C. 313.141. Thus, a coroner cannot accord the same treatment to a township police department and a municipal police department.

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

1. When any person has died in a manner described in R.C. 313.12, the coroner, for purposes of determining cause of death, has control of the area where the body is found to the extent that no person, without an order from the coroner, may purposely disturb the body, clothing or any other article on or near the body; R.C. 313.11(B) provides an affirmative defense for a person who has attempted in good faith to rescue or administer life-preserving assistance to the deceased.
2. A county sheriff or the chief of police of a municipal corporation must issue a receipt for firearms delivered to him by the coroner pursuant to R.C. 313.141.
3. A county coroner's duty to determine cause of death when he has acquired jurisdiction pursuant to R.C. 313.12 does not qualify him as a "law enforcement officer" for purposes of eligibility for the services of the Bureau of Criminal Identification and Investigation pursuant to R.C. 109.52 and R.C. 109.54; a coroner is so qualified only when he acts pursuant to specific statutes which confer upon him duties and authority of the sort contemplated by R.C. 2901.01(K)(2), and then only within the limits of such statutory duties and authority.
4. A distinction must be made between township police departments and municipal police departments for purposes of delineating a coroner's duties under R.C. Chapter 313.