

OPINION NO. 2001-010**Syllabus:**

R.C. 313.22 requires a county coroner to deliver a firearm found in the effects of a decedent to the executor or the administrator of the decedent's estate in cases where the relatives of the decedent are known. (1970 Op. Att'y Gen. No. 70-057, approved and followed; 1977 Op. Att'y Gen. No. 77-102, overruled.)

To: Donald R. Burns, Jr., Carroll County Prosecuting Attorney, Carrollton, Ohio
By: Betty D. Montgomery, Attorney General, March 26, 2001

You have asked for an opinion concerning whether a county coroner who has taken possession of a firearm upon an individual's suicide should deliver the firearm to the decedent's estate when the relatives of the decedent are known, or to the chief of police or sheriff.

We begin with a discussion of the general nature of a county coroner's duties, which are set forth in R.C. Chapter 313. R.C. 313.12 requires the coroner to be notified "[w]hen

any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, or when any person, including a child under two years of age, dies suddenly when in apparent good health." R.C. 313.13(A) provides that the coroner "may go to the dead body and take charge of it," and no one may remove or disturb the body, the decedent's possessions, or any article on or near the body without an order of the coroner, R.C. 313.11(A). *See* 1988 Op. Att'y Gen. No. 88-035 at 2-160 ("R.C. Chapter 313 authorizes the coroner to take immediate possession of any weapons found near the deceased").

The primary duty of a county coroner is to determine the cause of death of any person who has died in a manner described in R.C. 313.12. 1980 Op. Att'y Gen. No. 80-091 at 2-356. The coroner must fill in the cause of death on the death certificate in any case coming under his jurisdiction, R.C. 313.09, and may hold a dead body in his custody until he determines the cause of death, R.C. 313.15. *See* R.C. 313.121-.131 (performance of autopsy); R.C. 313.17 (power to issue subpoenas and administer oaths to witnesses in order to determine a decedent's cause of death); R.C. 313.19 ("[t]he 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 ... 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, after a hearing, directs the coroner to change his decision). *See also* 1988 Op. Att'y Gen. No. 88-035 at 2-158 ("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").

In order to analyze your question concerning the proper disposition of a decedent's firearm, we must next examine the interrelationship of R.C. 313.14, R.C. 313.141, and R.C. 313.22.¹ The first two sentences of R.C. 313.14 require the coroner to notify the known relatives of a person who commits suicide or otherwise meets death in a manner described in R.C. 313.12, and grants the next of kin or other relatives the right to determine disposition of the decedent's body. The remainder of R.C. 313.14 addresses the coroner's responsibilities as to a decedent whose relatives are unknown, specifically regarding the securing and disposing of such decedent's possessions. *See* 1970 Op. Att'y Gen. No. 70-057 at 2-95 (describing structure of R.C. 313.14). *See also* R.C. 313.08 (coroner's duties as to the body when the identity of a decedent or his relatives is unknown). R.C. 313.14 states that, in cases where the burial is paid for by the county, "the coroner shall sell at public auction the valuable personal effects of such deceased persons, found in connection with or pertaining to the unclaimed dead body, *except firearms, which shall be disposed of as provided by [R.C. 313.141]*" (emphasis added).

R.C. 313.141, governing the disposition of a decedent's firearms, reads in part as follows:

If firearms are included in the valuable personal effects of a deceased person who met death in the manner described by [R.C. 313.12], the coroner shall deliver the firearms to the chief of police of the municipal corporation

¹Your opinion request is limited to the disposition of firearms belonging to persons who have committed suicide. This opinion does not address, therefore, the situation where a crime may have been committed, and a firearm is needed as evidence in a criminal investigation or proceeding, or constitutes contraband subject to forfeiture. In such cases, additional statutes will apply. *See, e.g.*, R.C. 2930.11; R.C. 2933.41; R.C. 2933.43.

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.

Although R.C. 313.14, in addressing the disposition of the possessions of a decedent whose relatives are unknown and whose burial is paid for by the county, refers to R.C. 313.141 as governing the disposition of firearms, the language of R.C. 313.141 itself is not limited to the firearms of such persons, but refers generally to firearms found in the personal effects "of a deceased person who met death" in one of the ways described in R.C. 313.12.²

Lastly, R.C. 313.22 states that the provisions of R.C. Chapter 313 "do not interfere with the rights of any appointed and qualified administrator or executor, but moneys and effects taken by the coroner shall be delivered to such administrator or executor, whether before or after return thereof to the probate court." See generally R.C. Chapter 2113 (powers and duties of executors and administrators).

Thus, the issue to be resolved is whether R.C. 313.141, requiring the coroner to deliver to the chief of police or sheriff a firearm found in the effects of a decedent, applies when the decedent's relatives are known, or whether R.C. 313.22 requires the coroner, in such cases, to deliver the firearm to the administrator or executor of the decedent's estate.

As you note in your opinion request, the Ninth District Court of Appeals has addressed this precise question. In *Farley v. Kyriakides*, 7 Ohio App. 3d 284, 455 N.E.2d 676 (Summit County 1982), the court concluded that:

...R.C. 313.141 provides the means for disposal only of those firearms included in the effects over which the coroner has the power of disposition under R.C. 313.14, *i.e.*, property found in relation to unclaimed bodies, the cost of burial of which is paid by the county. In all other cases the coroner should proceed pursuant to R.C. 313.22.

7 Ohio App. 3d at 286, 455 N.E.2d at 678. The court rejected the interpretation that R.C. 313.141 applies to the coroner's disposition of firearms, regardless of whether the decedent's relatives are known, on the grounds that: (1) the part of R.C. 313.14 directing the coroner to dispose of firearms in accordance with R.C. 313.141 would be surplusage; (2) such an interpretation would contradict R.C. 313.22; and, (3) it would, in the case of a suicide, work a forfeiture or uncompensated taking of property, which is not favored in law or equity. *Id.* The court noted that, by concluding that R.C. 313.22 required the delivery of the firearm to the administrator of the decedent's estate, the administrator's contention that R.C. 313.141 is unconstitutional did not need to be addressed. *Id.*

As you also note, two prior opinions of the Attorney General have examined this question. Issued prior to *Farley v. Kyriakides*, 1970 Op. Att'y Gen. No. 70-057 reached the same conclusion, stating at 2-96 that, "[i]t was not the intention of the legislature to deprive known heirs of a valuable asset of an estate, even though such asset be firearms," and in a case where "action is pending or anticipated to administer [the decedent's] estate, the

²We note as well that application of R.C. 313.141 is not limited to the firearm that was used (or apparently used) to cause a decedent's death, but covers any firearm "included in the valuable personal effects of a deceased person who met death in the manner described by [R.C. 313.12]."

coroner should deliver property of such person, including firearms, to the executor or administrator rather than to a chief of police or sheriff" (syllabus).³

1977 Op. Att'y Gen. No. 77-102, also rendered prior to *Farley v. Kyriakides*, concluded to the contrary, that R.C. 313.141 requires the coroner to deliver a firearm to the appropriate law enforcement officer rather than to the administrator or executor of the decedent's estate. The opinion makes no mention, however, of R.C. 313.14, R.C. 313.22, or 1970 Op. Att'y Gen. No. 70-057, and thus apparently failed to thoroughly consider the matter. We hesitate, therefore, to afford 1977 Op. Att'y Gen. No. 77-102 much weight, especially in light of the conclusion subsequently reached by the court of appeals in *Farley v. Kyriakides*, and in the better-reasoned 1970 Op. Att'y Gen. No. 70-057. See 1989 Op. Att'y Gen. No. 89-098 at 2-479 ("when a court of competent jurisdiction has rendered a decision which is in conflict with an opinion of the Attorney General, the interpretation of the statute by the court of competent jurisdiction should be followed"). 1977 Op. Att'y Gen. No. 77-102 is accordingly overruled.

You have stated in your opinion request that the ruling in *Farley v. Kyriakides* applies only in the Ninth Appellate District,⁴ but the issue is one of interest to Carroll County and coroners and law enforcement officers statewide. See R.C. 2501.01(I) (Lorain, Medina, Wayne, and Summit Counties constitute the Ninth Appellate District). According to the rules adopted by the Ohio Supreme Court for the reporting of opinions, opinions issued by courts of appeals that are reported in the Ohio Official Reports are considered controlling authority, but only in the judicial district in which they were rendered. Sup. Ct. Rep. R. 2(G)(2). See also *State v. Kasnett*, 30 Ohio App. 2d 77, 82, 283 N.E.2d 636, 640 (Athens County 1972), *rev'd on other grounds*, 34 Ohio St. 2d 193, 297 N.E.2d 537 (1973) ("while courts of coordinate jurisdiction may be taken into consideration, they are not binding on a court of equivalent rank"); *Hogan v. Hogan*, 29 Ohio App. 2d 69, 77, 278 N.E.2d 367, 372 (Cuyahoga County 1972) ("[n]either are we bound by the decisions of our sister Courts of Appeals, although they are entitled to due consideration and respect"); 1989 Op. Att'y Gen. No. 89-098 at 2-478 to 2-479 ("an Ohio Court of Appeals decision is given a great deal of respect and generally, unless inherently wrong, followed by the other Courts of Appeals in Ohio" (citations omitted)).

However, in the absence of a ruling from the Ohio Supreme Court or decisions from other courts of appeals, we find no reason to question the analysis and conclusion of *Farley*

³1970 Op. Att'y Gen. No. 70-057 was issued prior to the enactment of R.C. 313.141 in 1976. 1975-1976 Ohio Laws, Part II, 3586 (Am. H.B. 1182, eff. Aug. 1, 1976). Prior to the enactment of Am. H.B. 1182, R.C. 313.14 addressed the disposition of firearms, requiring the coroner either to destroy the firearms upon application to and order of the court of common pleas, or, if he deemed it advisable, to deliver the firearms to the chief of police or sheriff for "bona fide police use only." See 1975-1976 Ohio Laws, Part II, 2976 (Am. H.B. 750, eff. Aug. 26, 1975). Am. H.B. 1182 removed this language from R.C. 313.14, and enacted R.C. 313.141, which requires the coroner to deliver the firearms to the chief of police or sheriff, who may use them for law enforcement purposes or destroy them. These changes have no bearing on the analysis or conclusion of 1970 Op. Att'y Gen. No. 70-057.

⁴See *Greenwood v. City of Portsmouth*, 29 Ohio Misc. 161, 164-65, 281 N.E.2d 45, 47 (C.P. Scioto County 1971) ("[t]he principle that a decision of the court of appeals, unless it is in conflict with the decision of the Supreme Court, binds the Courts of Common Pleas and constitutes conclusive evidence of the law within that appellate district, is too well established to require a statement of supporting authorities").

v. Kyriakides. Indeed, the conclusion that the coroner must deliver the firearm to the executor or administrator of the decedent's estate is especially compelling in light of the doubt a different result would shed on the constitutionality of R.C. 313.141. See R.C. 1.47(A) (a statute is presumed to be in compliance with the constitutions of the state and of the United States); *Co-Operative Legislative Committee v. Public Utilities Comm'n*, 177 Ohio St. 101, 202 N.E.2d 699 (1964) (syllabus, paragraph 2) (“[w]here reasonably possible, a statute should be given a construction which will avoid rather than a construction which will raise serious questions as to its constitutionality”).

Thus, we conclude that, under the better interpretation of R.C. Chapter 313, a county coroner is required to deliver a firearm in the possession of a decedent to the executor or the administrator of the decedent's estate in cases where the relatives of the decedent are known. There is, of course, nothing to prevent a court of law from reaching a contrary conclusion, since opinions of the Attorney General are not binding on the courts. See *Delmond v. Board Investors Co.*, 35 Ohio Op. 419, 424, 74 N.E.2d 376, 382 (App. Cuyahoga County 1947), *aff'd*, 148 Ohio St. 301, 74 N.E.2d 373 (1947) (“[w]hile the courts are not bound by the opinions of the attorney general, in the absence of judicial determination or other authority, a county administrative officer such as the county auditor, may properly consider the opinion of the attorney general as respectable authority to follow”); 1989 Op. Att’y Gen. No. 89-098 at 2-478 (“while opinions of the Attorney General may be persuasive, they do not have the binding precedential effect of a court decision” (citations omitted)). We provide our advice for purposes of offering guidance to county coroners and other interested agencies in jurisdictions where there is no controlling judicial authority.

Based upon the foregoing, it is my opinion, and you are so advised that, R.C. 313.22 requires a county coroner to deliver a firearm found in the effects of a decedent to the executor or the administrator of the decedent's estate in cases where the relatives of the decedent are known. (1970 Op. Att’y Gen. No. 70-057, approved and followed; 1977 Op. Att’y Gen. No. 77-102, overruled.)