

2153

PROPERTY, PERSONAL—FOUND IN CONNECTION WITH DEAD PERSON—PROPERTY TAKEN INTO CUSTODY BY CORONER, §309.17 R.C.—DEPOSITED WITH PROBATE COURT FOR PROPER DETERMINATION OF INTERESTS THEREIN; §2113.03 R.C.—DEFINITION OF “PERSONAL EFFECTS”.

## SYLLABUS:

1. “Personal effects” within the meaning of Section 313.14, Revised Code, does not include savings account passbooks, checks, money orders, United States Savings Bonds, and stock certificates.

2. Where property, other than moneys, clothing and personal effects, is found in connection with or pertaining to the body of a deceased person, in a case where death resulted in circumstances requiring action by the county coroner, and where such property is taken in custody by the coroner, it becomes his duty, under the provisions of Section 309.17, Revised Code, to “deposit” such property with the Probate Court. Such “deposit” should be accomplished by making application to the court either for the appointment of an administrator or for relief of the estate of such deceased person from administration as provided in Section 2113.03, Revised Code.

Columbus, Ohio, May 23, 1958

Hon. John T. Corrigan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

Your request for my opinion reads in part as follows:

“1. Are savings account passbooks, checks, money orders, United States Savings Bonds, and stock certificates personal effects within the meaning of R.C. 313.14?”

"2. If your answer to Question No. 1 is 'yes', by what means may the Coroner sell such personal effects and successfully transfer title to the purchasers thereof?

"3. Does the word 'person', as used in R.C. 309.17 in regard to persons having the duty of making deposits with the Probate Court, include the County Coroner?

"4. Is the Coroner required to deposit with the Probate Court, and the Court required to accept from the Coroner the deposit of savings account passbooks, stock certificates, bonds and similar items of personal property?"

Section 313.14, Revised Code, to which you refer reads in part as follows:

"The coroner shall take charge and possession of all moneys, clothing, and other valuable personal effects of such deceased person, found in connection with or pertaining to such body, and shall store such possessions in the county morgue or such other suitable place as is provided for such storage by the board of county commissioners. After using such of the clothing as is necessary in the burial of the body, in case the cost of the burial is paid 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 this section, and he shall make a verified inventory of such effects. Such effects shall be sold within eighteen months after the burial or delivery of such body, in accordance with Section 1713.34 of the Revised Code. All moneys derived from such sale shall be deposited in the county treasury. A notice of such sale must be given in one newspaper of general circulation in the county, for five days in succession, and the sale shall be held immediately thereafter. The cost of such advertisement and notices shall be paid by the board upon the submission of a verified statement therefor, certified to the coroner."

Your first query is whether savings account passbooks, checks, money orders, United States Savings Bonds, and stock certificates are personal effects within the meaning of Section 313.14, Revised Code, and which are subject to sale by the coroner in accordance with said section. In 32 Words and Phrases, Page 419, we find the following:

"Personal effects is usually construed to refer to articles associated with person and having more or less intimate relation to it."

Under the rule of *ejusdem generis* the general words "personal effects", following enumeration in Section 313.14, Revised Code, of words "moneys"

and "clothing", would be applicable only to things of the same general nature. In this section the coroner is directed to sell at public auction the valuable personal effects; and the sale at public auction of savings account passbooks, checks, money orders, stock certificates, and U. S. Savings Bonds, would be difficult if not impossible. The legislature is not presumed to have meant the coroner to attempt to do a vain act. Reason would indicate that the intention was to sell tangible personal effects capable of being sold at a public auction.

The history of the prior enactments of the legislature concerning this matter shows that originally the coroner was directed to turn over to the probate court all moneys and other property taken from the body of a deceased person coming under the jurisdiction of the coroner. The probate court was then to sell all such other property at public sale. The statute was later changed to direct the coroner to sell at public auction all such property, other than money, so coming into his hands. The legislature in 1945 then enacted a statute in substantially the same words as the present statute and it is worthy of note that the general statement of property other than money has been changed to "clothing, and other valuable personal effects."

By such change the legislature distinguished personal effects from the general term property or personal property, and I can only conclude that personal effects in the present statute means something less than personal property generally. In the sense in which now used in this section it would include only tangible personal effects that are commonly and ordinarily capable of being sold at public auction, but would not include the choses in action or intangible property mentioned in your first question.

The foregoing conclusion obviates the necessity of an answer to your second query.

Coming now to the meaning of the word "person" as used in Section 309.17, Revised Code, which reads as follows:

"When the prosecuting attorney of a county is informed that a person has in his possession money or other property belonging to a person found dead within such county, upon whose estate no letters of administration have been issued, the prosecuting attorney, by notice in writing, shall require the person having such money or other property to deposit it with the probate court. If within fifteen days such person does not comply with such requirement, the prosecuting attorney shall bring suit in the Court of

Common Pleas, in the name of the state, for the recovery thereof, and, when recovered, it shall be at the disposition of the probate court.”

Here it should be noted that the statute refers to “money or other property.” So far as money and personal effects is concerned it has already been noted in Section 313.14, Revised Code, that special provision is made for their disposition by the coroner. Accordingly, as to money and personal effects it could not be said that this section applies to that officer.

We have concluded above, however, that the “property” here involved is neither money nor personal effects. Hence whatever such property is in the possession of the coroner is not held by him in any official capacity but rather is held as an individual, and as an individual he is as fully amenable to Section 309.17, Revised Code, as any other person. Thus, I conclude that it is his duty to “deposit” such property “with the probate court.”

I do not consider that this requirement to “deposit” such property with the court means that actual physical custody should be transferred to the court, but rather that the court be given control of its disposition in accordance with the statutes relating generally to decedents’ estates. In this connection we note the following provision in Section 313.22, Revised Code:

“Section 311.01 to 311.21 (313.01 to 313.21), inclusive, of the Revised Code 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.”

It is quite likely that in the vast majority of cases of this sort the amount of the property involved is so small as not to justify the expense of administration in the probate court, just as was the case in Opinion No. 613, Opinions of the Attorney General for 1915, p. 1248. In such cases the property could be disposed of under the provisions of Section 2113.03, Revised Code, by application to the court to relieve the estate from administration and to order delivery of or transfer of the property to the persons entitled thereto. This section reads in part:

“Upon the application of any interested party, after notice of the filing thereof has been given to the surviving spouse and heirs at law in such manner and for such length of time as the

probate court directs, and after three weeks' notice to all interested parties by publication thereof once each week in a newspaper of general circulation in the county, unless such notices are waived or found unnecessary, the court, when satisfied that the assets of an estate are one thousand dollars or less in value and that creditors will not be prejudiced thereby, may make an order relieving such estate from administration and directing delivery of personal property and transfer of real estate to the persons entitled thereto.

“When a delivery or transfer of property has been ordered without administration, the court shall appoint a commissioner to execute instruments of conveyance when necessary \* \* \*”

Because the coroner, as an individual, is under a duty to “deposit” the property in question with the probate court it follows that he is an “interested party,” within the meaning of section 2113.03, Revised Code, and is thus authorized to make such application to the court; and I conclude that an application under this section is a proper method of “depositing” such property with the court.

In specific answer to your questions you are advised:

1. Personal effects within the meaning of Section 313.14, Revised Code, does not include savings account passbooks, checks, money orders, United States Savings Bonds, and stock certificates.

2. Where property, other than moneys, clothing and personal effects, is found in connection with or pertaining to the body of a deceased person, in a case where death resulted in circumstances requiring action by the county coroner, and where such property is taken in custody by the coroner, it becomes his duty, under the provisions of Section 309.17, Revised Code, to “deposit” such property with the probate court. Such “deposit” should be accomplished by making application to the court either for the appointment of an administrator or for relief of the estate of such deceased person from administration as provided in Section 2113.03, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General