

June 22, 2022

The Honorable William C. Hayes
Licking County Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

SYLLABUS:

2022-009

Pursuant to the terms of R.C. 2113.64-.67,
a county treasurer cannot take an owner-
ship interest in outstanding annuities
when the designated beneficiary of the an-
nuities is either unknown or not found.



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OPINION NO. 2022-009

The Honorable William C. Hayes
Licking County Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

Dear Prosecutor Hayes:

You have requested an opinion asking if a county treasurer may take an ownership interest in outstanding annuities when the interest remains unclaimed. I have framed your question as follows:

Pursuant to R.C. 2113.64-.67, may a county treasurer take an ownership interest in outstanding annuities when the designated beneficiary is either unknown or not found?

For the reasons that follow, I answer your question in the negative. A county treasurer cannot take an ownership interest in outstanding annuities when the designated beneficiary is either unknown or not found.

I

R.C. 2113.64-.67 provide that if a sum of money remains unclaimed prior to the filing of the final account of an estate, the unclaimed money may be distributed into the county treasury. *See* R.C. 2113.64 and 2113.65.

The deposited money is held for the benefit of the rightful claimant. The treasurer cannot use the money for the county, and once the entitled person satisfies the probate court of the person's right to the money—the entitled person may collect the deposited money. *See* R.C. 2113.67; *see also* 1972 Op. Att'y Gen. No. 72-122, syllabus, paragraph 2.

The procedure for unclaimed money is clearly stated in R.C. 2113.64-.67. You ask whether the county treasurer may take an ownership interest in unclaimed outstanding annuities for similar safe keeping. I must therefore analyze whether the procedure set forth in R.C. 2113.64-.67 applies to unclaimed outstanding annuities.

Prior to starting my analysis, however, I must note two limitations of my opinion rendering function. First, annuities are governed by contract. *See, e.g., Adams v. Adams*, 12th Dist. Warren No. CA2002-09-087, 2003-Ohio-3703, ¶15, *citing Trangenstein v. Bd. of Trustees of Wheaton College*, 148 Ohio App.3d 382, 2002-Ohio-2937, 773 N.E.2d 602, ¶ 9 (2d Dist.). The task of interpreting contracts and agreements rests solely with the judiciary. *See, e.g.,* 1983 Op. Att'y Gen. No. 83-087, at 2-342. As such, I am without authority to review and interpret particular annuity contracts. *Id.* Second, I have no authority to opine on the powers of the judiciary, which is a separate branch of government. *E.g.,* 2019 Op. Att'y Gen. No. 2019-018, Slip. Op. at 6; 2-137. Probate courts have significant control over the administration of estates, *see generally* R.C. 2101.24, and this opinion does not opine on the authority of a probate court to issue orders related to an estate. This opinion

only analyzes a county treasurer's ability to take an ownership interest in outstanding annuities under the Revised Code when the beneficiary is either unknown or not found.

II

R.C. 2113.64 and 2113.65 are the two relevant statutes. My analysis must start with the text of both statutes. *See, e.g., Gutmann v. Feldman*, 97 Ohio St.3d 473, 2002-Ohio-6721, 780 N.E.2d 562, ¶14.

R.C. 2113.64 states:

If a sum of money to be distributed to heirs, next of kin, or legatees, or owing from an estate to a creditor of the estate, remains unclaimed prior to the filing of a final account, the court may order it turned into the county treasury as provided in section 2113.65 of the Revised Code, or may order the executor or administrator to invest it as the court directs for a period not to exceed two years, to accumulate for the benefit of the persons entitled to the sum of money. Such investment shall be made in the name of the probate judge of the court for the time being and shall be subject to the order of the judge and the judge's successors in office.

R.C. 2113.65 states:

The person investing unclaimed money under section 2113.64 of the Revised Code shall file in the probate court a memorandum thereof, with the original certificates or evidences of title representing such investment, which shall be allowed as a sufficient voucher for such payment under the order or decree. If the amount is unclaimed at the end of the period of such investment, it shall be turned into the county treasury and credited to the general fund, without liability for interest thereon. The receipt of the county treasurer taken for it and filed is a sufficient voucher.

Neither statute mention “annuities.” Both statutes only discuss “money.” Neither “annuity” nor “money” is defined for purposes of R.C. Chapter 2113. When terms are not given a statutory definition, it is appropriate to give the terms their common meaning. *E.g.*, 2015 Op. Att’y Gen. No. 2015-005, Slip Op. at 15; 2-52. By its common meaning, “money” is not an “annuity.” *See Black’s Law Dictionary*, 1204 (11th Ed.2019) (a definition of “money” is: 1, “[t]he medium of exchange authorized or adopted by a government as part of its currency”; 2, “[a]ssets that can be easily converted to cash”; 3, “[c]apital that is invested or traded as a commodity; 4, “[f]unds; sums of money”). An “annuity” “is ‘an obligation to pay a stated sum, usually monthly or annually, to a stated recipient.’” 2013 Op. Att’y Gen. No. 2013-043, at 2-412, quoting *Black’s Law Dictionary*

105 (9thEd. 2009); see *Bronson v. Glander*, 149 Ohio St. 57, 59, 77 N.E.2d 471 (1948) (recognizing an annuity as “an obligation by a person or company to pay to the annuitant a certain sum of money at stated times during life or a specified number of years, in consideration of a gross sum paid for such obligation”); *Beard v. New York Life Ins. & Annuity Corp.*, Franklin App. No. 12AP-977, 2013-Ohio-3700, at ¶12 (defining annuity as an investment “where a person or company is obligated to pay to the annuitant a sum of money over stated intervals during the annuitant’s life, in consideration for a gross sum paid for such an obligation”). Based on the definitions, the terms “money” and “annuity” are not interchangeable.

Moreover, in other statutes addressing similar subject areas, the legislature has clearly distinguished between money and other personal property. For example, when certain beneficiaries live out of the country, the Revised Code explicitly distinguishes between how money is to be held in trust and how other personal property is to be held in trust. See R.C. 2113.81. And in the chapter governing unclaimed funds, the term “unclaimed funds” is defined as “any moneys, rights to moneys, or intangible property.” R.C. 169.01(B)(1). This definition clearly distinguishes between money and other intangible property. When the legislature uses different terms in similar statutes, it is presumed that different results were intended. See *State ex rel. Rocco v. Cuyahoga Cty. Bd. of Elections*, 151 Ohio St. 3d 306, 2017-Ohio-4466, 88 N.E.3d 924, ¶¶14-15; see also *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 66, 110 N.E. 627 (1915).

“A county treasurer is a creature of statute, entitled to exercise only those powers expressly granted by the legislature or ‘such implied powers as are necessary to carry into effect the powers expressly delegated.’” 2015 Op. Att’y Gen. No. 2015-005, Slip Op. at 18; 2-55, quoting *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 89, 197 N.E. 112 (1935). Since no statute provides that a county treasurer may take an ownership interest in outstanding annuities when the designated beneficiary is either unknown or not found, the county treasurer lacks the authority to take an ownership interest in such annuities.

Conclusion

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

Pursuant to the terms of R.C. 2113.64-.67, a county treasurer cannot take an ownership interest in outstanding annuities when the designated beneficiary of the annuities is either unknown or not found.

Respectfully,

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

DAVE YOST
Ohio Attorney General