or vote by classes, as the articles may require, at a shareholders' meeting called for that purpose. Notice of such meeting shall be given to all of the shareholders of record of the corporation whether or not they shall be entitled to vote thereat.

* * * ."

It is, of course, the common law rule that where an act is to be done by the constituent members of a corporation as distinguished from an act to be done by a select and definite body, such as a board of directors, a majority of those who appear may act. Kent's Commentaries, Vol. II, p. 293. In view of the express provision, however, of Section 8623-65, supra, it is manifest that before a board of directors may sell the entire assets and property of a corporation organized under the laws of this state, the Legislature has provided that authority so to do must be conferred by a vote of the holders of shares entitling them to exercise two-thirds of the entire voting power of the corporation. There is no provision in the foregoing section to the effect that two-thirds of a quorum is all that shall be required upon such a proposal. The statute expressly provides that this action must be authorized by the "holders of shares entitling them to exercise at least two-thirds of the voting power". The voting power of a corporation can only be represented by the total outstanding shares having authority to vote upon a given measure.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that under the provisions of Section 8623-65, General Code, unless otherwise provided in the articles of incorporation of a corporation, a board of directors of such corporation may not sell all of such corporation's property and assets unless authorized by the vote of holders of shares entitling them to exercise two-thirds of the entire voting power of such corporation on such proposal, and, accordingly, such authorization by the holders of shares entitling them to exercise two-thirds of the votes represented at a stockholders' meeting is not sufficient when all of the voting shares of such corporation are not represented at such meeting.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2236.

DEPENDENT CHILD—BORN WHILE MOTHER CONFINED IN FEEBLE-MINDED INSTITUTION ON VISIT TO COUNTY OTHER THAN FRANKLIN AND CLARK, HER BIRTHPLACE—COURTS HAVING JURISDICTION—WHAT COUNTY CHARGEABLE FOR SUPPORT—RIGHT TO MANDAMUS COURT.

SYLLABUS:

1. *Where a child is born to a feeble-minded mother while she is out of the Institution for Feeble-Minded on a trial visit in a county other than Franklin and other than the county from which said mother was committed and such child is now in the Institution for the Feeble-Minded with said mother, the Juvenile Court of the county in which said child was born has no jurisdiction over said child.*

2. *Under such circumstances, the Juvenile Court of the county in which the child is found clearly has jurisdiction. It is also probable that the court of the county from which the mother was originally committed may have jurisdiction.*

3. *The county in which such court assumes jurisdiction and declares such child to be dependent, will be responsible for the support of said child.*

4. *Mandamus is a proper remedy to require a court to proceed to hear a case properly brought before it. However, the discretion of a court may not be controlled by mandamus.*

COLUMBUS, OHIO, August 15, 1930.

HON. H. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads as follows:

"Under date of August 17, 1929, you rendered your official opinion No. 755 to this department with reference to the jurisdiction of a Juvenile Court in the case of commitment of dependent children. The opinion is clear and conclusive as to the proposition that any Juvenile Court, in whose jurisdiction a dependent child is found, has jurisdiction to hear the case and make the appropriate disposal of it. It does not, however, clearly indicate whether this jurisdiction is exclusive nor whether a court of the county in which the child may have a legal residence would also have jurisdiction to make such commitment.

The case on which our inquiry was based has some rather unusual aspects and the determination of the policy to be followed in this case will become very important in determining the future policy of the Department in general, and it may make it necessary for us to request legal action on the part of your office. I am, therefore, submitting the facts somewhat in detail for your instruction as to the proper procedure in disposing of this child.

The mother of this child 'M. T.' was born in Clark County in 1900. At eleven years of age, she was taken to a Clark County children's home and remained there till she reached the age of eighteen when she was committed to the institution for feeble-minded at Columbus. At the age of twenty-six she was allowed to go on trial visit to the home of her sister in Hancock County where she remained for several years. During this time two illegitimate children were born to her. After the birth of these children, the sister with whom the mother was living claimed that she was unable to control her and the sheriff of Hancock County returned the mother to the Institution for Feeble-Minded where she now is. One of the children 'H. T.' was returned with her and is now in the institution. The child was not committed to the institution by court action and is not of such age as to be admissible to the institution even if the fact of feeble-mindedness were shown to exist. Officials of Hancock County had no knowledge of the placement of this individual 'M. T.' in the home of her sister.

It is desirable for the good of these children and the good of society that they be committed to the Division of Charities for placement, but the question arises as to which court could have jurisdiction to make the commitment and as to which county will have to bear the responsibility for the support of the children.

Both children were born in Hancock County. Their mother was a ward of the Institution for Feeble-Minded at all times when she was in Hancock County. The child in which we are particularly interested is now actually present in Franklin County at the Institution for Feeble-Minded. It is imperative that the child be removed from this institution and we desire your advice as to whether we shall make application to Franklin County, Clark County or Hancock County and if such application is made and such com-

mitment effected, which county is responsible for the support of the child? In case the Probate Court of any one or all of these counties should refuse to assume jurisdiction what procedure should be followed in order to test the legal question as to responsibility for the care of the child?"

In an opinion of the Attorney General found in Opinions of the Attorney General for the year 1921, at page 808, consideration was given to the status of a child born to a mother confined in the State Institution for Feeble-Minded. In said opinion it was definitely, and I think correctly, decided that such a child has no status as an institutional child. In other words, before one may become subject to the jurisdiction of an institution, it must have been committed thereto in pursuance of some statutory authority. As suggested in your communication, my opinion No. 755, to which you refer, is conclusive upon the proposition that any Juvenile Court in whose jurisdiction a dependent child is found, has jurisdiction to hear the case and make the proper disposal of same.

In my opinion No. 1843, issued under date of May 9, 1930, it was held, as disclosed by the syllabus, that:

"A Probate Court may take jurisdiction of a child who is found to be in the county of which such court has jurisdiction under facts and circumstances which constitute truancy, irrespective of the school to which such child is assigned. Ordinarily the county of the child's residence will be the county in which such delinquency occurs, although it is possible for such child to be delinquent in another county for the same cause."

From the opinion last quoted it appears that the residence of the child is not the basis for determining the jurisdiction of the court. However, the residence of a child may, under certain facts and circumstances, bear upon the question as to whether a child is dependent, delinquent or otherwise. That is to say, a child who fails to obey the commands of its parents with whom it resides and is absent from its home against the wishes and commands of its parents, in all probability could be found to be delinquent in the county in which the parents reside, as in the case of a truant discussed in my opinion last mentioned.

On the other hand, from my said opinion last mentioned, it further appears that a child may be found to be dependent or delinquent in a county other than the residence of its parents. In the case you present, it is certain that the residence of the mother is the residence of the child. It is probable as a matter of law that the actual residence of the mother is in the county from which she was originally committed to the state institution. Undoubtedly, the county from which she was originally committed is now paying the cost of her support in the State institution. Not being *compos mentis,* of course, she could not change her residence while an inmate in said institution, and it would therefore follow that the county in which the child was born could not now take jurisdiction, for the reason that said child is not a resident of said county and is not within the jurisdiction of that court.

In view of the foregoing, it is my opinion that under the facts and circumstances presented in your communication, Clark County is the residence of the child under consideration, and in all probability the judge of that county could assume jurisdiction.

On the other hand, it is further my opinion that if by reason of the fact that such child is located in the State institution in Franklin County it is to be regarded as a dependent child, then the Juvenile Court of Franklin County clearly has jurisdiction. In other words, there is no doubt but that any court has jurisdiction of a child in its jurisdiction under facts and circumstances which constitute dependency.

With reference to the question you present as to the cost for the support of such

child, this is a problem somewhat difficult to determine. Section 1653, General Code, provides, among other things, that a child may be committed to the children's home of the county in which it is found to be dependent or neglected if there be such home in the county. If there be no such home in the county, then it may be committed to such a home in another county if it is willing to receive the child, for which the county commissioners of the county in which it has a settlement, shall pay a reasonable board. In the case you present, it would seem that the child under consideration cannot be said to have a settlement in either Clark or Franklin County. Under such circumstances, the county in which jurisdiction has been taken undoubtedly would be liable for the support of the child.

You further inquire as to the proper method of procedure in case the Probate Court of any county having jurisdiction should refuse to exercise such jurisdiction. In answer to this inquiry, it is suggested that mandamus is a proper remedy to require a court to exercise its judgment or proceed to discharge any of its functions, but, of course, judicial discretion cannot be controlled.

In my opinion, found in Opinions of the Attorney General for the year 1929, at page 1680, it was held, as disclosed by the syllabus, that:

> "1. The Probate Court under the provisions of Section 13425-15, General Code, must hear such criminal cases as it has jurisdiction to try upon the filing of any information by the prosecuting attorney.
>
> 2. It being the duty of the Probate Court, specifically enjoined by law, to hear such cases, mandamus will lie to require such court to perform its duty."

While precedents may also be available, it is believed unnecessary to discuss the same for the purposes of this opinion. However, in passing, it may be stated that it is inconceivable that such a procedure would be required in order to secure jurisdiction in such a matter. Of course, these problems present some technical questions as to which is the proper county to support the child, but such technical objections should not deter the taking of jurisdiction in view of the interests of the public welfare.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that:

1. Where a child is born to a feeble-minded mother while she is out of the Institution for Feeble-Minded on a trial visit in a county other than Franklin and other than the county from which said mother was committed and such child is now in the Institution for the Feeble-Minded with said mother, the Juvenile Court of the county in which said child was born has no jurisdiction over said child.

2. Under such circumstances, the Juvenile Court of the county in which the child is found clearly has jurisdiction. It is also probable that the court of the county from which the mother was originally committed may have jurisdiction.

3. The county in which such court assumes jurisdiction and declares such child to be dependent, will be responsible for the support of said child.

4. Mandamus is a proper remedy to require a court to proceed to hear a case properly brought before it. However, the discretion of a court may not be controlled by mandamus.

Respectfully,
GILBERT BETTMAN,
Attorney General.