

designed to guard against carelessness in the handling of virulent poisons by students in schools would be desirable. I am, however, confronted with a question involving the construction of a penal statute and it is well recognized that such statutes must be strictly construed in favor of the accused. It is, accordingly, my opinion that the delivery of a virulent poison in excess of the amount referred to in Section 12669 by a person in charge of a storeroom connected with a laboratory of the Department of Chemistry of a university or college, to students of the college for use in the laboratory without labeling such poison and without recording the delivery thereof, is not violative of the provisions of Section 12667, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2235.

CORPORATION—SALE OF PROPERTY MUST BE AUTHORIZED BY  
TWO-THIRDS OF VOTING POWER—EXCEPTION.

*SYLLABUS:*

*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 a 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 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.*

COLUMBUS, OHIO, August 14, 1930.

HON. JOHN W. PRUGH, *Supt. of Bldg. and Loan Assns., Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter addressed to Mr. Laylin, in which you request my opinion as to the matter of what proportion of the voting shares of a corporation are required under the provisions of Section 8623-65, General Code, to vote favorably upon the question of the sale of the entire assets of a corporation.

I am advised that the board of directors of a corporation has been authorized to sell all of its property and assets by a vote of the holders of shares authorizing them to exercise two-thirds of the votes represented at a stockholders meeting and that at such meeting the entire voting stock was not represented.

Section 8623-65, General Code, provides in part as follows:

“A corporation may, by action taken at any meeting of its board of directors, sell, lease, exchange or otherwise dispose of all or substantially all of its property and assets, including its good will, upon such terms and conditions and for such considerations, which may be money, shares, bonds, or other instruments for the payment of money or other property or considerations, and, if desired, may divide or distribute such considerations among its shareholders on such terms and basis and in such manner as its board of directors deems expedient, when and as authorized by the vote of holders of shares entitling them to exercise at least two-thirds of the voting power on such proposal, or the vote of such other proportion, not less than a majority,

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.*