

pany of Columbus, Ohio. This contract covers the construction and completion of heating and plumbing contract for Physical Education Building and Equipment, Ohio State University, as per Items 18-19, together with Alternate A, B, and No. 3, as set forth in the form of proposal dated July 8, 1930. Said contract calls for an expenditure of forty-nine thousand and twenty-four dollars (\$49,024.00).

You have submitted the certificate of the Director of Finance, to the effect that there are unencumbered balances legally appropriated, in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure have been obtained, as required by Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the Southern Surety Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2234.

STOREROOM—CONNECTED WITH COLLEGE LABORATORY—MAY BE OPERATED BY UNREGISTERED PHARMACIST—DELIVERY OF POISON TO STUDENTS WITHOUT LABELING AND RECORDING LEGAL.

SYLLABUS:

1. *A storeroom connected with a laboratory of the Department of Chemistry of a college or university may be operated by such college or university without a registered pharmacist in charge thereof.*

2. *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.*

COLUMBUS, OHIO, August 14, 1930.

State Board of Pharmacy, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“At a meeting of our board held this week, they had before them, the question of the chemistry departments of colleges and universities, dispensing poisons, and directed me to request of you an opinion on same.

The Department of Chemistry of a certain college has two well equipped laboratories to which is connected a storeroom where drugs, chemicals and poisons are dispensed to students working in these laboratories. This storeroom is in charge of an unregistered pharmacist who does not have a chemistry degree of any kind. The students in the laboratories call at the window

of the storeroom and receive any poisonous drug they may want. It is delivered to them and carried back to their desk in the laboratory with no record of same being made in the store supply room.

The different poisonous chemical solutions are also prepared within the storeroom by the person in charge, who is not a registered pharmacist or chemist.

The question is, therefore, is the Department of Chemistry of any college or university legally permitted to operate such a storeroom by dispensing such drugs, poisons and chemicals in the above mentioned manner. The drugs, chemicals and poisons being dispensed without cost except that a general tuition fee includes the same."

Your question resolves itself into two questions: First, whether a registered pharmacist is required to be in charge of a storeroom such as you describe, and, Second, when poisons are delivered by the person in charge of such storeroom to students of the college, must such poisons be labeled and a record kept of the delivery thereof.

Disposing first of the question as to whether or not a registered pharmacist must be in charge of such storeroom, Section 12705, General Code, provides a penalty for managing or conducting a retail drug store without having a legally registered pharmacist actually in charge of the pharmaceutical department of such store. I find no requirement in the General Code that the supply room of a laboratory must be in charge of a legally registered pharmacist. It is obvious that such a supply room or storeroom is not a retail drug store, and accordingly, such storeroom may be operated by a college or university without a registered pharmacist in charge thereof.

The provisions of the General Code relating to the labeling of poisons and recording the delivery thereof, are contained in Sections 12666, et seq. Section 12666 provides in part as follows:

"Whoever, knowingly sells or delivers to any person otherwise than in the manner prescribed by law, or sells or delivers in the manner prescribed by law, but without the written order of an adult, to a minor under sixteen years of age, any of the following described substances or any poisonous compounds, combinations or preparations thereof, to-wit: * * * or other virulent poison, shall be fined not less than ten dollars nor more than fifty dollars for each offense."

Section 12667, General Code, provides as follows:

"Whoever sells or delivers to any person a substance named in the next preceding section without having first learned by due inquiry that such person is aware of the poisonous character thereof and that it is desired for a lawful purpose or without plainly labeling the word 'poison,' and the names of two or more antidotes therefor, upon the box, bottle or package containing it or delivers such substance without recording in a book kept for the purpose, the name thereof, the quantity delivered, the purpose for which it is alleged to be used, the date of its delivery, and the name and address of the purchaser and the name of the dispenser or fails to preserve said book for five years and submit it at all times for inspection to proper officers of the law, shall be fined not less than ten dollars nor more than fifty dollars."

There are certain exceptions to the requirement in the foregoing section as to labeling virulent poisons, the only pertinent one of which is contained in Section 12669, which section provides:

"It shall not be necessary to place a poison label upon, nor record the delivery of preparations containing substances named in Section twelve thousand six hundred and sixty-six, when a single box, bottle or other package of one-half fluid ounce or the weight of one-half avoirdupois ounce does not contain more than an adult dose of such poisonous substance."

In view of these foregoing provisions, it becomes necessary to determine whether or not when the person in charge of a storeroom such as you mention, delivers poisons to students of the college or university for use in the laboratory, such person "*sells or delivers*" such poisons within the meaning of Section 12667, supra; if so, such delivery is in violation of the law. I have little difficulty in reaching the conclusion that the delivery of such poisons under the circumstances which you set forth is not a sale within the meaning of this last mentioned section, for even though students are customarily charged a fee by the college or university to pay the cost of chemicals which are used in the laboratory in the course of their instruction, the chemicals are not purchased from the institution of learning by the student but the college or university merely acts in the capacity of an agent in purchasing such chemicals for the students.

The question of whether or not the delivery of poisons to the students for use in the laboratory by the person in charge of the storeroom constitutes a delivery within the meaning of Section 12667, supra, is slightly more difficult. When a person surrenders control over an article to another person, such act constitutes a delivery of such article. To deliver a thing has been construed as parting with dominion or control over such thing as in the case of the delivery of a deed. *Kirby vs. Hulette*, 174 Ky. 257, 192 S. W. 6368; *Ward-Lewis Lumber Co. vs. Mahony*, 70 Calif. App. 708, 234 Pac. 417, 419. When a poison is sent to a university laboratory by a drug store or a chemical concern, there is, of course, a parting with possession and surrender of control by the store or firm from whence the poison came such as to constitute a delivery within the meaning of this section. After coming into the laboratory storeroom, however, a poison is under the control of the chemistry department. As long as a poison is used for instruction purposes in the chemical laboratory by the persons for which it was purchased, I do not think it may be said there is a delivery of such poison when it is handed from one student to another or when it is handed by the instructor or a storeroom keeper to a student,—there is under such circumstances no change in the dominion or control of such poison.

I am inclined to the view that "delivery," as used in this section, usually contemplates, though perhaps not necessarily in every instance, delivery pursuant to sale. An examination of the language of the section substantiates this view. The statute provides that a record shall be kept in a book which shall show the name of the poison, "the quantity delivered, the purpose for which it is alleged to be used, the date of its delivery, and the name and address of the purchaser." To say that the word "deliver," as used in Section 12667, supra, must be construed as meaning the mere parting with the physical possession of a thing, would lead to the conclusion that every time a student hands a few ounces of poison in a test tube to another student, the test tube must be labeled and the affair recorded. The inhibition against delivering a poison without complying with Section 12667, supra, is I believe applicable to the surrender of dominion or control over the thing.

I have predicated the foregoing observations upon the delivery of poisons by the storekeeper of the laboratory to students working in the laboratory and for use in the laboratory for the purposes of instruction. Of course, if a student were to secure from the person in charge of a college laboratory storeroom a poison for the known purpose of taking it out of the laboratory, there would be a delivery within the meaning of Section 12667, and its provisions must be met.

In considering your questions, I am aware of the fact that perhaps legislation

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,