

2. Persons not otherwise assessed in a township are, by section 100, of The Assessment Act, liable to perform one day's statute labor. If the township council passes a by-law commuting the statute labor to a money payment, pursuant to section 103, of The Assessment Act, and sub-section 4, of section 561, of The Municipal Act, the persons theretofore liable to perform one day's statute labor under section 100 of the former Act, must pay the per diem commutation, or suffer the penalty provided by sub-section 1, of section 107, of The Assessment Act.

#### General School Levy in Districts.

27.—G. K.—In looking over the Public Schools Act I don't see anything that is very clear on the subject of *changing a school section* into a township board that would be applicable to our municipality, Neebing, as we are at present composed, viz., five townships in one municipality and only one school section and that is in a part of one of the townships, where the majority of the settlers reside.

1. Could you refer me to the particular clause (if any)? I see by sec. 66, sub-sec. 1, Public Schools Act, that the council of every township shall levy upon the whole township that is the public school supporters a sum of \$150.

2. Does that word "township" mean the whole municipality or the township?

3. Does that sentence "public school supporters" mean all those residents outside of school section in the township?

4. Or does it mean all those in the municipality?

1. See section 29 of the Public Schools Act, chapter 292, R. S. O., 1897.

2 and 3. The words "public school supporters" in section 66 includes all the public supporters in the township, that is all those within and outside the school section in the township.

4. In using the word "municipality" we understand it to mean the district formed by the union of several townships under the provisions of chapter 225, R. S. O., 1897, and if we understand you aright the words "public school supporters" have reference to "township" and not to the whole municipality.

#### Drainage Scheme—Allowance for Work Done.

28.—W. D. M.—In a drain just being constructed under the provisions of the Municipal Drainage Act the question has arisen that where a party has been allowed by the engineer for certain work previously done on said drain and which the engineer has allowed in his report to be deducted from the total assessment of the party, upon letting the contract for the drain it was found that the work could not be constructed for the amount originally estimated by the engineer. The contract was finally let for an amount about one half more than the original estimate thus adding to the assessment of all the parties on the drain *pro rata* according to the extra amount required for the construction. One of the parties allowed for work previously done claims that the same per centage should be added to the value of this work as was added to the engineer's estimate for the actual cost of construction. For instance, he had been allowed \$50.00, originally by the engineer, and he claims this amount should be made \$75.00. Is there anything in the Municipal Drainage Act that would bear the council out in allowing this addition? The Act appears to me to be silent on this point. It gives the council power to let the work and if the cost exceeds the original estimate they have the power to add on to the

assessment of the several parties assessed a *pro rata* proportion, but as far as I can see there is nothing said which would indicate that the council could add the same proportion to the value of the work previously done. Kindly give us your opinion as to the meaning of the Act as we wish to deal fairly with all parties and at the same time act in accordance with the statutes.

We assume that the allowance made by the engineer to this person for drainage work already done by him, was that provided for by sub-section 4, of section 9, of The Drainage Act, (R. S. O., 1897, chap. 226.) The engineer, no doubt, estimated this work at its actual value, and credited him with the amount on his share of the cost of the drainage scheme. The account so credited is a fixed sum, and is all that the party can be allowed, whether the whole cost of the drainage scheme exceeds or falls below the engineer's original estimate. The council, under section 66, of The Drainage Act, must distribute the amount required to complete the work among the parties assessed for it *pro rata*, according to their respective assessments.

#### Dog-Tax in Police Village.

29.—A. M. F.—1. We have a police village in our municipality and prior to the formation of the police village, the municipality had a by-law in force taxing dogs, which tax went into the general funds of the municipality. Is the police village entitled to their share of this money in proportion to their assessment, or are they entitled to the full amount of dog-tax imposed on dogs within the limits of the said village?

2. If the municipality had no dog-tax imposed, have the trustees of police village power to pass a by-law imposing a tax on dogs within the limits of said village?

1. No. The only moneys the trustees of the police village are entitled to receive from the council of the township are those levied pursuant to the provisions of section 740, of The Municipal Act, which provides as follows: "The rate levied for police village purposes by the council or councils of the township or townships, in which the police village is situated, upon the property liable to assessment in such village shall be in lieu of such proportion of the township rate now levied for the same or like purposes, within such village, as the trustees and the council may by agreement provide."

2. No.

#### Liability for Accident on Bridge on Colonization Road

30.—H. S.—A bridge at least four hundred feet long, crossing Massanoga Lake and forming part of the Addington colonization road, situate in this municipality, has been built, rebuilt and repaired several times and controlled by the provincial government. The bridge has lately again been in a very bad state of repair, and the attention of the government has been called to its unsafe condition, but no action was taken to make it more safe. About two months ago a load of merchandize broke through said bridge, and was nearly all lost. Some damage was also done to the wagon and harness of the driver, who also lost some clothing and other articles. One of the merchants who owned part of the goods lost applied to the Department of Public Works for indemnification, but was informed by the Honorable the Commissioner, that whether the bridge in question was built by the government or not, it is by law vested in the municipal council, which is alone responsible for any

damages which may have been sustained. The owners of the goods lost and the owner of the wagon, which broke through the bridge, have now claimed the amount of their losses from the council. The members of the council, however, claim that the municipality ought not to be held liable or responsible for the damages as the bridge was built and controlled by the government and was never assumed by the council. The broken down bridge is now being rebuilt by the government.

Will you kindly advise us at once on the following questions?

1. Have the owners of the goods lost and the driver referred to, a legal claim for indemnification for the full amount of the loss sustained?

2. Who is responsible for said damages, the government, or the municipality?

1. Assuming that there was negligence, the question whether the municipality is liable for the damages sustained by reason of such negligence depends upon whether the Lieutenant-Governor had, under the power conferred upon him by section 627, of The Municipal Act, prior to the accident, declared that the bridge should no longer be under the control of the commissioner of public works. That section prohibits any council interfering with any public roads or bridges vested as a provincial work in Her Majesty, or in any public department or board. If this bridge was, at the time of the accident, vested as a provincial work in Her Majesty, or in a public department or board, the local municipality is not liable. The latter part of the section declares that after a proclamation by the Lieutenant-Governor-in-Council divesting the control of the bridge it shall thenceforth be controlled and kept in repair by the council of the municipality, whose duty it is to repair the same. We observe that the commissioner of public works says that the bridge in question is vested in the municipality. If that is true the municipality is liable if it was negligent. The Government of Ontario frequently grants moneys for colonization roads, and these sums are not always under the control of the public works department. That may be the case here. If you will look at section 22, of chapter 37, R. S. O., 1897, you will find the commissioner of public works is required to submit to the Lieutenant-Governor an annual report on all the works under the control of the department, to be laid before the Legislative Assembly within twenty-one days from the commencement of each session, showing the state of each work, and the amount received and expended in respect thereof. If you will have some person make a search in the Public Works Department you will be able to ascertain whether the bridge in question is a work under the control of the department of Public Works or not. If an action be brought against your municipality, we do not think it will be assumed that this bridge is a work under the control of the Public Works Department; on the contrary, we think the onus will be on the municipality to prove that it is such a work, because the fact that a portion of a grant of money by the legislature has been expended on this bridge under the direction of the government, whether to build