

Restraining Cutting of Timber on Highway.

217—J. S.—1. Parties are cutting timber, (without leave of the council) on side road. Is it necessary for the council to have a proper or new survey in order to forbid cutting of said timber? The road has been fenced and used as public road.

Is it the duty of any member of the township council to forbid such cutting of timber in case the pathmaster fails to do so?

Our township by-law states that all timber, etc., on road is in charge of pathmaster.

1. If the council is satisfied that the road is located in the right place, it should by resolution notify the parties who are cutting the timber without its consent to desist therefrom, and if they persist in continuing their operations they can be restrained by injunction. If, on the other hand, the council is uncertain as to the exact location of the line of road, it should, before taking any proceedings, have it definitely located by a surveyor.

2. The council should pass a resolution to notify these parties to desist from cutting the timber. No single member of the council can give an authoritative notice.

Grants by County to Aid Roads in Local Municipality.

218—M. L.—1. If a county cannot grant aid to a municipality to improve a road unless it be joined to a county road what does section 658, sub-section 2 of The Municipal Act mean?

2. What is the legal distinction between passing a by-law for improving any road in a municipality and granting aid to a municipality to improve the same road?

I quite agree with the opinion of the legal editor of THE MUNICIPAL WORLD as I understand that it would be illegal to grant aid to a township unless the grant was to be applied to a road running into a county road, but the county would be justified by section 658, sub-section two, in passing a by-law and then proceed with any work they deemed necessary assuming all responsibility of damages until the road was again assumed by the township.

3. Is this view correct?

We have just such a case in our county council. The council granted \$500 as aid to reduce a hill in the township of G. The township of G. did the work to suit themselves, the county council doing nothing but pay over the money which I contend was illegal, which is contrary to the opinion of our county solicitor, who declared they were justified by section 658, sub-section 2.

1. Sub-section 2 of section 658 does not appear to harmonize with other sections of The Municipal Act. We cannot do better than to quote the observations of Mr. Biggar in his "Municipal Manual" upon this sub-section, with which we agree. They are as follows:

"But even after the interpolated clause relating to bridges has been eliminated the interpretation of the section presents no little difficulty. Read literally, it gives a county council power, if, in the opinion of the council the interests of the county so require, to exercise as to every road not situate within the city, town or village, all the powers conferred by section 637 (1) upon the council of every municipality as to roads which are within their respective jurisdictions. Such an interpretation would render section 613 (1) quoad bridges in townships, and also section 614 wholly unnecessary; since, if a county council is intended to possess, under this sub-section, powers as extensive in regard to such roads as they could acquire by assuming them under one of the sections mentioned, there would be no reason for their taking the latter course and assuming with the road the burden of maintenance imposed by section 606. Section 615 would also become unnecessary, since larger powers would be conferred by this sub-section than by that section.

It is apprehended, therefore, that a county by-law for "opening, making, preserving, widening, altering, diverting or stopping up" any of the "public communications" to which this sub-section applies, is in effect, if not in form, a by-law for assuming the highway or bridge in question.

It may be that a county by-law passed under this sub-section merely for "improving or repairing" a township road or bridge would not *ipso facto* amount to an assumption thereof; but in view of the conflict of jurisdiction and the uncertainty as to the incidence of municipal liability which would result from such a construction, it can scarcely be adopted without the authority of a judicial decision."

2. The passing of a by-law for improving a road in a municipality would involve the defining of the improvements to be made, and their carrying out by the county council or its commissioner. The granting of aid to a local municipality under the authority of sub-sections 5 and 6 of section 658, would mean simply the granting of a sum of money to be expended by the local municipality in the making, etc., of such roads as are mentioned in these sub-sections, either under the direction of a commissioner appointed by the county council or otherwise.

3. We agree with your idea that the county council cannot legally make a money grant to a township under the authority of sub-section 2 of section 658, because there is not a word in it authorizing aid in money. Express authority is given to a county council to grant aid in money to a township by sub-sections 5 and 6 of section 658 in the particular cases mentioned in these sub-sections. Authority to make money grants is also found in sections 614, 615 and 644. In view of the fact that the Legislature has expressly authorized councils of counties to grant aid in money, by the above sections we are of the opinion that such grants can only be made under these sections.

Proceedings for Construction of Drain.

219—J. H. F.—We have an open ditch running across seventeen farms, which was made by mutual consent about twenty-five years ago. Nearly all the people want it cleaned, but one or two men at the outlet do not want to do the work. The majority of the people want the township council to take hold of the matter and put it through in a legal business-like manner and the cost be paid by the parties benefited. The trouble is all want the ditch cleaned. A cleans his part one year. B the next, and so on. We want to get at the thing right. If you can direct please state if it can be made compulsory for each to maintain and keep clean his portion in future?

If this drain does not pass through more than seven original township lots, exclusive of any part thereof, on or across any road allowance, any person interested may take proceedings under The Ditches and Watercourses Act for the construction of a drain, or if the drain required will pass through more than seven original township lots, the council, upon a petition of the majority of the owners of the lands to be affected by the ditch, may pass a resolution authorizing the extension thereof, provided the cost of the whole drain will not exceed \$1,000. Each party interested may be required, by an award made by the township engineer pursuant to the provisions of the above Act, to construct and maintain a definite portion of the drain. (See section 5 of the Act). Otherwise the council may pass a by-law for the construction of the drainage works pursuant to the provisions of The Municipal Drainage Act (R. S. O., 1897, chapter 226), on the presentation to it of the petition required by section 3 of the latter Act.

In Kingston the by-law to give effect to the election of aldermen by the entire city, instead of by the wards, was snowed under.

At Belleville a by-law authorizing the council to borrow \$50,000, with which to repair and run the gas works as a municipal concern, was carried by a vote of 353 to 337.*

Welland defeated the by-law to grant exemption to the Frost Manufacturing Co.